DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR HEALTHY SCHOOL MEALS FOR ALL PROGRAM

1 CCR 301-114

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

0.0 STATEMENT OF BASIS AND PURPOSE

The statutory basis for these rules is 22-82.9-201, et. seq., C.R.S., which requires the State Board of Education to promulgate rules for implementation of the Healthy School Meals for All Program. The purpose of these rules is to assist public School Food Authorities that participate in the National School Lunch Program or School Breakfast Program in complying with federal and state law.

1.0 DEFINITIONS

1.1 "Community Eligibility Provision" means the Federal program created in 42 U.S.C. sec. 1759a(a)(1)(F) that allows school districts to choose to receive federal assistance payments for school meals in exchange for providing free school meals to all students enrolled in all or selected schools of the school district.

1.2 "Department" means the department of education created and existing pursuant to section 24-1-115, C.R.S.

1.3 "Direct Certification" means a process conducted by the states and by local education agencies to certify eligible students for free meals without the need for free or reduced price school meal applications.

1.4 "Federal Free Reimbursement Rate" means the free reimbursement rate set by the United States Department of Agriculture for meals that qualify for reimbursement under the National School Breakfast Program and the National School Lunch Program.

1.5 "Identified Students" means students certified based on documentation of benefit receipt or categorical eligibility as described in 7 CFR 245.6, as it existed as of the most recent adoption of these rules.

1.6 "Identified Student Percentage" means the percentage of a public school's or school district's student enrollment who, pursuant to the National School Lunch Program, are certified as eligible for free meals based on documentation of benefit receipt or categorical eligibility.

1.7 "Local Food Program" means the program authorized pursuant to section 22-82.9-205, C.R.S., that provides School Food Authorities grant funds for the purchase of Colorado grown, raised, or processed products.

1.8 "National School Lunch Program" means the federal school lunch program created in the "Richard B. Russell National School Lunch Act", 42 U.S.C. sec. 1751 et seq.

1.9 "Participating Provider" means an authorized entity that chooses to participate in the Healthy School Meals for All Program.

1.10 "School Breakfast Program" means the federal school breakfast program created in 42 U.S.C. sec. 1773.

1.11 "School Food Authority" (SFA) has the same meaning as provided in section 22-32-120(8), C.R.S., the governing body which is responsible for the administration of the National School Lunch or School Breakfast Program of one or more schools.

1.12 "School Meal Applications" means the application to determine school meal eligibility based on reported information including household size and income or participation in approved assistance programs.

1.13 "Supplemental Nutrition Assistance Program" means the federal program that provides nutrition benefits used by low-income individuals and families to purchase food at stores.

1.14 "Valued-added processed products" means products that are altered from their unprocessed or minimally processed state through preservation techniques, including cooking, baking, or canning.

2.0 ANNUAL NOTIFICATION

2.1 Participating SFAs must submit annual notification to the Department to participate in the Healthy School Meals for All Program prior to the beginning of each school year and must indicate whether they intend to implement the Community Eligibility Provision for eligible schools, as described in section 3.0 of these rules. The School Breakfast Program and the National School Lunch Program must be implemented in all community eligible schools, per federal guidelines.

2.2 As part of the annual notification, participating SFAs must attest to serving free meals to all students at participating schools in both community eligible and non-community eligible schools.

3.0 MAXIMIZING FEDERAL FUNDING

3.1 To be eligible for Community Eligibility Provision, a public school and/or school district is required to have an Identified Student Percentage that meets the threshold required under the National School Lunch Program.

3.2 An SFA may elect to use the Community Eligibility Provision on behalf of a single school, a group of schools, or all schools based on eligibility. An SFA may, in consultation with the Department, choose to group community eligible schools in order to maximize federal funding. Under this practice, individual schools that meet the identified student threshold required under the National School Lunch Program may participate in community eligibility so long as the aggregate percentage of the group of schools electing together meets the required threshold.

3.3 During the annual notification process, an SFA seeking to participate in the Healthy School Meals for All Program may, as needed, work with the Department to complete analysis of school data to determine operating recommendations for participating sites.

3.4 Schools with higher Identified Student Percentage receive the federal free reimbursement for a greater percentage of their meals, making direct certification an important factor in maximizing federal funding. Participating SFAs must directly certify students during required timeframes, based on federal regulations. One representative from each participating SFA must complete the Department's direct certification training annually.

4.0 LOCAL FOOD PROGRAM - ALLOWABLE COSTS

4.1 The majority of Local Food Program grant funding must go toward purchasing Colorado grown, raised, or processed products. Up to 10 percent of money received by a participating provider may cover allowable program related costs that are reasonable and support the Local Food Program's goals. Up to 12 percent of grant funding received may support the implementation of the advisory committee as described in section 22-82.9-205(3)(a), C.R.S. and up to 25 percent of funds can be used to purchase value-added processed products.

4.2 Allowable program related costs include operating and administrative expenses. Participating providers must track all program expenses. All costs will be reviewed by the Department, as a part of its review under section 22-82.9-205(4), C.R.S.

4.02(a) Operating costs include expenses for acquiring, delivering, preparing, and serving local food products or equipment. Any salary expenses that are identified as operating costs must be limited to tasks that are directly related to the implementation of the Local Food Program, such as washing and preparing local produce.

4.02(b) Administrative costs include documented expenses for planning the program, managing the paperwork, and procuring needed equipment. Any salary expenses that are identified as administrative costs must be limited to tasks directly related to the administration of the Local Food Program, such as compiling and tracking the local food purchases and ordering produce.

4.02(c) If equipment is purchased with Local Food Program funds, written justification must be provided to the Department to support the purchase. Equipment purchased with Local Food Program funds that will also be used in other school food programs must only be used for school nutrition programs.

4.3 The Department will monitor purchases and expenses on an annual basis to ensure that Local Food Program funds are only used to pay for allowable program costs. Each year, the Department will identify a selected group of participating providers that received a grant in the preceding budget year. Selected providers must submit to the Department a representative sample of the invoices for the products purchased using the grant money. If a selected participating provider spends more than 15 percent of Local Food Program funding on unallowable products and expenses, the provider is ineligible to receive the grant for the next budget year after the year the Department conducts the review.

5.0 FUNDING FOR WAGES AND STIPENDS AND REQUIRED DOCUMENTATION

5.1 Participating providers are eligible to receive additional funding to increase wages or provide stipends to individuals who directly prepare and serve food for school meals. These individuals include kitchen staff and kitchen managers who, based on their job descriptions, spend at least 70% of their time preparing meal ingredients, cooking, and directly serving meals to students.

5.01(a) A participating provider may receive an amount described in section 22-82.9-211(3), C.R.S.

5.01(b) The wages or stipends shall be in addition to a participating provider’s employees scheduled salary placement.

5.2 To be eligible for funding, a participating provider must use 100 percent of the amount received under this rule 5.0 to increase wages or provide stipends for individuals whom the participating provider employs to directly prepare and serve food for school meals. This funding can be used to cover the increased benefits costs directly associated with the increase in wages or stipends. In subsequent years, the funding can also be used to maintain wage increases or stipends that were provided pursuant to these rules.

5.02(a) If the amount received is used to increase wages or provide stipends, the wages or stipends shall be in addition to a participating provider's employees scheduled salary placement.

5.3 As part of the annual grant process, participating providers must provide documentation to the Department on the provider's planned uses of funding received under this rule 5.0. Appropriate documentation may include, but is not limited to, a written plan for the use of the funds and a link to the provider's proposed budget, and relevant job descriptions.

5.4 Funding will be provided up front once documentation is received and the participating provider's plan is approved. Funds will be disbursed by the end of the current calendar year. Participating providers must record all expenditures. If a provider is unable to spend these funds within the current or subsequent fiscal year, they are required to return the funding to the Department.

6.0 RECORD RETENTION

6.1 All records related to expenditures and program operations must be kept in such a way as to substantiate the claim reimbursements of the participating providers and to meet federal U.S. Department of Agriculture requirements. At a minimum, all records pertaining to the federal child nutrition programs and the Healthy School Meals for All Program, including eligibility, claims, financial records and supporting documentation, must be retained for a period of three years after the end of the federal fiscal year (October 1 through September 30) to which they pertain. Record retention must continue if any audit findings from the period during which the records were in use remain outstanding. In any such case, records must be retained until all issues raised by the audit have been fully resolved. Failure to retain required documentation may result in requiring the school(s) to return to standard meal counting and claiming procedures and/or fiscal action.

7.0 INCORPORATION BY REFERENCE

7.1 The foregoing rules incorporate by reference 7 CFR 245.6 as codified as of October 26, 2023, which are federal regulations regarding providing free and reduced price meals and free milk in the National School Lunch Program, the School Breakfast Program, and the Special Milk Program for Children. The foregoing rules do not incorporate by reference any later amendment or editions to these regulations.

7.2 The federal regulations are available at https://www.ecfr.gov/. They are also available for public inspection, upon appointment, during regular business hours from the Colorado Department of Education, 201 E. Colfax Ave., Denver, Colorado 80203.

Editor's Notes

History

New rule eff. 06/14/2023.

Rule 7.1 eff. 12/30/2023.