

**Title 1—OFFICE OF
ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested
Cases Under Statutory Jurisdiction,
Except Cases [Under Section 621.040, RSMo]
Where Procedure Is Otherwise Provided For By Law**

1 CSR 15-3.380 Answers and Other Responsive Pleadings

PURPOSE: This amendment clarifies that an answer in a case filed under section 162.961, RSMo (IDEA) is due within ten (10) days after receipt of the complaint.

(1) The respondent shall file an answer in all cases except those arising pursuant to sections 36.280, 36.370, 36.380, and 36.390, RSMo, in which case respondent may, but is not required to, file an answer, unless the commission orders that an answer be filed.

(2) An answer to the complaint shall—

(A) Be in writing;

(B) Admit those portions of the complaint which the respondent believes are true and deny those portions that the respondent believes are not true and state that the respondent is without sufficient knowledge to admit or deny the portions not admitted or denied;

(C) Assert as a defense any specific failure of the complaint to comply with 1 CSR 15-3.350 or waive that defense by not asserting it;

(D) Be signed by the respondent or the respondent's attorney; and

(E) When the petitioner seeks review of respondent's action, include—

1. Allegations of any facts on which the respondent bases the action, with sufficient specificity to enable the petitioner to address such allegations;

2. Any provision of law that allows the respondent to base the action on such facts;

3. A copy of any written notice of the action of which petitioner seeks review, unless such written notice was included in the complaint; and

4. Facts that show that the respondent has complied with any provisions of law requiring the respondent to notify the petitioner of the action that petitioner is appealing.

(3) The respondent shall file any responsive pleading within the following times—

(A) Thirty (30) days after service of the notice of complaint, except when service is by certified mail or publication.

(B) When service is by certified mail, within thirty (30) days after acknowledgment of receipt of the notice of complaint or return certified mail receipt is filed in the case.

(C) When service is by publication, within forty-five (45) days of the first publication of notice.

(D) For cases filed under section 162.961, RSMo (IDEA), except as provided in 34 CFR 300.508(e), within ten (10) days of receiving the due process complaint.

(4) The filing of a responsive pleading, other than an answer, that requests the commission to take some action shall increase the time in which the respondent shall file an answer, as set by section (3) of this rule, as follows, unless the commission orders otherwise. In any case, the time allowed for filing an answer shall be no less than the time that remained when the responsive pleading was filed.

(A) If the commission denies the request, the respondent shall file the answer no later than ten (10) days after the commission so orders;

(B) If the commission issues an order postponing its ruling on the request until hearing, the respondent shall file the answer no later than ten (10) days after the commission so orders;

(C) If the commission issues an order granting the request, but the order does not dispose of the entire complaint, respondent shall file the answer no later than ten (10) days after the commission so orders; and

(D) If the commission orders petitioner to amend the complaint, the respondent shall file the answer no later than ten (10) days after service of the amended complaint.

(5) **Except by leave of the commission, [The] the** respondent shall file an answer to an amended complaint within the latest of:

(A) Ten (10) days after service of the amended complaint; or

(B) The time remaining for filing answer to the original complaint; or

(C) Ten (10) days after the date of an order granting leave to file the amended complaint.

(6) Otherwise, the respondent shall amend the answer only with the commission's leave.

(7) Failure to File.

(A) The commission, on its own motion or that of any party, may order a remedy for respondent's failure to file an answer or other responsive pleading, or failure to otherwise comply with this rule, as set forth at rule 1 CSR 15-3.425.

(B) Except in cases under section 36.280, 36.370, 36.380, 36.390, 407.822.1, or 407.1031.1, RSMo, petitioner shall file the motion not fewer than thirty (30) days before the hearing on the complaint or the motion shall be waived. In cases under section 407.822.1 or 407.1031.1, RSMo, petitioner shall file a motion for a remedy only with the [commissioner's] **commission's** leave and pursuant to a schedule ordered by the commission.

(C) In addition to the remedies set forth in rule 1 CSR 15-3.425, remedies under this section may include an order that respondent is deemed to have—

1. Admitted the facts pleaded in the complaint;

2. Waived any defense to the complaint; and

3. Defaulted on any issue raised in the complaint.

(D) The commission may dispose of any issue on which it deems respondent to have defaulted. The commission shall determine the appropriate remedy based on the facts of the case. Respondent's failure to file an answer or other responsive pleading or otherwise comply with this rule shall not constitute the admission of any facts or entitle petitioner to the relief requested in the complaint unless the commission so orders.

(E) In cases in which a default decision has been entered under section 621.045.6, RSMo, the commission may set aside the default when respondent files a motion to set aside the default decision within thirty (30) days after entry of the default, stating facts constituting a meritorious defense and good cause for not having filed an answer or other responsive pleading.

AUTHORITY: section 621.035, RSMo 2000 and section 621.198, RSMo Supp. 2013. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 1, 2004, effective Nov. 30, 2004. Amended: Filed June 1, 2005, effective Nov. 30, 2005. Amended: Filed July 2, 2008, effective Jan. 1, 2009. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expired March 7, 2011. Amended: Filed Aug. 30, 2010, effective Feb. 28, 2011. Amended: Filed _____, 2016, effective _____, _____.*

**Original authority: 621.035, RSMo 1978 and 621.198, RSMo 1965, amended 1978, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.