

Proposed Rule (FNS 2023-0026)

Food Distribution Programs: Improving Access and Parity

Purpose of this Document

This document lists Texas Department of Agriculture's (TDA) responses to the proposed amendments to the Proposed Rule: FNS 2023-0026.

I. Commodity Supplemental Food Program – Proposed Changes

A. Technical Updates

- Proposes technical updates throughout the CSFP regulations (7 CFR 247)
 - **TDA agrees with this proposal.**

B. Regulations to Increase Access

- Proposes a requirement for a state agency to make a publicly available list of all CSFP distribution sites, including both local agencies and other agencies operating under an agreement with a local agency.
 - **CSFP distribution sites are determined by local agencies. Ensuring that accurate lists are publicly available may be burdensome to state agencies. Texas collects this information but would not want participants to fully rely on state websites to find service locations.**

C. State Plan Requirements

- Proposes a requirement for a state agency to make its State Plan publicly available on an internet web page.
 - **TDA could comply with this requirement if designated.**
- Proposes that State Plan must include a description of the process a state agency has in place to verify the identity of participants, or their proxies, before they can receive aid from USDA Foods.
 - **USDA should provide the criteria for this process and permit states to include this in their State Plan. USDA should consider the components as a part of its State Plan review without requiring separate USDA approval before implementation.**

D. Identification Requirements

- Proposes replacing the current requirement that local agencies must require participants or their proxy to have identification at the time of distribution but adds language that local agencies must have a process in place to verify the identity of participants under State Agency requirements.
 - **TDA recommends that states outline those processes in the State Plan submitted for USDA approval.**



TEXAS DEPARTMENT OF AGRICULTURE
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Food and Nutrition Division
Nutrition Assistance Programs

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E. Eligibility Requirements

- Proposes increasing CSFP's maximum income eligibility guidelines from 130% to 150% of the U.S. Federal Poverty Guidelines.
 - If increasing access, USDA must consider increasing caseload and administrative funding for states meeting the current caseload. TDA agrees with increasing to 185% to align with SFMNP for consistency across nutrition programs.
- Proposes removing references to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
 - TDA supports this proposal.
- While not currently proposed, FNS is seeking comment about a potential future change allowing State agencies to accept participation in Federal programs such as the Supplemental Nutrition Assistance Program (SNAP), the Food Distribution Program on Indian Reservations (FDPIR), and Supplemental Security Income (SSI) as demonstrating eligibility for CSFP.
 - Allowing more categorical eligibility would decrease paperwork and barriers to access the program.
- Additional questions on this topic:
 - Are there other Federal programs that you would like USDA to consider as options to demonstrate eligibility for CSFP?
 - USDA should consider SFMNP if the eligibility thresholds align in addition to the Housing and Urban Development program.
 - Should USDA consider an option for State agencies to have the flexibility to include State means-tested programs to demonstrate eligibility for CSFP?
 - This would be difficult for states without clear instructions or parameters to make those decisions. This would incur an additional cost to a program that currently does not receive enough funding to cover the administrative costs.

F. Referrals to other senior nutrition assistance programs

- Proposes requiring local agencies, where applicable, to share written information and referrals to the SFMNP with applicants, increasing awareness and access to other senior nutrition assistance programs relevant to CSFP participants.
 - TDA supports this proposal.

G. Non-Discrimination Statement

- Proposes updating regulation to advise the public that CSFP must operate under the most up-to-date USDA nondiscrimination statement.
 - TDA does not have a comment on this proposal.

II. The Emergency Food Assistance Program – Proposed Changes

A. Technical Updates

- Proposes replacing instances of the outdated terms such as Commodities, Food commodities, TEFAP commodities, TEFAP foods, Donated foods, and Donated commodities to “USDA Foods.”
 - TDA supports this proposal.
- Proposes revising the definition of Food Bank by deleting “...or edible commodities, or the products of food or edible commodities...” from the description of foods provided by food banks in CFR § 251.3(f).
 - TDA supports this proposal.

B. Increasing Access to TEFAP

- Proposes a requirement for TEFAP State agencies to post information about eligible recipient agencies and TEFAP statewide eligibility criteria to publicly available websites.
 - Ensuring that accurate TEFAP eligible agencies and TEFAP statewide eligibility criteria are publicly available may be burdensome to state agencies. Texas collects this information but would not want participants to fully rely on state websites as a sole source of information.

C. Income Eligibility Requirements

- Proposes a maximum income eligibility threshold that is at or between 185 percent to 250 percent of the U.S. Federal Poverty Guidelines.
 - Although TDA supports alignment to a 185% poverty standard, concern exists about diluting current available food to more households. Without additional funding, food banks will be expected to serve more eligible households from the same food sources currently available. Such a change will require USDA to provide additional food funding for TEFAP.

TDA does not support an income threshold above 185% due to food availability in addition to the difficulty that it would create. Currently, anything above 185% is out of alignment with other federal nutrition programs.

D. Verifying Residency

- Proposes that a state agency must develop a process for requesting residency information to determine eligibility that does not require an address or identification, such as self-declaration of residency by the applicant.
 - TDA does not support this proposal. Border states such as Texas have many people who are not US (United States) residents, visiting their area

and requesting services. This proposal would open the borders for program abuses and further dilute food availability for citizens.

- Proposes to remove the federal address collection requirement from regulations for TEFAP participants who receive USDA Foods for home consumption.
 - TDA does not support this proposal for the issues cited above.
- Proposes establishing requirements for protecting information obtained from applicants and participants to establish eligibility.
 - TDA does not have a comment on this proposal.

E. Public Posting of Statewide TEFAP Eligibility Criteria

- Proposes requirements for a state agency to post information about eligible recipient agencies and TEFAP statewide eligibility criteria to publicly available websites, including requirements for demonstrating income and residency.
 - Although possible, the accuracy of information may vary as the ERAs are determined by food banks and not state agencies. State agencies should not be the main point of reference for locating resources compared to local agencies that are usually the best referral point.

F. Updated References and Citations

- Update the paragraphs cited for information that must be included in TEFAP State Plans for Farm to Food Bank Projects at new § 251.13.
- Update the paragraph cited for the FNS–667, Report of TEFAP Administrative Costs. Provisions in § 251.10 are proposed to be updated for clarity and improved readability.
 - TDA does not have a comment on this proposal.

G. Non-Discrimination Statement

- Proposes updating regulation to advise the public that TEFAP must be operated under the most up-to-date USDA nondiscrimination statement.
 - TDA does not have a comment on this proposal.

H. Eligible Recipient Agency and Household Distribution Participation Reporting

- Proposes to require TEFAP State agencies to report a list of eligible recipient agencies to FNS annually so that FNS may understand where TEFAP services are offered and the landscape of eligible recipient agencies participating in TEFAP nationally.
 - Ensuring that accurate TEFAP eligible agencies are publicly available may be burdensome to state agencies. Texas collects this information but would not want participants to fully rely on state websites as a sole source of information.

- Proposes that a state agency reports the total monthly number of individuals receiving USDA Foods through TEFAP for home consumption quarterly.
 - This would be an additional cost to a program that does not have enough administrative funding to cover current program costs. If USDA proceeds with this requirement, the reporting mechanism must be in a system that is dynamic and provides automation for larger states that manage more data. Microsoft Excel platform would not be proficient for this type of reporting.

III. USDA Foods in Disasters and Situations of Distress

A. Technical Updates

- Proposed technical updates to replace the outdated terms such as Commodities, Food Commodities, Donated Commodities, and Donated Foods, with “USDA Foods” to further align with the definition of “USDA Foods” in 7 CFR 250.
 - TDA supports this proposal.

B. Eliminate Prohibition of Simultaneous Provision of D-SNAP and USDA Foods during Disasters or Situations of Distress

- Proposes removing language which prohibits the simultaneous provision of USDA Foods and Disaster Supplemental Nutrition Assistance Program (D-SNAP) benefits during a disaster.
 - TDA supports this proposal.

C. Clarification of Requirements for Use of USDA Foods in Congregate Setting vs Household Distribution during Disasters or Situations of Distress

- Proposes revisions to the regulations would reorder provisions so that all congregate meal language would be consolidated into a single provision to clarify the use of USDA Foods in congregate meals.
- Proposes that all language relevant to distribution to households, is consolidated into a single provision to clarify the use of USDA Foods for distribution to households.
 - TDA supports this proposal.

D. Limitation on Impacts to Other Programs

- Proposes language that would ensure that the use of USDA Foods for disaster response activities does not have an ongoing negative impact on the operation of other programs.

- USDA must identify the thresholds that would be deemed as a negative impact for states to enforce. Without those thresholds, the additional language will not accomplish the goal of this rule change.

E. Updated Reporting Requirements for Distribution of USDA Foods to Households during a Disaster

- Proposes a requirement that State distributing agencies must complete a new weekly report if disaster household distribution persists for longer than 14 calendar days.
 - This would be an additional cost to a program that does not have enough administrative funding to cover current program costs. If USDA implements this requirement, the reporting mechanism must be in a system that is dynamic and provides automation for larger states that manage more data. Microsoft Excel platform would not be proficient for this type of reporting.

Signature: 

Date: 09/27/23

Approved By: Lena Wilson
Title: Assistant Commissioner
Division: Food and Nutrition
Agency: Texas Department of Agriculture