

Section 3000

Program Agreement

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Program Agreement

3100 The Emergency Food Assistance Program (TEFAP) Agreement Between Contracting Entity and Texas Department of Agriculture and *Application for Participation/Plan of Operation*

The Texas Department of Agriculture (TDA) will approve the *Application for Participation/Plan of Operation*, which stipulates that a contracting entity (CE) will perform according to The Emergency Food Assistance Program Agreement Between Contracting Entity and Texas Department of Agriculture (“TEFAP Agreement”); *Application for Participation/Plan of Operation*; supporting documents; and approved amendments. The TEFAP Agreement provides the terms and conditions for participation in The Emergency Food Assistance Program (TEFAP). These terms and conditions relate to the following topics:

- Use, storage, and disposition of USDA Foods
- Accountability
- Certification
- Debarment, suspension, ineligibility, or voluntary exclusion for covered contracts
- Federal lobbying
- Subcontracts for goods and services
- Civil rights
- Program payments

NOTE: TDA may terminate the TEFAP Agreement, as provided by federal regulations, state rules, and the terms and conditions of the agreement. Additionally, the agreement may be terminated immediately by mutual consent or by TDA, without mutual consent, for material breach of the agreement.

After TDA has approved the *Application for Participation/Plan of Operation*, it can be amended only with TDA’s consent.

3200 Agreements Between Contracting Entity and Subdistributing Agencies

If a CE is unable to fulfill one or more of the requirements identified in the TEFAP Agreement and *Application for Participation/Plan of Operation*, the CE may be able to enter into a written agreement with a subdistributing agency to fulfill these requirements. These agreements are subject to TDA approval. TDA will approve or deny these agreements during the application process.

3300 Financial Management System

A CE must maintain a financial management system that provides accurate, current and complete disclosure of the financial status of the CE's TEFAP operation. This system must ensure the following:

- Accounting records are supported by source documentation, including canceled checks, paid bills, payroll, and contract and subcontract award documents.
- Records identify the source and application of funds and contain information about TEFAP reimbursement claimed and paid by TDA, authorization, obligations, unobligated balances, assets, liabilities, outlays, and income.
- Records include accurate, current, and complete reports concerning TEFAP participation and the financial results of the TEFAP.
- Audits are completed yearly to determine, at a minimum, the fiscal integrity of financial transactions and reports and compliance with laws, regulations, and TDA guidelines.
- A systematic method is maintained to resolve audit and review findings and recommendations.

3310 Administrative Costs

TDA determines the necessity and acceptability of administrative costs incurred by a CE in accordance with federal regulations and state rules. CEs can reference these requirements in the

1. Code of Federal Regulations (CFR) at 7 CFR Part 251;
2. Texas Administrative Code (TAC) at Title 4, Part 1, Chapter 26; and
3. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200.

From available federal funds, TDA reimburses CEs for their allowable direct and indirect costs of processing, transporting, and distributing USDA Foods. In addition, at the end of each federal fiscal year, after reimbursing all timely received claims of costs of distributing USDA Foods, TDA will reallocate remaining funds to reimburse the allowable costs of distributing non-USDA Foods.

Administrative costs are covered in more detail in Section 7000, *Financial Management*.

3320 Allowable Administrative Costs

The following costs are specifically identified as allowable costs:

- Actual, direct and indirect costs of transporting, processing, repackaging, storing, and handling USDA Foods.
- As applicable, other costs that are reasonably attributable to distributing USDA Foods, including the cost of supplies, printing, record-keeping, auditing, publishing USDA Foods information, training material, and announcements of distributions.

CEs may claim “direct” and “indirect” expenses. Except for the party who actually pays an expense, there is no difference between a direct and an indirect expense.

Example: A CE “directly” pays the costs of storing USDA Foods in its own warehouse, or in storage space it leases, and “indirectly” pays for the same expense when reimbursing a subagency for the subagency’s cost of storing TEFAP foods.

Allowable expenses, direct and indirect, are those incurred by a CE in order to comply with the terms and conditions of the TEFAP Agreement.

Allowable expenses relate to receiving, handling, storing, and distributing USDA Foods, in the following broad categories:

- Storage facilities
- Equipment
- Salaries
- Transportation
- Other (requires itemization and explanation)

Though cost allocation methodologies are not mandated by TDA, such methodologies must be reasonable.

Examples: Determining salary costs of less than full-time employees may necessitate the ongoing use of timesheets. The cost of storage and office space in a multi-purpose facility can be determined using the percentage of square footage as the basis.

3320.1 Examples of Allowable Expenses:

Accounting services
Advertising program availability
Audits
Bonding costs
Depreciation and Use Allowance
Employee salary and fringe benefit
Legal expenses in contracting and subcontracting
Maintenance and supplies
Transportation (including costs of permits/licenses to transport commodities)
Travel for TEFAP purposes
Cost of meals served to volunteers
Building and office space
USDA Foods storage costs

3330 Unallowable Administrative Costs

Expenditures by a CE that are not applicable to TEFAP objectives are “unallowable costs,” which are identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200). Unallowable costs are addressed in more detail in Section 7000, *Financial Management*.

- Bad debts because of uncollectible accounts and other claims and related costs including repayment of audit exceptions
- Contributions to a contingency reserve or similar provisions for unforeseen events
- Contributions and donations including USDA Foods and other donated food, labor, and supplies
- Entertainment including amusements, social activity, and related costs such as meals, beverages, lodging, rentals, transportation, and gratuities
- Fines or penalties resulting from violations of or failure to comply with federal, state, or local laws and regulations
- Salary and other expenses of the governor and state and local legislators
- Costs resulting from non-reimbursement of expenses under other programs
- Value of in-kind donations
- Administrative costs not included in the CE’s approved budget
Capital expenditures (See Item 7710.4, *Capital Expenditures in TEFAP* for additional guidance.)
- Fund-raising expenses incurred to raise capital or to obtain contributions such as financial campaigns, endowment drives, and solicitation of gifts and bequests
- Rental or lease of buildings, facilities, or equipment if the rental or lease agreement includes a purchase option or if the rental extends beyond the termination date for the program operations

- Rental or use charges for equipment or space owned by a CE
- Reimbursement for the distribution of USDA Foods that exceeds allocated caseload
- Costs incurred for rearrangement and alteration of facilities not required specifically for the program
- Actual losses that could have been covered by permissible insurance (through an approved self-insurance program or otherwise)

If costs paid with TEFAP administrative funds were not allowable, the CE submits an amended claim to remove the disallowed costs. TDA recovers the money in the next claim period. If there are no funds available to cover the unallowable costs, the TDA sends a demand letter to the CE to recover the unallowable costs. TDA may require a corrective action plan (CAP) to prevent future improper use of administrative funds.

3340 Adding or Deleting Allowable Costs

If necessary to ensure the equitable distribution of USDA Foods, TDA may, after consulting with the affected CEs and other stakeholders identified by TDA, change policy to add or delete reimbursable costs of distributing USDA Foods.

3350 Special Transportation Funds

According to the terms and conditions of individual TDA contracts and based on the availability of administrative funds, TDA may provide special transportation funds to CEs to offset the costs of distributing USDA Foods to rural or difficult-to-serve TEFAP recipients.

NOTE: TDA may limit special transportation funds reimbursements to the costs of distributing USDA Foods. If TDA chooses to reimburse the costs of distributing non-USDA Foods with special transportation funds, such reimbursements will occur only if funds are available during reallocation.

3360 Reimbursing Non-USDA Foods Costs

At the end of a federal fiscal year, after reimbursing CEs their allowable costs of distributing USDA Foods, TDA will reallocate available administrative funds and reimburse eligible CEs for costs of distributing non-USDA Foods.

3370 Allocation by a “60/40” Formula

Each year, after reserving funds needed for TEFAP operation, TDA allocates available administrative funds to CEs and alternate CEs by county, using a “60/40” formula. The “60/40” formula is based 60% on the number of county residents who live at or below the official poverty line, and 40% of the number of county residents who are unemployed. **EXCEPTION:** TDA allocates administrative funds to CEs and additional CEs (whose service areas are the same or overlap) based on USDA Foods usage information (see *TEFAP Handbook*, Section 3000, *Program Agreement*, “Allocation by Usage Rates”).

3370.1 Allocation by Usage Rates

TDA may contract with CEs serving the same or overlapping areas. For service areas that are the same or overlap, TDA allocates a fair share of administrative funds based on USDA Foods usage rates. USDA Foods usage rates are determined using historical and/or projected information on the number of meals and/or households served or using other information, as appropriate.

3370.2 Alternative Allocation Methods

As necessary, TDA may elect an alternative method of allocating administrative funds to CEs. An alternative method may replace or complement the current allocating method, as necessary, to

- ensure that TEFAP is available in areas where poor economic conditions are known to exist,
- ensure that all recipient groups have access to USDA Foods, and/or
- distribute USDA Foods in an equitable manner.

In addition, TDA may modify the terms of any TEFAP Agreement or contract, as needed, to ensure that reimbursements from administrative funds are equitable. However, before changing allocation methods or modifying contracts, TDA will consult with affected CEs and will provide notification of the change.

3380 Shared Maintenance Fees

Shared maintenance fees are not an allowable administrative cost. TDA will not reimburse this expenditure. CEs may directly charge recipient agencies (RAs) their usual and customary shared maintenance fees.

At its discretion, TDA can require CEs to reduce or waive shared maintenance fees.

3400 Reimbursement Limits: “Letters of Credit”

After USDA notifies TDA of Texas' share of federal administrative funds, TDA calculates each CE's share of funds. Individual notices to CEs include “Letter of Credit” amounts, which are the reimbursement limits for the program year.

TDA may divide a CE's yearly reimbursement limit into monthly reimbursement limits.

NOTE: TDA may reimburse above “Letter of Credit” levels only if reallocated or if other funds become available.

3410 Reimbursement Rates

3410.1 Actual Reimbursement Rate

Actual reimbursement rates or amounts depend on the amount of available administrative funds and the allocation method used.

3410.2 Notification of Change in Reimbursement Rate

TDA will provide prior notice to CEs of a change in the allocation and/or the reimbursement rate or amount.

3410.3 Claims for Reimbursement

TDA reimburses CEs for their actual, allowable costs of storing, transporting and distributing USDA Foods, as administrative funds are available, according to the terms and conditions of the TEFAP Agreement.

3410.4 Annual TEFAP Budgets

During the annual application approval process and as requested by TDA thereafter, CEs must submit budgets to project the costs of storing, transporting, and distributing USDA Foods during a specified period.

NOTE: A budget is a planning document and is not the amount that TDA will reimburse the CE.