

# Texas Department of Agriculture



## The Emergency Food Assistance Program Handbook

# The Emergency Food Assistance Program Handbook

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# Section 1

# Introduction

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# Section 1

## Introduction

### Program Description

The Emergency Food Assistance Program (TEFAP) was authorized under Federal Public Law 98-8, Title II, as amended.

In August 1996, TEFAP was amended by federal welfare reform legislation. The amendment included a requirement for states to consolidate TEFAP and another commodity assistance program, the Soup Kitchen and Food Bank (SKFB) Program, into a single program.

The consolidated commodity assistance program, TEFAP, was implemented on December 1, 1997. In Texas, TEFAP operated under the name “Texas Commodity Assistance Program (TEXCAP)” until 2011.

### Administration

The Texas Department of Agriculture (TDA) has an agreement with the U. S. Department of Agriculture (USDA) to administer TEFAP in Texas and does so in accordance with federal and state requirements. These requirements can be referenced in the

- Code of Federal Regulations (CFR) at 7 CFR Parts 250 and 251 and
- Texas Administrative Code (TAC) at Title 4, Part 1, Chapter 26.

TDA distributes funds and USDA Foods to participating contracting entities (CEs), that is, nonprofit organizations and public agencies, that

- determine the eligibility of applicants,
- receive, store, transport, and distribute USDA Foods to eligible participants, and
- conduct nutrition education activities for eligible participants.

TDA's responsibilities include the following tasks:

- Administering TEFAP in Texas,
- Disbursing administrative funds,
- Assisting CEs in the operation and management of the program,
- Reviewing the program to ensure that reimbursement is used for program purposes, and USDA Foods are distributed to eligible participants

CEs' responsibilities include the following tasks:

- Complying with the terms of the *TEFAP Agreement Between Contracting Entity and Texas Department of Agriculture* ("TEFAP Agreement")<sup>1</sup> and the *Application for Participation/Plan of Operation*<sup>2</sup>
- Complying with regulations set forth in 7 CFR 250 and 251
- Implementing and operating an approved financial management system
- Maintaining program records
- Submitting claims for reimbursement

## Other Programs

TDA administers TEFAP through agreements with nonprofit organizations or public agencies in Texas. TDA also administers the following USDA programs:

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)
- Child and Adult Care Food Program (CACFP)
- Summer Food Service Program (SFSP)
- Food Distribution Program (FDP)
- Commodity Supplemental Food Program (CSFP), in limited areas
- Senior Farmers' Market Nutrition Program (SFMNP), in limited areas
- Farmers' Market Nutrition Program (FMNP), in limited areas
- Food Assistance for Disaster Relief

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<sup>1</sup> Go to <http://www.squaremeals.org/> and choose "Programs," "The Emergency Food Assistance Program," "TEFAP Administration and Forms," and enter the form name in the appropriate field.

<sup>2</sup> Located in the Texas Unified Nutrition Programs System (TX-UNPS), which can be accessed at [www.Squaremeals.org](http://www.Squaremeals.org).

Organizations may receive additional information about these programs by contacting:

Food and Nutrition  
Texas Department of Agriculture  
PO Box 12847  
Austin, TX 78711  
877-TEX-MEAL (877-839-6325)

Or by visiting our website at <http://www.SquareMeals.org>

If an organization is approved to participate in more than one program at the same time, the CE must ensure that it

- maintains separate records for each program and
- attributes costs to the appropriate program.

## Funding

Each year, USDA Foods and administrative funding are provided to TDA by the USDA to administer and operate TEFAP in Texas. TDA uses USDA monies to fund approved administrative costs associated with the operation of TEFAP.

# Section 2

# Program Application

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## Section 2

# Program Application

As a contracting entity (CE) for The Emergency Food Assistance Program (TEFAP), the CE accepts final administrative and financial responsibility for all sites at which the CE operates or delegates (to an approved subdistributing agency or site) TEFAP activities.

## Useful Terminology

The following terms are useful for understanding this section. For more information about them and how they fit into TEFAP, refer to *TEFAP Handbook*, Section 3, *Managing the Program*.

**Contracting Entity (CE)** – an entity that holds a TEFAP Agreement<sup>1</sup> with the Texas Department of Agriculture (TDA) to receive, store, handle, and deliver USDA Foods.

**Site** – A place at which an emergency feeding organization (EFO) certifies applicant eligibility and/or distributes USDA Foods packages or meals to needy persons. A site may work directly with a CE or a subdistributing agency. A site can include, but is not limited to, a food pantry or soup kitchen. A site must be a nonprofit organization with tax-exempt status or a public agency.

**Subdistributing Agency** – An entity (usually a food bank) that holds a TEFAP Agreement with a CE. Not all CEs have subdistributing agencies. A subdistributing agency must be a nonprofit organization with tax-exempt status or a public agency.

**Subagency** – The collective term for subdistributing agencies and sites.

The following U.S. Department of Agriculture (USDA) terminology is also useful:

**Eligible Recipient Agency (ERA)** – A public or private entity that has an agreement with TDA or a CE to receive USDA Foods. Each site must be an ERA. An ERA cannot be a penal institution.

An ERA provides food assistance either

- exclusively to eligible persons for household consumption (according to a means test) or
- predominantly to eligible persons as prepared meals.

An ERA must fall into one of the following categories:

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<sup>1</sup> For more information about the TEFAP Agreement, refer to “Agreements” in this handbook section.

- Emergency feeding organizations (including food banks, food pantries, and soup kitchens)
- Charitable institutions (including hospitals and retirement homes)
- Summer camps for children
- Child nutrition program providing food service (such as a CACFP site)
- Disaster relief programs

**Emergency Feeding Organization (EFO)** – An ERA that provides nutrition assistance to relieve situations of emergency and distress by providing food to eligible persons. Examples of EFOs include, but are not limited to, food banks, food pantries, and soup kitchens. In TEFAP’s priority system, EFOs have priority over other ERAs.

## Eligibility Requirements

CEs, subdistributing agencies, and sites must demonstrate adequate administrative and financial responsibility to manage an efficient and effective food distribution system to be considered to receive and distribute USDA Foods through TEFAP. An organization may be eligible to participate in TEFAP if the organization takes the following actions:

- Accepts final administrative and financial responsibility for TEFAP operations
- Is a non-profit organization or a public agency
- Attends all required Texas Department of Agriculture (TDA) training
- Provides adequate supervisory and operational personnel to manage effectively and monitor TEFAP operations
- Assumes responsibility for distributions of USDA Foods within contracted service areas
- Improves the accessibility of USDA Foods for all needy residents throughout the month and shortens the intervals between distributions
- Includes the needs of the elderly, persons with disabilities, shut-ins, and persons with transportation difficulties in plans to expand or improve TEFAP operations

**EXAMPLES:** Special efforts may include

- encouraging shut-ins to designate a proxy,
- arranging separate lines or pick-up times for elderly or disabled persons, and
- having volunteers help with applications.
- Cooperates, as necessary, with TDA to identify an area(s) within a contracted service area where subdistributing agencies or sites may be needed.

## General Requirements

### Organizational Structure

An organization is eligible to participate in TEFAP as a CE, subdistributing agency, or site only if it is a nonprofit organization with tax-exempt status or a public agency.

## **Tax Exemption**

Non-profit organizations must acquire and maintain tax-exempt status from the U.S. Internal Revenue Service (IRS) either individually or as part of a group ruling.

Although the IRS does not require certain organizations (e.g., church organizations) to seek a formal determination of tax-exemption, the IRS may issue a determination after application. If an organization acquired tax-exempt status under a group ruling, it must submit proof of affiliation with the parent organization that was given tax-exempt status.

If the IRS has given an organization tax-exempt status because it is a non-profit organization, the organization must submit either a

- formal determination of tax-exempt status from the IRS or
- proof of participation in another federally funded program that requires an IRS determination of tax-exempt status.

If an organization does not submit this proof of tax-exempt status, the application will be denied. If the IRS revokes tax-exempt status, the CE must notify TDA immediately.

## **Special Filing for Small Tax-Exempt Organizations**

The IRS maintains specific filing requirements for small tax-exempt organizations whose annual gross receipts are normally \$50,000 or less. The Pension Protection Act of 2006 (PPA) requires these organizations to file *Annual Electronic Filing Requirements for Small Exempt Organizations* (Form 990-N, also known as the *e-Postcard*), or *Short Form Return of Organizations Exempt from Income Tax* (Form 990-EZ).

Failure to comply with the PPA could result in the revocation of an organization's tax-exempt status.

Additional information about the filing requirements, as well as information on how to apply for a tax exemption, can be found at [www.irs.gov](http://www.irs.gov).

## **IRS Automatic Revocation of Exemption List**

CEs, subdistributing agencies, and sites must maintain their tax-exempt status. (Exceptions include governmental and many faith-based organizations.) The IRS maintains a list of organizations that lose their tax-exempt status at <http://www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption-List>.

At least annually, TDA will review the IRS list to ensure CEs have the required tax-exempt status.

At the initial application and at least annually afterward, CEs must check the list to ensure that their subdistributing agencies and sites are not on the list. If any organization appears on the list, the CE must take the following steps:

1. Notify the subdistributing agency or site in writing that it has 30 days to provide documentation

that it has applied for reinstatement of tax-exempt status. If the organization does not provide documentation within 30 days, the organization will be terminated from TEFAP.

2. Forward documentation of IRS recognition of tax-exempt status to TDA within 180 days of the notification specified in the above step. If the organization does not provide proof within 180 days, the organization will be terminated from TEFAP.

A CE may grant one 90-day extension if the subdistributing agency or site demonstrates that its inability to obtain appropriate status during the initial period was due to circumstances beyond the organization's control.

### **Single Audit Requirements**

Nonfederal organizations must submit one or more of the following to verify their compliance with Single Audit requirements:

- A copy of an organization-wide or program-specific audit that has been determined to meet the Single Audit requirements.
- A completed *Annual Audit* form,<sup>2</sup> certifying that the CE will obtain, if necessary, an acceptable audit that meets the Single Audit requirements.

Refer to *TEFAP Handbook*, Section 5, *Visits, Reviews, and Audits* for specific information related to audit requirements.

### **Debarment Certification**

Debarment is an action taken by a debarring official to exclude a person or entity from participating in covered contracts. A person or entity excluded this way is "debarred."

TDA requires CEs to provide debarment certifications for covered contracts. Three types of covered contracts exist:

1. Any non-procurement transaction that involves federal funds of any amount. This type of transaction includes (but is not limited to) a subgrant between TDA and the CE or between the CE and its subdistributing agency or site.
2. Any procurement contract for goods or services at or above the small-purchase threshold of **\$100,000**.
3. Any procurement contract for goods or services where a person or entity will have a critical influence on or substantive control over the covered transaction. Such a person or entity includes (but is not limited to) a:
  - consultant,
  - principal investigator,
  - audit services provider required by TDA or a federal funding source, or
  - researcher.

TDA offers the following three options for CEs to provide debarment certification for subdistributing

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<sup>2</sup> Located in the Texas Unified Nutrition Program System (TX-UNPS) accessed at [www.SquareMeals.org](http://www.SquareMeals.org). TX-UNPS is the web-based application and claims processing system for all food and nutrition programs managed by TDA.

agencies or for sites:

- Search the website The System for Award Management (SAM) and print the page that shows the person or entity is not debarred. Store the printed page with the covered contract records.
- Include the following debarment certification in the CE's subcontracts: "By signing this Agreement, the subdistributing agency or site certifies that neither it nor any principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency or by the State of Texas."
- Obtain from the person or entity TDA's *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts* (Form H2048).

TDA will terminate the *The Emergency Food Assistance Program Agreement Between Contracting Entity and Texas Department of Agriculture* ("TEFAP Agreement") if an organization cannot provide one of the options above for any subdistributing agency, site, person, or entity that meets the above criteria. Any contract that contains federal assistance and that is held by a CE who is excluded from entering into such contracts will be considered void, effective on the date of exclusion.

For a copy of the TEFAP Agreement or *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), go to [www.SquareMeals.org](http://www.SquareMeals.org), choose "Programs," choose "The Emergency Food Assistance Program," choose "TEFAP Administration and Forms," and enter the form name or number in the appropriate field.

#### **Unique Entity Identifier Number**

As of April 4, 2022, the federal government stopped using the Dun & Bradstreet Data Universal Numbering System (DUNS) number as the identifier for entities doing business with the federal government. A Unique Entity Identifier (UEI) has replaced the DUNS number for all CEs. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.

All CEs must complete the following steps:

1. Register and obtain a UEI from SAM.gov
2. Once your organization has a UEI, please email the number to nsip-sbp.bops@texasagriculture.gov

For more information, go to SAM.gov. Please note that TDA does not administrate the SAM.gov website. All requests for technical help should be directed to SAM.gov.

Note also that the UEI number will not replace the Employer Identification Number (EIN).

# Agreements

## Agreement Between Contracting Entity and the Texas Department of Agriculture

To start the application process to become a CE for TEFAP, the CE and TDA must complete and sign the *TEFAP Agreement Between Contracting Entity and Texas Department of Agriculture* (“TEFAP Agreement”).<sup>3</sup> The TEFAP Agreement provides the terms and conditions for participation in TEFAP. Agreement topics include:

- 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

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.

## Agreement Between Contracting Entity and Subdistributing Agency

A subdistributing agency is an entity (usually a smaller food bank) that holds a TEFAP Agreement with a CE rather than directly with TDA. CEs must execute the *TEFAP Agreement Between Contracting Entity and Subdistributing Agency* with each agency. CEs must keep the executed agreement on file.

## Agreement Between Contracting Entity and Site

A site is any place at which an emergency feeding organization (EFO) certifies applicant eligibility and/or distributes USDA Foods packages or meals to needy persons. CEs must execute the *TEFAP Agreement Between Contracting Entity and Site* with each site. CEs then keep the executed agreement on file.

# Application Process

## Application for Participation/Plan of Operation

In the initial application process, new applicants should submit a complete TEFAP Agreement, which is a permanent agreement between TDA and the CE. The *Application for Participation/Plan of Operation*

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<sup>3</sup> Go to <http://www.SquareMeals.org/> and choose “Programs,” “The Emergency Food Assistance Program,” “TEFAP Administration/Forms,” and enter the form name or number in the appropriate field.

should then be completed online in the Texas United Nutrition Programs System (TX-UNPS). It must be submitted annually with all necessary supporting documentation. The *Application for Participation/Plan of Operation* provides information about the organization and how it plans to operate TEFAP.

If a potential CE submits an incomplete or incorrect application, TDA will request in writing that the information needed to complete the application be submitted within thirty (30) days. An incomplete *Application for Participation/Plan of Operation* will delay participation in TEFAP. If incomplete items are not corrected, an organization will not be eligible to participate. Upon approval of the TEFAP Agreement and *Application for Participation/Plan of Operation*, the CE will receive a copy of the signed TEFAP Agreement. The *Application for Participation/Plan of Operation* will be approved through TX-UNPS. TDA will not issue USDA Foods or reimbursement for administrative costs prior to executing the TEFAP Agreement and approving the *Application for Participation/Plan of Operation*.

TDA's TEFAP Program Specialist may be contacted at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or at 1-877-TEX-MEAL (1-877-839-6325) to answer questions and provide technical assistance.

As part of the application process, the potential CE must meet the following requirements:

1. Provide proof of tax-exempt status if the organization is a non-profit entity
2. Demonstrate adequate administrative and financial responsibility to manage an effective food distribution system
3. Identify and execute agreements with subdistributing agencies, if needed, that will be responsible for distributing, transporting, or storing USDA Foods
4. Provide information for each proposed site
5. Visit each site before operating, in any capacity, TEFAP at the site
6. Submit a complete management plan that includes staffing needs and an administrative budget
7. Certify that the CE will train administrative and site personnel

The TEFAP Agreement is a legally binding document that specifies the rights and responsibilities of both the CE and the TDA.

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

## **Contract Packet**

The contract packet gathers information about the organization and how it plans to operate TEFAP. Applicants complete the entire packet once. Renewing CEs complete portions of the packet annually.

If an applicant submits an incomplete or incorrect application, TDA will request in writing that the necessary information be submitted within 30 days. An incomplete or incorrect contract packet will delay participation in TEFAP. If an applicant fails to address such items, the organization will be ineligible to participate.

The contract packet can be found in the Texas Unified Nutrition Programs System (TX-UNPS), which can be accessed at [www.SquareMeals.org](http://www.SquareMeals.org).

## **Budget**

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

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

## **Additional Requirements**

The contract packet will also outline requirements for CEs to provide training for staff, monitor sites, and other general requirements of the program. CEs agree to verify that sites operate in full compliance with the requirements mandated in the TEFAP Agreement and the *Application for Participation/Plan of Operation*. Refer to *TEFAP Handbook Section 3, Managing the Program*, “Monitor Reviews by Contracting Entities” for specific instructions. CEs also must determine eligibility of participants as well as maintain and distribute USDA Foods properly and ensure that its sites do the same.

CEs also agree to serve a county or other identifiable service area that directly or indirectly (through subdistributing agencies) distributes USDA Foods to emergency feeding organizations such as food pantries, soup kitchens, and housing authorities.

CEs must distribute USDA Foods to eligible participants through prepared meals that are served on-site and food packages that may be used for home consumption.

CEs must make reasonable efforts to safeguard against households’ dual participation in TEFAP. At a minimum, CEs must 1) maintain a record of distributions to households to deter abuse and 2) train staff and volunteers to inquire whether a household receives TEFAP USDA Foods from other sources.

## **Authorized Representatives for Contracting Entities**

As designated on the organization’s *Application for Participation/Plan of Operation*<sup>4</sup> and/or on the *User Access Manager Form* (FND-135), an authorized representative is any individual who is individually authorized on behalf of the contracting organization to

- make written agreements with TDA,
- sign documents or reports about the agreement, and
- present claims for reimbursement, when appropriate.

An authorized representative must be an employee of the organization.

## **Amendments to the TEFAP Agreement**

The *Application for Participation/Plan of Operation* stipulates that CEs will perform according to the TEFAP Agreement, supporting documents, and approved amendments. Therefore, approved amendments to the *Application for Participation/Plan of Operation* do not require an amendment to the TEFAP Agreement. CEs will request amendments to the *Application for Participation/Plan of Operation*,

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<sup>4</sup> Located in TX-UNPS found at [www.SquareMeals.org](http://www.SquareMeals.org).

and TDA will respond to requests in TX-UNPS. CEs must include all supporting documentation to complete the amendment request.

## Selection of Contracting Entities (CEs)

TDA will only approve the participation of a CE<sup>5</sup> that has applied with sufficient information to enable a determination of eligibility.

### Review of Applications

TDA will notify the CE of the approval or denial of a complete application within thirty (30) days of receipt. If TDA denies the application, TDA will notify the organization in writing of the reasons for the denial. Refer to Section 8, *Denials and Terminations* for additional information.

### Selection of Contracting Entities

USDA Foods and administrative funds are issued by USDA to TDA for service areas that TDA and its CEs pre-determine. TDA will approve applications and agreements only from organizations that will serve eligible participants in these service areas.

TDA gives preference to organizations that have an established system for the receipt, storage, transportation, and distribution of USDA Foods. However, TDA does not contract exclusively with such organizations.

#### Food Banks

Food banks operate in all pre-determined service areas of Texas, and food banks have an established system for the receipt, storage, transportation, and distribution of USDA Foods. Food banks 1) directly serve USDA Foods recipients; and 2) indirectly serve USDA Foods recipients through agreements with other agencies and organizations, such as food pantries and soup kitchens. As a result, TDA contracts with food banks to distribute USDA Foods in TEFAP.

### Visit Prior to Approval of Initial Applications and Renewals

TDA **may conduct** a visit prior to the approval of an applicant's administrative offices and storage facilities to assess the potential for successful TEFAP operations and to verify information provided in the application. Prior to approving the *Application for Participation/Plan of Operation*, TDA may visit

- all CEs that did not participate in the program during the previous program year;
- all CEs that, as a result of significant operational problems noted during the previous program prior year, have been determined by TDA to need a visit prior to approval; and
- all sites that TDA has determined to need a visit prior to approval.

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<sup>5</sup> For more information about CEs, refer to Section 3, *Managing the Program*.

# Section 3

# Managing the Program

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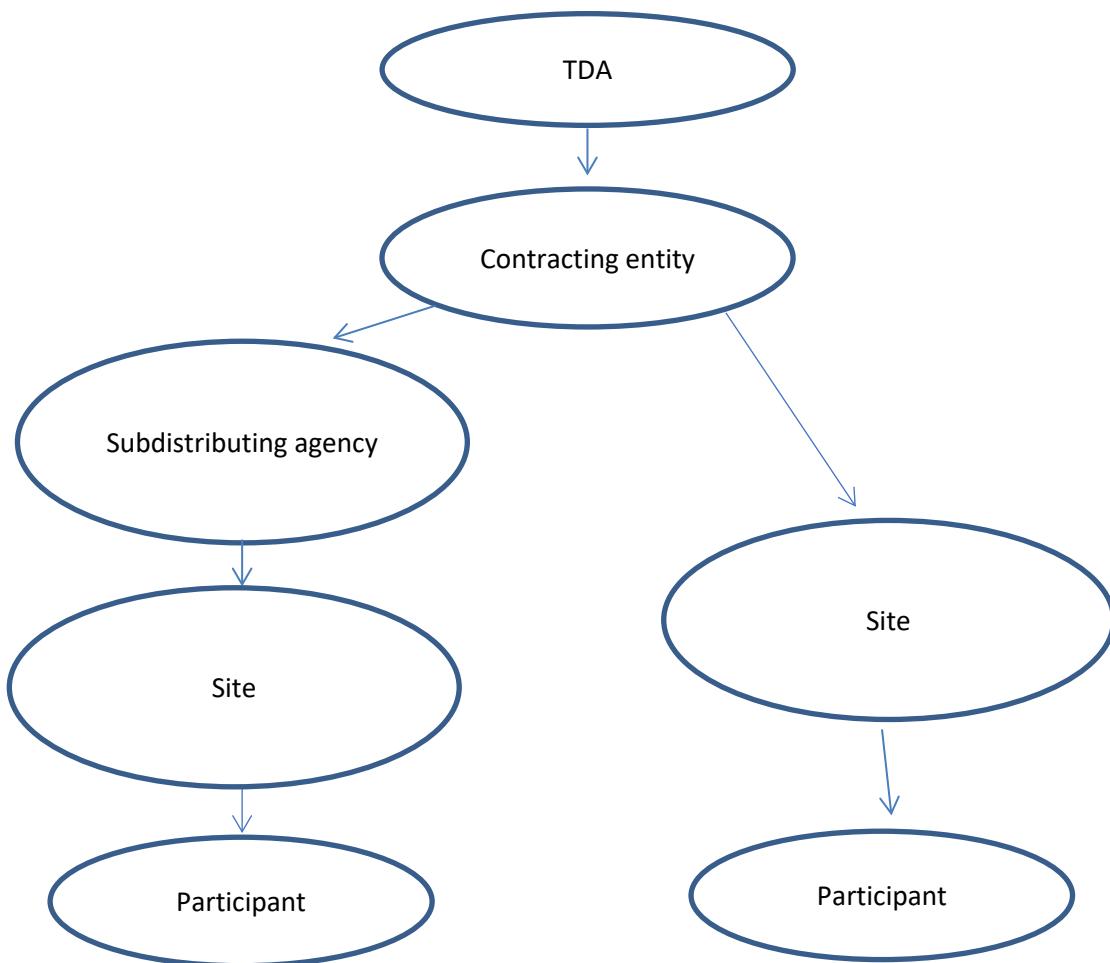
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## Section 3

# Managing the Program

### TEFAP Structure

The graphic below defines and illustrates the existing structure between some entities involved in The Emergency Food Assistance Program (TEFAP). The terms are defined throughout this section, as necessary. The terms can also be found in *TEFAP Handbook, Section 9, Terms, Definitions, and Acronyms*.



## Contracting Entities (CEs)

**contracting entity (CE)** – an entity that holds a TEFAP Agreement with the Texas Department of Agriculture (TDA) to receive, store, handle, and deliver USDA Foods.

While operating TEFAP, CEs must comply with program requirements found in the following:

- *The Emergency Food Assistance Program Agreement Between Contracting Entity and the Texas Department of Agriculture* (TEFAP Agreement), including:
  - Controlling inventory
  - Completing and submitting an annual inventory report
  - Completing and maintaining a record of storage facility reviews (completed in conjunction with the annual inventory)
  - Reporting changes that may affect the terms and conditions
  - Agreeing to be monitored by the U.S. Department of Agriculture (USDA) and TDA
  - Reviewing and monitoring subagencies to ensure TEFAP compliance
- *Application for Participation/Plan of Operation*
- Federal and state rules and regulations
- USDA policies, as issued by that agency
- TDA policies, including those outlined in this Handbook
- Additional guidance provided by TDA

For more information about CEs, refer to Section 2, *Program Application*.

## Subdistributing Agencies

**subdistributing agency** – An entity (usually a food bank) that holds a TEFAP agreement with a CE. Not all CEs have subdistributing agencies.

**subagency** – The collective term for subdistributing agencies and sites.

If a CE cannot 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.

## Sites

**site** – A place at which an emergency feeding organization (EFO) certifies applicant eligibility and/or distributes USDA Foods packages or meals to needy persons. A site may work directly with a CE or a subdistributing agency. A site can include but is not limited to, a food pantry or soup kitchen.

Before operating TEFAP at a site where USDA Foods are distributed or stored, the CE or subdistributing agency must conduct a site visit to verify the site's ability to operate in full compliance with the

requirements of the agreement it holds.

CEs and subdistributing agencies must train sites to properly handle and store USDA Foods.

If USDA Foods remain after a household distribution or a prepared meal, the foods must be

- returned to the CE's or subdistributing agency's storage site **or**
- stored properly at the site according to the terms and conditions of the agreement it holds.

At the request of TDA or the subdistributing agency, sites that distribute prepared meals must provide certain documentation including, but not limited to, a health inspection certificate and current pest control records.

Sites at religious organizations must adhere to additional guidance. For more information, refer to "Participant Rights and Responsibilities" in this handbook section.

### **Site List**

CEs must maintain a complete list of all sites and submit it annually to TDA within the application system, usually at program application renewal. During the program year, CEs must revisit each site to monitor program operations and verify compliance with program requirements according to the *TEFAP Agreement Between Contracting Entity and Site*. Refer to *Monitor Reviews by Contracting Entities* in this handbook section for specific instructions related to these visits.

### **Adding Sites**

During the program year, a CE may wish to add or eliminate a site. The addition or elimination of a site is a change (that is, an amendment) to the *Application for Participation/Plan of Operation*. If the CE wishes to add a new site, it must take the following steps:

- Visit the site to verify that it will operate in full compliance with the requirements mandated in *Agreement Between Contracting Entity and Site*.
- Execute *Agreement Between Contracting Entity and Site* with each site that will certify the eligibility of applicants or that will transport, distribute, or store USDA Foods.
- Notify TDA of the new site when requested to do so.

### **Eliminating Sites**

If a CE wishes to eliminate a site, it must notify TDA for guidance.

## **Additional Terminology**

The following terms are also used in regulations and guidance for TEFAP. Though not used as often in TDA's guidance, it may be useful to understand them.

### **Eligible Recipient Agency (ERA)**

An Eligible Recipient Agency (ERA) is a public or private entity that has an agreement with TDA or a CE to receive USDA Foods. Each site must be an ERA. An ERA cannot be a penal institution.

Additionally, an ERA provides food assistance either:

- exclusively to eligible persons for household consumption (according to a means test) or
- predominantly to eligible persons in the form of prepared meals.

Further, an ERA must fall into one of the following categories:

- Emergency feeding organizations (including food banks, food pantries, and soup kitchens)
- Charitable institutions (including hospitals and retirement homes)
- Summer camps for children
- Child nutrition programs that provide food service
- Disaster relief programs

(7 CFR §251.3(d))

### **Emergency Feeding Organization (EFO)**

An Emergency Feeding Organization (EFO) is an eligible recipient agency (ERA) that provides nutrition assistance to relieve situations of emergency and distress by providing food to eligible persons.

Examples of EFOs include, but are not limited to, food banks, food pantries, and soup kitchens. (7 CFR §251.3(e))

In TEFAP's priority system, EFOs have priority over other ERAs. For more information, see *TEFAP Handbook*, Section 4, *USDA Foods*.

### **Recipient Agency (RA)**

A recipient agency (RA) is a public or private nonprofit agency or organization eligible to receive distributions of USDA Foods. Examples of RAs are CEs, subdistributing agencies, sites, emergency feeding organizations, charitable institutions (to the extent they serve eligible people), summer camps/nutrition programs for children, nutrition programs for the elderly, and disaster relief programs.

## **Program Administration**

### **Training**

TDA provides training for new CEs. TDA may train CEs via webinar, classroom, or on-site, as necessary. CEs provide training to subagencies.

CEs and subdistributing agencies must train staff and volunteers before they initially assume any TEFAP duty and each program year thereafter. CEs should notify all personnel of the date, time, location, and

importance of attending a training session. Training must be documented, and the records retained for three years after the close of the fiscal year.

The staff and volunteers of CEs and subagencies must be trained in the following tasks:

- Properly transporting, storing, handling, and using USDA Foods
- Applying eligibility criteria for households
- Following written application procedures
- Ensuring client rights (including civil rights requirements)
- Following complaint procedures
- Processing household applications or requests for meals in the contracted service area
- Assisting applicant households to complete their applications
- Referring residents from other contracted service areas to locations where they may apply for USDA Foods

CEs must maintain a record of trainings and attendees (sign-in sheets) which includes:

- date of training,
- location of training,
- training topics,
- name(s) and signature(s) of attendees, and
- name of the trainer.

CEs must retain this documentation with its program records.

## **Monitor Reviews by Contracting Entities**

CEs must monitor their administrative and site personnel and subagencies to make certain the following steps are taken:

- Ensure program compliance
- Investigate reported problems
- Determine whether to operate a site during the following program year
- Verify and ensure proper use of USDA Foods

CEs must record and track compliance or operational issues<sup>1</sup> on their compliance monitoring forms. If the monitor review reveals problems, CEs must take appropriate action to correct the noncompliance. At its discretion, TDA may collect information about the content of CEs' findings for sites.

**NOTE:** TDA recommends CEs select sites for monitoring where site supervisors have had a poor performance record during previous program years or where supervisors could not implement or complete corrective action. Depending on the previous performance problems, TDA may not approve such sites at the time of renewal.

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<sup>1</sup> For a definition of this term, see *TEFAP Handbook*, Section 9, *Terms, Definitions, and Acronyms*.

Independently or in coordination with TDA, as appropriate, CEs will review subdistributing agencies and the sites served by those agencies to take the following steps:

- Evaluate their operations and activities (including evaluating the extent to which the agencies inform eligible populations of the availability of USDA Foods)
- Ensure TEFAP compliance, according to the terms and conditions of their agreements, including (but not limited to) the following:
  - Receiving, handling, distributing, and using USDA Foods, according to the *TEFAP Agreement and Application for Participation/Plan of Operation*
  - Adhering to nondiscrimination requirements
  - Providing eligible persons and households equal access to USDA Foods (including the elderly, persons with disabilities, and homebound persons)
  - Means-testing households
  - Evaluating the frequency of meal service or USDA Foods distribution, the quantity of USDA Foods included in meals or food packages, and other factors, as may be necessary

## **Filing and Submitting Monthly Claims**

A CE's claim is the actual participation report submitted to receive financial assistance with administrative costs associated with TEFAP operations. TDA reimburses claims depending on the availability of funds.

Only a person authorized by the CE's User Access Manager (as designated on [Form FND-140](#)) may enter the claim in TDA's online system.

### **Due Dates**

Monthly reimbursement claims must be received by TDA in a timely manner. TDA recommends monthly claims be submitted no later than 60 days after the claim month has ended.

All claims must be submitted no later than November 29, which is 60 days after the close of the federal fiscal year. TDA will not accept claims for reimbursement of costs of distributing USDA Foods after this date.

### **Identifying Costs Separately**

Monthly claims must separately identify the direct and indirect costs of distributing USDA Foods. As authorized by contracts and as funds are available, CEs must include special transportation costs on monthly claims, as instructed by TDA. CEs may also include on claims the reimbursable costs of distributing non-USDA Foods.

### **Reallocation of Administrative Funds**

After the end-of-the-year due date, and after TDA has reimbursed all CEs as it determines to be appropriate, TDA will take the following steps:

- Use the appropriate allocation method to reallocate funds and reimburse any remaining allowable costs of distributing USDA Foods to CEs who exceed their Letter of Credit amounts
- With any remaining funds, reimburse CEs their allowable costs of distributing non-USDA Foods

### **Adjusted Claims**

If TDA processes an adjusted claim for a month in the current program year, TDA will reconcile any overpayment or underpayment against any outstanding claims for the current program year. If the outstanding claims do not reconcile the adjusted claim, TDA will process payment to the CE for any underpayment and will require the CE to submit any remaining overpayment.

### **Public Notice**

CEs must give notice to the public of distributions of USDA Foods.<sup>2</sup>

Public notices must meet the following requirements:

- Target eligible<sup>3</sup> households whose members are unemployed or have low incomes and households that include elderly or disabled people
- Include the locations of sites
- Provide the days and hours of distributions

If applicable, CEs or subagencies should post a public notice to explain why a scheduled distribution is canceled.

TDA encourages CEs to inform the public of all USDA Foods distributions through their own established and customary communication methods. Suggested methods to advertise the availability of USDA Foods include, but are not limited to:

- The media (TV, radio, and newspaper)
- Civic and religious organizations
- City and county governments
- Social service organizations, upon request

### **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 more than “Letter of Credit” levels only if reallocated or if other

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<sup>2</sup> Per Texas Administrative Code (TAC), Title 4, Part 1, §26.105.

<sup>3</sup> An eligible person is one who, because of economic status, is eligible to receive food assistance from a public or private, nonprofit institution.

funds become available.

#### **Actual Reimbursement Rate**

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

#### **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.

#### **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.

#### **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.

## **Enrolling Participants**

Any person or household may apply for, and, if eligible, to receive USDA Foods for home consumption without regard to race, color, national origin, sex, age, or disability.

## **Eligibility**

CEs must utilize **only** the eligibility criteria and methods established by TDA. Prohibited additional criteria would include limiting the distribution of USDA Foods to a certain subset of the eligible population. For example, a TEFAP food pantry located within or near a senior center is not able to limit the distribution of USDA Foods to only seniors; rather, it must serve eligible populations of all ages. Prohibited additional criteria would also include unique CE methods to verify eligibility not approved by TDA.

#### **Congregate Meals**

Participants seeking congregate meals<sup>4</sup> are assumed eligible simply because they are seeking a meal. In

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<sup>4</sup> *Congregate meals* – A meal prepared with USDA Foods and provided to eligible persons who gather in a setting to

other words, there are no eligibility requirements for congregate meals. This includes, but is not limited to,

- residency,
- identity,
- income, and
- citizenship.

USDA Foods must be provided without regard to race, color, national origin, age, sex, or disability. Congregate meals must be served equitably. TDA recommends first come, first serve.

**NOTE:** A disaster organization may provide USDA Foods to emergency relief workers at congregate meal sites who are engaged in providing relief assistance.

### **Household Distributions**

**Residency.** At the time of application, households must have established residency within the service area **by providing a zip code, at minimum.** While federal regulations state that a minimum length of residency is not required to establish eligibility, the intent of the program is to serve individuals who live in the area and are not visiting temporarily. Overnight residency or an overnight stay does not meet the intent of the regulation.

With TDA approval, a CE may make exceptions to the service area.<sup>5</sup>

**EXAMPLE:** A CE may allow an exception for an applicant household that resides in a location that is closer to another service area in Texas. Exceptions require agreement and coordination between both affected CEs.

CEs and subagencies may ask but must not require any applicant or participant to **provide a full address or other additional proof of residency.** CEs and subagencies must provide USDA Foods to all participants **providing a zip code** even if they cannot or will not provide additional proof of residency. Further, CEs and subagencies must clarify the following points to applicants and participants:

1. The inability or unwillingness to provide proof of residency **beyond a zip code** is not a barrier to participation.
2. Participants will receive USDA Foods without proof of residency.

**Identity.** CEs and subagencies may request but **must not require** any applicant or participant to provide proof of identification (ID). CEs and subagencies must provide USDA Foods to all participants even if they cannot or will not provide ID. Examples of ID include, but are not limited to, birth certificates, driver's license, military ID, and state-issued ID.

CEs and subagencies must clarify the following points to applicants and participants:

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participate.

<sup>5</sup> Contact TDA at [commodityoperations@texasagriculture.gov](mailto:commodityoperations@texasagriculture.gov) or call 877-TEX-MEAL (877-839-6235).

1. The inability or unwillingness to provide proof of ID is not a barrier to participation.
2. Participants will receive USDA Foods without proof of ID.

**Citizenship.** There are no citizenship requirements. CEs and subagencies must not request or require any applicant or participant to prove citizenship through any means whatsoever.

## Determining Eligibility for Household Distributions

### Categorical Eligibility

A household is automatically (or categorically) eligible for USDA Foods if it currently receives assistance from one of the following programs:

- Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamps
- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)
- National School Lunch Program (NSLP) free or reduced-price meals
- Non-institutional Medicaid

### Income Eligibility

Initially, and at least annually thereafter, CEs must means test households to determine their eligibility for USDA Foods distributed by TEFAP. The income eligibility process is as follows.

1. Obtain a verbal report from the household of total weekly, monthly, or yearly gross<sup>6</sup> earned and unearned income. Proof of income is not allowed unless the information provided is questionable. If income is from farming or self-employment, eligibility is based on net income. Determine the net earned income of farmers and self-employed persons by subtracting the cost of doing business from gross earnings.
2. Determine the household's total **countable** income (see "Countable Income and Income Exclusions" below) by adding together the gross earned and unearned incomes of all household members.  
**EXCEPTION:** Add the net earned income of any household members who are farmers or self-employed. Compare countable income to the maximum allowable income for the household, which varies according to household size.
3. Determine the household to be either
  - eligible for USDA Foods if countable income is equal to or less than the maximum allowable income amount, or
  - ineligible for USDA Foods if countable income exceeds the maximum allowable income amount.

USDA annually publishes the *TEFAP Income Eligibility Guidelines* (Form H1640), which contains household qualifying income cut-offs for annual, monthly, and weekly income levels per number of

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<sup>6</sup> Gross earned income is the amount before deductions.

household members. The eligibility guidelines cover the period from July 1 of one year through June 30 of the following year. The income guideline tables are published on the TDA website at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Income Eligibility Guidelines.

**Countable Income and Exclusions.** Most household income is countable, which means that it is used to determine the household's eligibility for TEFAP. Countable income includes

- wages,
- Social Security benefits,
- most veteran's benefits, and
- other types of benefits.

However, some household income and assistance must be excluded as income, which means that it is not used to determine the household's eligibility for TEFAP. Excluded income and assistance include the following:

- SNAP
- Vendor payments
- Loans
- In-kind benefits
- Filipino Veterans Equity Compensation Fund payments authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) for certain veterans or surviving spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II
- A lump sum or periodic payments from the *Cobell* settlement
- Family Subsistence Supplemental Allowance
- National Flood Insurance Program (NFIP) payments
- Certain other types of benefits

Contact the Program Specialist<sup>7</sup> with questions.

### **Household Crisis Eligibility**

Even if household income exceeds the means test, certain circumstances allow some households to receive USDA Foods. The household must currently be paying or, during the month of application, must have paid an expense (of any amount) that was a direct result of a household crisis. The crisis must have occurred during the month the household applied for TEFAP or during the five consecutive months immediately before the application month.

<b>Characteristics of a Household Crisis</b>	<b>Unexpected Costs of a Household Crisis (The CE or site may define and document other circumstances)</b>
1. Unexpected	1. Necessary medical treatment of a household member

<sup>7</sup> [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 1-877-TEX-MEAL (1-877-839-6325).

<p>2. Temporary</p> <p>3. Beyond the household's control</p>	<p>2. Burial expenses of a household member</p> <p>3. Uncontrolled loss of employment</p> <p>4. The repair or replacement, because of a household crisis<sup>8</sup>, of the household's</p> <ul style="list-style-type: none"> <li>• home,</li> <li>• home contents, or</li> <li>• vehicle</li> </ul>
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The CE or subagency must document the reason a household is eligible for crisis food assistance and will estimate the number of months (up to a maximum of six) the household will need such food assistance. Some household circumstances require a seven to twelve-month certification period. TDA must approve, in writing, certification periods of seven to twelve months.

## Household Application

### Written Application Procedures

CEs must maintain written procedures for the application process. The procedures must be available for compliance reviews at all levels of distribution — the CE level, the subdistributing agency level, and the site level. The CE is responsible for training subagencies on the application procedures.

Remember that sites may request **but must not require** proof of application information, including, but not limited to, the following:

- Identification
- Address
- Income

Participants and applicants have the right to refuse to provide proof of application information. Nevertheless, sites must provide USDA Foods to eligible participants who list a zip code — in other words, refusal to provide official ID or supplemental documentation verifying an address must not be perceived as a barrier to participation.

### Household Application for USDA Foods (Form H1555)/Household Application for USDA Foods-Alternate (H1555B)

CEs should use the *Household Application for USDA Foods* (Form H1555) or the Household Application for USDA Foods-Alternate (H1555B)<sup>9</sup> to certify participants because either form contains federally allowed information. However, CEs may create forms to collect 1) federally allowed information and 2) additional data for other services — for example, clothing aid or assistance with bills.

CEs requesting additional data must ensure that the federally allowed information to determine TEFAP

<sup>8</sup> A household disaster may include fire, flood, hurricane, tornado, car repairs, and other circumstances or incidents as defined and documented by the CE or subagency.

<sup>9</sup> Go to [www.SquareMeals.org](http://www.SquareMeals.org); choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, and enter the form number in the appropriate search field. The H1555B is an alternate version application designed to accommodate a drive-through or similar distribution setting.

eligibility is collected *before* the CE requests any additional data. Further, the collection of additional data must not be a real or perceived barrier to participation in TEFAP. If a CE uses other forms during the TEFAP application process, the form must specify that a participant (or eligible applicant) will receive USDA Foods through TEFAP even if a participant refuses to provide the additional data. **Only the information collected on the *Household Application for USDA Foods (Form H1555)* or the *Household Application for USDA Foods-Alternate (H1555B)* can be requested for a participant to obtain USDA Foods.**

**NOTE:** The certification statement and nondiscrimination statement<sup>10</sup> must be included on the CE-created form.

If a CE uses the *Household Application for USDA Foods (Form H1555)* or the *Household Application for USDA Foods-Alternate (H1555B)* and adds extra pages to collect additional data, the extra pages must specify that they are not required by the TDA and that a participant will receive USDA Foods through TEFAP even if a participant refuses to provide the additional data. Further, the information to determine TEFAP eligibility must be collected *before* the CE requests additional data.

If utilizing additional documents or pages in conjunction with the H1555 or H1555B, the CE must include the current nondiscrimination statement.

### **Application of Staff or Volunteers**

When staff or volunteers of subagencies apply for USDA Foods, the same eligibility criteria apply as for any other applicant.

### **Electronic Information**

A CE and subagency may record participant and applicant information electronically. CEs and subagencies must protect electronic information to ensure confidentiality.

### **Confidentiality**

CEs and subagencies must protect the confidentiality of any information that has been provided on an application for eligibility, whether the application is paper or electronic. **Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of TEFAP application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other federal, state, or local law.**

The information may be used only to determine eligibility for TEFAP benefits and to verify income. **CEs must restrict the use or disclosure of information obtained from TEFAP applicants or participants to persons directly connected with the administration or enforcement of the program.**

**With the explicit consent of the participant, CEs may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach,**

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<sup>10</sup> For the wording of these statements, refer to Form H1555.

**provided that TDA has an agreement with those program operators to share this information for the specified purposes.** Before sharing any confidential information, CEs must contact TDA to ensure that TDA has an agreement with the agency requesting the confidential information.

CEs must obtain written consent upon application of the participant or at a subsequent distribution. CEs should contact TDA for guidance about how to properly obtain this consent beforehand.

## Ineligible Applicants

Occasionally applicants are ineligible. Nevertheless, a *Household Application for USDA Foods* (H1555) or *Household Application for USDA Foods-Alternate* (H1555B) must be completed (if possible) and retained as a record of the application. See “Record Retention” in this handbook section for more information.

## Certifying Participants

The certification period is a period of consecutive months during which a household is eligible to receive a distribution of USDA Foods.

A certification period

- begins the first month the household receives the USDA Foods, and
- may not exceed 12 months.

To continue receiving USDA Foods after a certification period has ended, the household must be recertified by reapplying and meeting eligibility requirements again.

## The Proxy

A proxy is a person designated by a participant to act for the participant as necessary throughout every process of TEFAP. Proxies may also act for the participant at application, certification, food package distribution, and recertification. A proxy must provide proof of identification before picking up a food package.

## Requirements

CEs must collect at least the following information:

1. Participant’s name
2. Name of site
3. Authorization, including proxy name
4. Duration of proxy

The CE must maintain each written proxy designation on file. Proxy identification must be reviewed at each application, certification, food package distribution, and recertification.

## Proxy Change

There are two ways to change a proxy:

- In a written statement
- In-person at the CE or site, where proxy changes are noted and maintained in the participant file

## Multiple Proxies

A participant may designate as many proxies as necessary to ensure that the food package is picked up. Likewise, a single proxy can be designated by multiple participants.

## TEFAP Foods for Children

In general, CEs, subagencies, and sites can provide USDA Foods to a child if the child's household is certified as eligible for TEFAP. This item provides additional guidance for CEs, subagencies, and sites that use TEFAP foods to operate programs intended only for child participants, such as Kids Café and Backpack.<sup>11</sup>

Except as mentioned in this item, all applications, monitoring, and USDA Foods requirements still apply.

### Eligibility

#### Congregate Meals

There are no eligibility criteria for congregate meals; individuals are presumed eligible because they seek meals at a TEFAP site. Any child at any congregate meal site must receive a meal.

#### Household Distributions

Children are categorically eligible for TEFAP USDA Foods if they are eligible for

- free or reduced-price meals under the National School Lunch Program (NSLP) or School Breakfast Program (SBP), or for
- free milk under the Special Milk Program (SMP).

## Site Responsibilities

### Permission to Participate

Parents or caregivers must accept household distributions for children in writing — for instance, by

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<sup>11</sup> Guidance is based on USDA Policy Memo FD-041, *Distribution of TEFAP Foods to Children*.

signing a permission slip. A household member under age 18 can sign the permission slip only if there are no household members 18 or older. Permission slips must include at least the following information:

- A brief description of the way that the program works
- Clauses that allow parents or guardians to opt-in or out of the program
- The nondiscrimination statement found in *TEFAP Handbook*, Section 6, *Civil Rights*, “Public Notification”

The site must keep the returned permission slips on file.

### **Record of Participants Served**

On each distribution day, sites must record the names of participants. TDA recommends that schools report this information to CEs monthly.

Other information that schools may want to collect includes:

- Site name
- Month and year
- Program coordinator at the school
- Week number of distribution (week 1, week 2, week 3, etc.)
- Date of distribution
- Stories of ways the food helped participants
- Comments
- Concerns

### **Signature of Receipt**

A site representative (or the agency that receives the USDA Foods for the site) must sign a receipt to indicate that the food was received. The receipt must be kept on file per the “Record Retention” guidance in this handbook section.

## **Contracting Entity Responsibilities**

### **Agreement**

CEs must have agreements with sites that specify:

- Distribution plan (see “Distribution Plan,” below)
- Contact information for site personnel responsible for the program
- Site’s reporting requirements (at a minimum: names of participants on each distribution date)
- A statement certifying that site personnel understand and agree to proper use of USDA Foods
- USDA’s civil rights assurance language<sup>12</sup>

### **Distribution Plan**

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<sup>12</sup> For more information, refer to *TEFAP Handbook*, Section 6, *Civil Rights*.

If providing household distributions, the CE must submit to TDA<sup>13</sup> a distribution plan, which must include the following information:

1. How will the food packages be distributed?

**EXAMPLE:** A school site might distribute weekly, near dismissal, in the office, etc.

2. What is the certification period?

**EXAMPLE:** 3 distributions, 6 distributions, the entire school year, etc.

3. The specification that the site must record the names of participants that receive USDA Foods for each distribution.

**NOTE:** TDA recommends that schools report this information monthly.

After TDA approves the distribution plan, the CE may use the plan for all children's household sites for TEFAP.

## Participant Rights and Responsibilities

### TEFAP Participant Rights and Responsibilities Form

TEFAP applicants and participants have rights and responsibilities that are listed in the *TEFAP Participant Rights and Responsibilities* form.<sup>14</sup> CEs are not required to give applicants or participants a copy of the form. However, CEs must make the form available during the household application and recertification process. CEs may read the form to applicants, if necessary, or applicants may read it to themselves.

**EXAMPLE:** Some sites present a laminated copy of the *TEFAP Participant Rights and Responsibilities* form to each applicant as part of the application process. Applicants read the form themselves or the site staff reads the form to the applicants.

### Sites Located at Religious Organizations

TEFAP distribution can involve several different organizations. For instance, some religious organizations administer a site, while other religious sites provide space for TEFAP without administering the program itself. Federal civil rights laws explicitly address religious activities at such sites:

- Organizations must not engage in explicitly religious activities as part of TEFAP, including overt religious content such as worship, religious instruction, or proselytization; however, religious

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<sup>13</sup> Submit to [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov).

<sup>14</sup> Found at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input the form's name into the appropriate search field.

sites are not required to remove printed materials or symbols from areas where food distributions occur.

- An explicitly religious activity at a site must be separated in time or location from TEFAP services.
- Organizations must not require participants or applicants to participate in explicitly religious activities to receive TEFAP.

### **TEFAP and Explicitly Religious Activities**

The following table provides examples to guide explicitly religious activities at TEFAP sites. TDA encourages CEs to contact the Program Specialist<sup>15</sup> with questions about specific circumstances.

<b><i>It is acceptable to... .</i></b>	<b><i>It is unacceptable to... .</i></b>
Hang a cross on a wall at the TEFAP site.	Require participants to stand by a cross and recite a prayer before TEFAP distribution.
Place a menorah on a table at the site during the holiday season.	Refuse USDA Foods to participants who do not practice the Jewish faith.
Have a religious official, such as a pastor, assist with TEFAP distribution.	Require or encourage participants to have a religious conversation before TEFAP distribution.
Hold a prayer service on the second level of a church building while TEFAP distribution occurs on the lower level.	Hold a prayer service in the same room and at the same time as TEFAP distribution.
Invite participants or applicants to participate in a voluntary — and clearly separate — prayer before TEFAP distribution.	Lead participants in prayer at the beginning of TEFAP distribution.

### **Written Notice of Beneficiary Rights**

Sites must protect participants' rights regarding participation in religious activities.

All sites must provide all participants and applicants with a *Written Notice of Beneficiary Rights*<sup>16</sup> using one or more of the following methods:

- Display the notice in a prominent place near the entrance to the distribution;
- Provide the notice as a handout at each distribution; and/or

<sup>15</sup> Email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 877-TEX-MEAL (877-839-6325).

<sup>16</sup> Go to [www.SquareMeals.org](http://www.SquareMeals.org). Choose "Programs" then "The Emergency Food Assistance Program," click on "TEFAP Administration/Forms," then put the form name in the appropriate search field.

- Include the notice in the household application.

The *Written Notice of Beneficiary Rights* must inform applicants and participants that:

- The site will not discriminate against participants based on religion or religious belief; a refusal to hold a religious belief; or a refusal to attend or participate in a religious practice.
- The site will not require participants to attend or participate in any explicitly religious activities. Participants' participation in these activities must be purely voluntary.
- The site must separate, in time or location, any privately funded, explicitly religious activities from activities supported with USDA direct assistance.
- The site will provide contact information to report violations of these protections (including denials of services or benefits) by either a site, a subdistributing agency, or a CE.

The written notice must also inform participants and applicants about how to obtain information from either USDA and/or TDA about other federally funded service providers in their area.

Upon the request of a participant, CEs and subagencies must provide a copy of the written notice.

The CE and site must maintain written procedures for the application process, including how the CE will provide the *Written Notice of Beneficiary Rights* to applicants. The procedures must be available for compliance reviews at all levels of distribution. The CE and subdistributing agencies are responsible for training site personnel about application procedures.

## Refusal of USDA Foods

Recipients may refuse any USDA Foods they cannot use or do not want. Refusal will not affect eligibility.

## Household Responsibilities

Households bear the following responsibilities:

- Cooperate (to the extent the household is capable) to clarify or provide the information needed to establish eligibility
- Repay, on-demand, to the CE the value of USDA Foods received if an error in eligibility is found because of erroneous information provided by the household. If the household received multiple food packages, the CE may deny to the household distributions of USDA Foods for the same number of months as the extra issuances.
- Not sell or exchange USDA Foods
- Report changes in circumstances, such as income or household size

**NOTE:** During a certification period, CEs must act on reported changes affecting eligibility or amount of benefits and document changes that include pertinent information (such as a change of address). CEs must act on other changes only when/if the household requests recertification.

## Orderly Distribution

Participants have the responsibility to contribute to an orderly distribution.

An orderly distribution allows participants to be served in a safe and nonthreatening atmosphere. Occasionally, however, a site might face recurring issues with a disruptive participant. In such a case, the site can coordinate with local law enforcement officials to ensure the safety of volunteers and participants. Contact the Program Specialist<sup>17</sup> with questions, comments, or concerns.

When the participant is no longer disruptive, he or she can receive a food package at that distribution. However, the distribution might end before the disorderly participant is calm enough to receive a distribution. In this case, the CE or subagency must serve the participant at his or her next regularly scheduled distribution.

## Fraud, Negligence, and Misuse

CEs, subdistributing agencies, sites, and participants must report fraud, misuse, or negligence.

**fraud** – The intentional concealment or willful misrepresentation of information to receive USDA Foods.

**negligence** – Improper distribution or use of USDA Foods; or failure to properly store, handle, or care for the food.

**misuse of USDA Foods** – Includes (but is not limited to) selling, trading, or giving USDA Foods to ineligible persons.

## Procedure for Reporting

CEs must create and follow written procedures for reporting fraud, negligence, and misuse of foods, whether the offense occurs on the part of CEs, subdistributing agencies, sites, or participants. The procedure must include information such as the amount of USDA Foods involved, location of the incident, suspected parties, and other details and facts.<sup>18</sup> CEs assume financial liability for negligent or fraudulent administration of TEFAP if CEs are aware of such activity but choose not to report to TDA.

As always, record maintenance is required. CEs, subdistributing agencies, and sites must keep and maintain records for three years after the end of the federal fiscal year to which they pertain.

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<sup>17</sup> Email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 1-877-TEX-MEAL (1-877-839-6325).

<sup>18</sup> To read more about fraud, see *TEFAP Handbook*, Section 8, *Denials and Terminations*.

# Program Documentation

TDA can only observe the CE's daily operation of the program when conducting compliance reviews and audits. Therefore, TDA must rely on the records that the CE retains to determine compliance with TEFAP requirements and to verify the reimbursement to which the CE is entitled. If a CE's records do not support eligibility or claims for reimbursement, the CE will be required to repay the unsupported amount.

## Record Retention

CEs must retain all documents relating to participation in TEFAP, such as claims and supporting documents that are specific to a particular program year, for three years from the end of that federal fiscal year. These documents include, but are not limited to, eligibility determinations, financial documents, supporting documents, distribution receipt, and statistical records.

Every application creates a record, even an application denied because of ineligibility. Therefore, denied applications are subject to record retention requirements. For more information, see "Ineligible Applicants" in this handbook section.

However, if audit findings, claims, litigation, or investigation findings have not been resolved, all forms and records must be retained beyond the required period until all issues are resolved. These issues are considered resolved when a final order is issued in litigation, or when the CE and TDA sign a written agreement indicating that the audit findings, claims, or investigation findings have been resolved.

## Availability of Records

Each CE, as well as each of its subagencies, must allow TDA, USDA, U.S. Government Accountability Office (GAO), and representatives of other appropriate agencies to inspect facilities and records and to audit, examine, and copy records during normal working hours.

CEs must maintain separate records for each subagency, and TEFAP records must be maintained separately from records of other programs. CEs must make records available to TDA upon request. Such records include, but are not limited to, the following:

- CE findings of subdistributing agencies
- Number of participants served
- Salvage license
- Documents concerning the application for participation
- Storage and warehousing practices
- Inventory controls
- Site monitor review records
- All required TEFAP forms
- Budget records (applicable only to CEs)
- Records of training
- Cost allocation records

- Program agreements
- Procurement records
- Single audit records
- Civil rights compliance
- Other documents, as determined by TDA

Record maintenance requirements apply even if the *TEFAP Agreement and Application for Participation/Plan of Operation* are terminated or not renewed.

# Section 4

# USDA Foods

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## Section 4 USDA Foods

Handling of U.S. Department of Agriculture (USDA) Foods must be in accordance with federal requirements found in the Code of Federal Regulations (CFR) at 7 CFR Part 250.

Additional requirements specific to The Emergency Food Assistance Program (TEFAP) can be found at 7 CFR Part 251 and in the Texas Administrative Code (TAC) Title 4, Part 1, Chapter 26.

### Allocation

#### Entitlement Funds (“60/40” Formula)

The Texas Department of Agriculture (TDA) allocates funds for entitlement of USDA Foods according to the service area’s “60/40” formula. Using its share of entitlement, each contracting entity (CE) requests from TDA the USDA Foods it wants to receive and distribute.

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 unemployed county residents. (7 CFR §251.3(h) and TAC §26.108)

#### Allocation of USDA Foods to Sites

CEs and subdistributing agencies receive, handle, store, and distribute USDA Foods to sites that distribute, or agree to distribute, USDA Foods exclusively to eligible persons and eligible households.

Unless otherwise specified by TDA, CEs and subdistributing agencies allocate to sites a share of USDA Foods based on historical or projected usage rates such as the number of meals and/or households served. (TAC §26.108(b) and (c))

The distribution of USDA Foods must be according to TDA priorities. See “Distribution Priorities” in this handbook section.

CEs’ and subdistributing agencies’ methods of allocating USDA Foods to sites are subject to TDA’s review and approval.

#### Direct Shipments

CEs receive direct shipments of USDA Foods. .

## **USDA Foods Available**

For a list of available USDA Foods that might be available through TEFAP, go to [www.fns.usda.gov/usda-fis/usda-foods-available](http://www.fns.usda.gov/usda-fis/usda-foods-available).

## **Bonus Foods**

Bonus foods are special USDA Foods purchased by USDA that are uncertain from year to year and do not require entitlement. TDA allocates bonus USDA Foods by actual food truckloads or by dollar value increments. When allocating bonus foods, TDA uses each service area's 60/40 formula. In addition, TDA may use alternate allocation methods.

## **Receipt of USDA Foods**

FNS Instruction 709-5,<sup>1</sup> *Shipment and Receipt of USDA Foods*, establishes the responsibilities for shipment and receipt of USDA Foods. The entities responsible for USDA Foods include TDA, CEs, vendors, and carriers. The standards and procedures in this instruction are necessary to determine whether shipments of USDA Foods are received in optimal condition and the quantities ordered, and in ensuring the proper disposition and replacement of USDA Foods when circumstances warrant.

### **Signing for USDA Foods**

The CE must sign to validate receipt when USDA Foods are delivered to them. Likewise, each subagency must sign for receipt of USDA Foods when the CE delivers them, or when the subagency picks up the food.

CEs, subdistributing agencies, sites, and others authorized to possess USDA Foods must ensure that USDA Foods are safeguarded. Any entity that stores USDA Foods for any period must become familiar with and adhere to state and local health codes that apply to stored food products.

### **Inspection of USDA Food Shipments**

CEs must inspect USDA shipments to ensure the product and quantity is as identified on the delivery or pick-up document (that is, bill of lading or invoice) and that the product is in good condition. If the product is in questionable condition (that is, damaged or spoiled) or the quantity is not correct, then the CE must take the following steps:

1. Note an exception on the delivery or pick-up document when signing
2. Obtain the signature of delivery/warehouse personnel on the delivery or pick-up document
3. Notify TDA immediately

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<sup>1</sup> FNS Instruction 709-5 is available at <https://www.fns.usda.gov/usda-foods/shipment-receipt-goods-instruction-709-5>

## Electronic Receipting for USDA Foods

CEs must electronically receipt<sup>2</sup> into USDA's Web-based Supply Chain Management (WBSCM)<sup>3</sup> system within 24 hours for USDA Foods shipments received. USDA requires shipment receipts to be entered within 24 hours to meet contractual requirements and to provide prompt payment to vendors.

## Storage

USDA requires CEs and subagencies that store USDA Foods to use storage practices that prevent premature deterioration of food. Additionally, the areas in which USDA Foods are stored must be maintained in good condition. Storage of USDA Foods must permit them to be distinguishable from other foods.

Any entity that stores USDA Foods for any period must become familiar with and adhere to state and local health codes that apply to stored food products.

## Food Safety

USDA Foods must be stored in safe and secure conditions. The CE is responsible for (1) determining which regulations apply whether the storage is controlled by the CE or not and (2) ensuring that the facility has an adequate plan and all necessary permits.

## Temperature

Products must be stored at temperatures recommended by state and local health codes. USDA Foods Product Information Sheets<sup>4</sup> may provide shelf-life information for a product at various temperatures. Products should not spoil during the shelf life; however, storage at higher temperatures increases the likelihood of insect infestation and may shorten shelf life.

All entities storing USDA Foods should verify food temperatures on delivery and annotate the receiving document when proper temperatures are exceeded.

Cooler, freezer, **and dry storage** temperatures must be checked and recorded during regular business hours, and shutdown or vacation periods

- a minimum of every other day,
- immediately after a power loss is known or suspected, and
- late each Friday afternoon and early each Monday morning (if operations are suspended during weekends).

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<sup>2</sup> *Electronic receipting* – The entering of shipment receipts into an online management system.

<sup>3</sup> *WBSCM* – The web-based ordering and procurement system for USDA Foods.

<sup>4</sup> Found at [www.fns.usda.gov/usda-fis/usda-foods-product-information-sheets](http://www.fns.usda.gov/usda-fis/usda-foods-product-information-sheets).

All entities storing USDA Foods may use *Temperature Record* (Form H1639)<sup>5</sup> to record temperatures. TDA staff will check temperature records (whether Form H1639 or other similar recordkeeping method) during scheduled administrative reviews. Consistent improper temperatures will be recorded as a finding. Proper cold storage temperatures are indicated below. For dry storage, TDA recommends that temperatures remain between 50 and 70 degrees Fahrenheit per industry standards. Dry storage temperatures over 85 degrees Fahrenheit will be recorded as a finding in the administrative review.<sup>6</sup>

### Temperature Chart

Food	Dry Storage (50°-70°F)	Refrigerated Storage (36°-40°F)	Freezer Storage (0°F or below)
<b>Dairy Products</b>			
Butter.....	.....	Satisfactory up to 2 weeks (maximum 45°F)	Required over 2 weeks
Cheese, natural.....	.....	Required (maximum 45°F)	.....
Cheese, processed	.....	Required (maximum 45°F)	.....
Milk, canned.....	Satisfactory	Preferred.....	.....
Milk, fluid whole...	.....	Required (maximum 45°F)	.....
<b>Eggs</b>			
Shell.....	.....	Required.....	.....
Dried.....	.....	Required.....	.....
Frozen.....	.....	.....	Required.....
<b>Meat and Meat Products</b>			
Frozen meats, such as ground beef; hams and shoulders; pork loins; turkeys; etc.....	.....	.....	Required.....
Cured hams and shoulders; bacon; etc.....	.....	Required....	.....
Canned hams.....	.....	Required.....	.....

<sup>5</sup> Go to [www.SquareMeals.org](http://www.SquareMeals.org). Choose “Programs” then “The Emergency Food Assistance Program,” click on “TEFAP Administration/Forms,” then put the proper form number or name in the appropriate search field.

<sup>6</sup> Consistent with [USDA's Food Safety and Inspection Service Guidance](#) and Health and Human Services dry storage requirements for licensed nursing home facilities ([Texas Administrative Code, Title 26, Part 1, Chapter 554, Subchapter D, Division 2, Rule 554.318\(k\)\(4\)](#)).

Food	Dry Storage (50°-70°F)	Refrigerated Storage (36°-40°F)	Freezer Storage (0°F or below)
Other canned meats, such as beef/gravy; pork luncheon meat; pork/gravy; etc.....	Satisfactory.	Preferred.....	.....
<b>Canned Fruits</b>			
Other canned fruits, such as apples and applesauce; apricots; blackberries; cherries; cranberry sauce; figs; grapefruit sections; grapefruit juice; peaches; purple plums (prunes); etc.....	.....	Preferred.....	.....
<b>Fresh Vegetables</b>			
Onions.....	Satisfactory.	Preferred.....	.....
Potatoes, Irish....	Satisfactory	Preferred (minimum 40°F)	.....
Potatoes, Sweet ...	Required (maximum 55°F)	.....	.....
Other fresh vegetables, such as green beans; beets; cabbage; carrots; spinach; etc.....	.....	Required...	.....
<b>Fresh Fruits</b>			
Apples; peaches; pears; purple plums; etc...	.....	Required.....	.....
<b>Dried Vegetables</b>			
Beans, high moisture.....	Satisfactory for 60 days	Required over 60 days	.....
Beans, low moisture.....	Satisfactory	Preferred.....	.....
<b>Dried Fruits</b>			
Apples; apricots; peaches.....	Satisfactory for 2 weeks	Required over 60 days	....
Figs; prunes; raisins; etc.....	Satisfactory	Preferred.....	.....
<b>Cereal Products</b>			
Regular cornmeal; whole wheat flour.....	Satisfactory for 60 days	Required over 60 days	.....
Degermed cornmeal; all-purpose and bread flour; rice; etc.....	Satisfactory	Preferred.....	.....

Food	Dry Storage (50°-70°F)	Refrigerated Storage (36°-40°F)	Freezer Storage (0°F or below)
<b>Miscellaneous</b>			
Honey.....	Satisfactory	.....	.....
Nuts.....	.....	Required.....	
Peanut Butter.....	Satisfactory	Preferred.....	.....

## Air Circulation

Frozen, chilled, and dry storage areas must have air circulation. USDA Foods must be stored on pallets or shelves with six inches of clearance from the floor and walls and two feet of clearance from the ceiling.

## Stacking

Stacks of USDA Foods should be

- sufficiently low so that the product at the bottom will not burst or be crushed by the weight of the product above,
- cross-stacked,
- away from steam, heat, or moisture, and
- shrink-wrapped if stored at the top of a storage rack.

## Protection of Stored Food

CEs must ensure that USDA Foods are in good condition by taking the following steps:

- Checking all products frequently for deterioration
- Inspecting for tears in sacks and broken cartons
  - CEs must recover foods from torn sacks or broken cartons and repackage any foods that remain in good condition. CEs must dispose of spoiled foods as instructed in “Food Losses” in this handbook section.
- Maintaining all storage areas in a clean and orderly condition
- Storing foods away from pesticides, cleaning supplies, and paper products
- Using security measures to prevent theft
- Inspecting storage areas monthly and exterminating as necessary

Some foods, such as grains, dried fruit, and string cheese, are more sensitive to storage conditions. The table below illustrates storage for grains.

Storage of Grains during Summer Months	
<b>TDA recommends . . .</b>	Grain products to be stored in cool storage.
<b>TDA requires . . .</b>	Grain products in cool storage remain there until distribution. <b>NOTE:</b> Grain products moved from cool storage to dry storage are at risk of spoilage. CEs are liable for such spoilage.

## Inventory Requirements

CEs must maintain complete and accurate records of USDA Foods that the CE has received and distributed. CEs must differentiate between USDA Foods and other purchased or donated foods, and separate inventory records are required for USDA Foods. All CEs, subdistributing agencies, and sites are responsible for good inventory management so that USDA foods are distributed to recipients timely and in optimal condition.

Good practices include

- requesting only an amount of food that can be used without waste,
- preventing excess inventory levels, and
- detecting damage or spoilage.

The CE is responsible for two types of inventory:

- **Perpetual Inventory** — An ongoing accounting system that requires daily entries to document the amounts of food added to or removed from storage.
- **Physical Inventory** — A process to account for all USDA Foods received since the last physical inventory and to report those on hand at the time of the report.

## Date of Possession

CEs must record the date of possession of USDA Foods on the perpetual inventory. The date of possession of USDA Foods by a CE is the date the CE accepts delivery directly from USDA. Subdistributing agencies and sites take possession and are responsible for USDA Foods on the date the foods are picked up or delivered from the CE. If applicable, the possession date may be the pickup delivery day from a

commercial distributor or a food processing company.

CEs' agreements with subdistributing agencies and sites must include the chain of custody responsibilities for USDA Foods at any time before distribution to participants. For example, CEs must ensure the ongoing responsibility of subdistributing agencies that indirectly distribute USDA Foods to recipients through other agencies, organizations, and sites.

## **Site Inventory Requirements**

As necessary, CEs may establish and apply inventory controls at sites and to all agents. CEs must establish inventory controls that are sufficient to ensure that USDA Foods are safeguarded and used and distributed as intended. If indicated by review findings or other information received, TDA may impose corrective action to require CEs to implement any inventory controls deemed necessary for any sites or agents who receive USDA Foods.

## **Determining Inventory Levels**

A CE's USDA Foods inventory may not exceed six month's supply without approval from USDA. Inventory levels are calculated based on historical food usage in typical months.

To determine the months on-hand of a USDA Food: take the accumulated inventory balance at the end of the month to be reported and divide that number by the average monthly quantity of the food item distributed to recipient agencies (RAs).<sup>7</sup>

**EXAMPLE:** 1,000 units of canned peaches on hand ÷ 250 units of canned peaches distributed in a typical month = 4 months of canned peaches in inventory

For foods that have no historical data, base estimates on typical usage of similar foods. For instance, if using whole-grain rotini for the first time, develop inventory estimates by averaging the usage of other pasta products in a typical month, e.g., whole-grain macaroni.

Keep in mind that certain USDA Foods, such as shelled eggs or fresh produce, have shorter shelf lives than the six-month limit. Those foods must be managed in a way that allows them to be consumed while in optimal condition.

CEs that have an excess of six months' supply of any USDA Food may be required to submit a justification for the excess inventory.

## **Reporting Inventory Levels**

Quarterly, each CE will submit the *TEFAP Physical Inventory and Months on Hand Supply* report on a TDA-provided spreadsheet. This report will gather quarterly physical counts, book counts, and usage rates of USDA Foods within the fiscal year of TEFAP participation.

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<sup>7</sup> *Recipient agency (RA)* - A public or private nonprofit agency or organization eligible to receive distributions of USDA Foods. For more information, refer to *TEFAP Handbook*, Section 3, *Managing the Program*.

For the June and December reporting periods, CEs must conduct and report both physical and book counts. For the March and September reporting periods, CEs must conduct and report only book counts. TDA reports excess inventory to USDA in June and December reports.

Refer to the table below for required reporting periods and deadlines.

### **CE Inventory Reporting Timeframe**

<b>TDA Provides Spreadsheet on or Around</b>	<b>CE Inventory Reporting Period</b>	<b>CE Report Due 5<sup>th</sup> Business Day of these Months**</b>
February 28	March 1-31	April
May 31	June 1-30	July
August 31	September 1-30	October
November 30	December 1-31	January

\*\*The CE must submit a completed report to TDA five business days following the CE inventory reporting period.

If a CE has over six months' inventory, the CE must also include a corrective action plan (CAP) for reducing inventory. The CE places the CAP in the "comments" column of the report.

Examples of acceptable CAPs include:

- reduce the shared maintenance fee,
- eliminate the shared maintenance fee, and
- transfer the excess inventory to a different CE.

An unacceptable CAP lacks specificity to where it will not result in inventory reduction.

TDA will provide the *TEFAP Physical Inventory and Months on Hand Supply* spreadsheet on or around November 30 and May 31 of each year. The reporting periods then continue through December 31 and June 30. The CE must submit a completed report to TDA five business days after each reporting period.

After receipt of the CE's *TEFAP Physical Inventory and Months on Hand Supply* report, TDA may conduct an on-site monitoring visit to verify inventory.

### **USDA Foods Transfer**

Sometimes CEs or subagencies cannot use USDA Foods timely. TDA may transfer USDA Foods from one program to another after requesting USDA approval. However, TDA does not need USDA approval to transfer USDA Foods in the same program.

**EXAMPLE:** Food Bank C cannot utilize, timely, and in optimal condition, TEFAP green beans. TDA chooses to transfer the TEFAP green beans to Subdistributing Agency J, which also operates

TEFAP. The transfer does not require USDA approval.

**EXAMPLE:** Site E wants to transfer TEFAP green peas to Site L, which also operates TEFAP. TDA can approve the transfer without USDA approval.

**EXAMPLE:** Food Bank A notifies TDA of an excess of TEFAP corn and requests to transfer the corn to Food Bank L, which operates the Commodity Supplemental Food Program (CSFP) but not TEFAP. TDA must request approval from USDA because the transfer occurs across two programs — CSFP and TEFAP.

In all cases, CEs, subdistributing agencies, and sites must contact the entity that provides TEFAP foods to them.

**EXAMPLE:** A site contacts either the subdistributing agency or the CE, as applicable. The subdistributing agency contacts the CE. The CE contacts TDA.

TDA, CEs, and subagencies must maintain records of a transfer. For more about record retention, see *TEFAP Handbook, Section 3, Managing the Program*.

## Insurance

CEs and subdistributing agencies must obtain insurance to protect the value of USDA Foods inventories. Reasonable insurance premiums are allowable costs.

The insurance amount must be at least equal to the entity's average monthly value of month-end USDA Foods inventories in the previous fiscal year (as determined by one of USDA's foods valuation methods in 7 CFR Part 250).

Entities that are not required to obtain insurance include, but are not limited to:

- Sites
- Food pantries
- Soup kitchens
- Community action agencies

USDA has reserved the right to grant an exemption to entities that maintain a small amount of USDA Foods inventory.<sup>8</sup>

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<sup>8</sup> To request an exemption, email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 877-TEX-MEAL (877-839-6325)

## Distribution

CEs and subagencies should ensure the distribution of USDA Foods in optimal condition. Participants should have the opportunity to consume USDA Foods before the product end dates, discussed below, have passed.

**best-if-used-by** or **best-if-used-before** – Date that a product will be of best flavor or quality.

**use-by** – Last date that the manufacturer recommends using the product at peak quality.

**sell-by** – Date by which the manufacturer recommends that a store sell the food product for inventory management purposes.

If handled properly, food could still be wholesome and safe to consume beyond its product end date. However, if handled improperly, food can lose quality before the product end date. Therefore, USDA Foods with expired product end dates should not be distributed to program recipients, so considerations must be made for inventory management. Generally, CEs and subagencies should use first-in-first-out (FIFO) inventory management by marking food cases or other containers with the date of receipt. However, CEs and subagencies should also note food product dates provided by the manufacturer. Products marked with the earliest end date (that is, best-if-used-by and best-if-used-before) should be distributed first, even if those items were received at a later date.

Other dates that affect the distribution of USDA Foods are discussed below.

**pack code or date of pack** – Foods packed shortly after harvest, including, but not limited to, canned or frozen peaches; pears; green beans; and corn. These foods may be delivered throughout the following year or until the next harvest season.

**EXAMPLE:** USDA Foods packed in September 2018 may be distributed in July 2019.

**manufacture date** – Date the product was manufactured.

Pack and manufacture dates affect inventory management differently than product end dates: Pack and manufacture dates do not necessarily provide useful information about product wholesomeness or nutritional value. As always, CEs and subagencies must practice proper storage and inventory management system to ensure that USDA Foods are distributed in optimal condition.

## Payment of Costs

USDA Foods from vendors and federal storage facilities incur a delivery or handling cost. USDA is responsible for these costs. However, CEs and subdistributing agencies are responsible for any delivery charges incurred because of failure to unload a shipment within the designated time frame. (7 CFR §250.11(d))

## **Transfer of Title**

The title to USDA Foods transfers to the CE or subagency upon acceptance of the foods at the time and place of delivery or pick up. (7 CFR §250.11(e))

## **Distribution Priorities**

When the need for USDA Foods exceeds the available supply, CEs must allocate and distribute USDA Foods by the following priorities:

**Priority 1** – To emergency feeding organizations (EFOs), defined as eligible recipient agencies (ERAs)<sup>9</sup> that provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons (i.e., hunger relief agencies, soup kitchens, and like agencies; food pantries; and shelters for persons fleeing domestic abuse).

**Priority 2** – To other ERAs that serve needy people but do not relieve situations of emergency and distress. (i.e., group treatment centers and other group living arrangements; charitable institutions, including hospitals and retirement homes; summer camps for children; or child nutrition programs providing food service).

Priority 2 is for USDA Foods that remain only after Priority 1 needs are met.

(7 CFR §251.4(h))

The requirement for CEs to develop outlets for USDA Foods conforms to the program's primary goal of distributing to eligible people and, over time, may reduce the amount of USDA Foods distributed to Priority 2. TDA will continue to monitor the distribution of USDA Foods to ensure that CEs adhere to priorities. If supported by review findings or other information, TDA will request corrective action as appropriate.

## **Meeting the Priority System**

CEs should develop a written plan for implementing the priority system. This should include but is not limited to, how the CE determines 1) when demand exceeds supply and 2) when Priority 1 needs are met.

TDA recognizes that some CEs' inventory tracking systems cause difficulty in meeting the priority system. CEs have several options. For instance, they may choose to manually adjust the tracking system to meet the priority system. As an alternative, CEs may choose to serve TEFAP USDA Foods to only Priority 1 agencies. In all cases, each CE must comply with TDA and USDA regulations for the priority system.

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<sup>9</sup> For more information about ERAs, refer to *TEFAP Handbook*, Section 3, *Managing the Program*.

TDA wants to remain informed as CEs become aware of alternative methods to meet the priority system because shared information can benefit participants, sites, and CEs. To provide information, contact the Program Specialist.<sup>10</sup>

## **Distribution Quantities**

TDA recommends distribution on a first-come, first-serve basis. CEs should distribute at least monthly to households for home consumption equitably according to the following considerations:

- Household size  
**NOTE:** TEFAP provides USDA Foods to households that meet family size and income requirements.
- Available resources
- Days and hours of operation
- The expected demand for USDA Foods
- Other factors and circumstances that the CE determines are necessary

USDA Foods recipients may refuse any food item they cannot use or do not want.

CEs are permitted to use a system which encourages participants to make appointments for distribution times but cannot require it. CEs must make every effort to make an appointment system equitable by never refusing an eligible participant who does not have an appointment and by providing clear public notices that explain how to make an appointment. The process must include multiple methods for scheduling an appointment (such as online, in-person, telephone call, etc.).

## **Distribution to Contracted Service Area**

CEs assume final administrative and financial responsibility for distributions of USDA Foods within the contracted service area. A CE's efforts to meet the needs of eligible participants in the CE's service area include:

- Improving the accessibility of USDA Foods for eligible individuals
- Referring eligible people (both applicants and participants) to a different site as necessary
- Cooperating with TDA to identify areas within a contracted service area where subdistributing agencies may be needed

## **Food Losses and Complaints**

The CE must report all losses regardless of the cause. TDA will decide whether to pursue a claim depending on the circumstances. CEs and subdistributing agencies (as applicable) are responsible to

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<sup>10</sup> Email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 1-877-TEX-MEAL (1-877-839-6235).

ensure that sites take appropriate steps to reduce losses. Further, USDA may pursue a claim against CEs and subdistributing agencies for loss of USDA Foods, as well as for the loss or improper use of funds provided or obtained as a result of food distribution. USDA may choose to compromise, forgive, or waive a claim (waiver is not guaranteed).

There are several reasons for loss:

**Fraud** – Intentional concealment or willful misrepresentation of information. In this discussion, the term fraud includes theft, embezzlement, and willful misapplication.

*If a loss of any amount occurs as a result of fraud, then TDA must pursue a claim against the responsible party. Additionally, federal regulations require TDA to forward the claim to USDA.*

**Negligence** – Improper distribution or use of USDA Foods; or failure to properly store, handle, or care for the food.

*TDA will not pursue a claim if the loss is less than \$500. For more on negligence, see “Fraud, Negligence, and Misuse of USDA Foods” in this handbook section.*

**Uncontrollable event** – Hidden damage, hurricane, flood, or general power outage.

*TDA will not pursue a claim if a loss is the result of an uncontrollable event. If the loss exceeds \$500, TDA informs USDA.*

## Report of Loss of USDA Foods

To report a loss, CEs must complete *Report of Loss of USDA Foods* (Form H1638)<sup>11</sup> and any other supporting documentation,<sup>12</sup> including documents provided by subagencies. CEs are encouraged to report losses as soon as discovered; however, all losses must be reported to TDA no later than 24 hours of the loss. All reports of loss must explain how and why the loss occurred.

The following table provides examples of supporting documentation for the *Report of Loss of USDA Foods* (Form H1638).

Type of Documentation	Details about Documentation
<b>Condemnation certificate</b>	From health official
<b>Destruction certificate</b>	Must include when, where, and how the USDA Foods were destroyed; and by whom
<b>Temperature logs</b>	If USDA Foods were stored in the freezer, cooler, <b>or dry storage</b>

<sup>11</sup> Go to [www.SquareMeals.org](http://www.SquareMeals.org). Choose “Programs” then “The Emergency Food Assistance Program;” click on “TEFAP Administration and Forms,” then input the proper form number into the appropriate search field. Instructions for the form contain the link to submit the form.

<sup>12</sup> Examples of supporting documentation include photographs; the confirmation document of the local health official who inspects the food loss; or a receipt or invoice from a landfill that verifies destruction of the food loss.

<b>Police report</b>	If theft or vandalism was involved <i>Also, include precautions taken to prevent future theft or vandalism.</i>
<b>Fire department report</b>	If the loss was due to fire
<b>Extermination records</b>	If the loss was due to infestation
<b>Refrigeration repair information</b>	If the loss was due to refrigeration failure

## Holds and Recalls

USDA notifies TDA of a hold or recall to provide 1) instructions, 2) replacement of recalled foods, and 3) reimbursement of specific costs related to the recall. TDA will notify CEs and may request them to report the amount of affected product in their possession, as well as whether the product was delivered to subagencies.

If USDA Foods are on hold, the CE and subagencies, if applicable, segregate the product until USDA either releases the hold or provides further information.

If USDA Foods are recalled, TDA instructs CEs of the ways to dispose of the product.

For more information, see the USDA Food Safety website.<sup>13</sup>

### Public Notification of a Recall

TDA recommends that the CE and subagency broadcast recall information in ways that a participant can be reached. The CE and subagency may take further action as they deem necessary.

## Out-of-Condition USDA Foods

Out-of-condition USDA Foods are no longer fit for human consumption because of damage, spoilage, or infestation. Occasionally, some USDA Foods can be salvaged; if so, CEs must contact TDA.

When there is a question about the wholesomeness of USDA Foods, CEs and subdistributing agencies must have the foods inspected by a state or local health authority to ensure the foods are still safe. When USDA Foods are determined to be out of condition, CE must take the following steps:

1. Obtain from a federal, state, or local health official a written statement that the USDA Foods are unfit for human consumption.  
**NOTE:** If a federal, state, or local health official is not available to inspect foods to determine if they are out-of-condition, then CEs and subagencies may, with TDA approval, use other community resources, e.g., individuals who provide inspection services, nurses, or others whose training, experience or background in medical, health,

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<sup>13</sup> USDA Food safety website: <https://www.fns.usda.gov/ofc/usda-food-recall-resources>.

or related fields qualify them to determine if food is fit for human consumption.

2. Obliterate carton labels.
3. Destroy food and ensure that it is inedible.
4. Transport unsalvageable, out-of-condition USDA Foods to a landfill for proper disposal.

(7 CFR §250.15)

## Complaints

CEs should keep in mind that factors affecting USDA purchases of USDA Foods include market conditions; the amounts, types, and costs of foods available; and price support requirements. Also, when purchasing USDA Foods, USDA considers the recommendations of CEs and subagencies.

USDA and TDA appreciate the input of CEs and subagencies regarding food quality or specifications. Two complaint forms and their locations are described below.

1. USDA Foods Complaint Form. CEs may use the *USDA Foods Complaint*<sup>14</sup> form to report specific issues involving USDA Foods. Such issues include (but are not limited to) quality, acceptability, and packaging. TDA must seek guidance and authorization from USDA before disposing of USDA Foods that have been the subject of a complaint, due to food safety regulations and to contractual obligations with USDA's vendors. The complaint will be resolved as expeditiously as possible.
2. F&N Complaint Form. CEs may use the *F&N Complaint Form*<sup>15</sup> to give TDA feedback concerning program problems or general suggestions.

## Prohibited Actions and Restricted Practices

### Payment for USDA Foods

CEs must not require, solicit, or accept payment from TEFAP applicants or participants in money, materials, or services for, or in connection with, receiving USDA Foods. Additionally, USDA Foods must not be sold or disposed of through commercial methods.

**NOTE:** This policy does not restrict any person or persons from volunteering services in their communities, as they choose when such volunteer services are not conditions for receiving USDA Foods.

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<sup>14</sup> Go to [www.SquareMeals.org](http://www.SquareMeals.org). Choose “Programs” then “The Emergency Food Assistance Program,” click on “TEFAP Administration and Forms,” then put the form name in the appropriate search field.

<sup>15</sup> Go to [www.SquareMeals.org](http://www.SquareMeals.org). Choose “Programs” then “The Emergency Food Assistance Program,” click on “TEFAP Administration and Forms,” then put the form name in the appropriate search field.

## Join an Organization

CEs must not require an agency, organization, individual, or a household to join, attend meetings of, or pay dues to a specific organization as a condition for receiving, distributing, or using USDA Foods.

## SNAP Recruitment and Promotion

TEFAP administrative funds may be used only to pay the direct expenses associated with the distribution of USDA Foods as well as foods secured from other sources. CEs and subagencies must not use TEFAP administrative funds to compensate outreach workers based on the number of individuals who apply for SNAP as a result of that worker's efforts.

Additionally, TEFAP funds must not be used for the following activities:

- Recruitment activities designed to persuade an individual to apply for SNAP
- TV, radio, or billboard advertisements designed to promote SNAP benefits and enrollment
- Agreements with foreign governments to promote SNAP benefits and enrollment

## USDA Foods to Child and Adult Care Food Program Organizations

CEs may distribute USDA Foods to Child and Adult Care Food Program (CACFP) organizations that are also participating in TEFAP. However, distribution to such eligible organizations should be made only if the needs of all emergency-feeding organizations, such as hunger relief agencies, soup kitchens, and food pantries, have been met. Refer to "Distribution Priorities" in this handbook section for additional information.

## Activities Unrelated to USDA Foods

CEs and subagencies must ensure that unrelated activities are conducted in a way that does not disrupt TEFAP distribution or congregate meals.

A person may conduct activities unrelated to TEFAP distribution or meal service as long as the person clarifies that

- the activity is not part of TEFAP,
- such activity is not endorsed by USDA, and
- cooperation with the activity is not a condition to receive TEFAP foods, including
  - contributing money,
  - signing petitions,
  - or conversing with the person.

Information about explicitly religious activity must never be placed in TEFAP containers. On the other hand, information unrelated 1) to TEFAP and 2) to explicitly religious matters, is permissible if it is printed with a statement that the information is not endorsed by USDA.

Some information can be included in TEFAP containers without specifying that USDA does not endorse it, including, but not limited to

- recipes,
- information about USDA Foods,
- dates of future distributions,
- hours of operations, or
- other federal, state, or local government programs or services for eligible people.

Corrective action will be required of any CE or subagency that distributes or permits the distribution of materials, as explained above. Failure to maintain corrective action may result in the termination of the TEFAP agreement.

## **Additional Resources**

### **Health Risks of Peanut Products**

The ingestion of peanut products can pose a serious health risk to certain individuals. This health risk applies to peanut butter products, peanut oil, and peanut granules that are purchased by the U.S. Department of Agriculture (USDA).

According to USDA, the oil used in other USDA Foods, such as potato wedges, potato rounds, French-fried potatoes, dressings, and other vegetable oil is unsaturated vegetable oil. These products do not contain peanut oil.

### **Food Safety Best Practices for Households**

For safety resources, go to the USDA website at [www.fns.usda.gov/food-safety/food-safety-resources](http://www.fns.usda.gov/food-safety/food-safety-resources).

# Section 5

# Visits, Reviews, and Audits

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## Section 5

# Visits, Reviews, and Audits

### Visit Prior to Approval

The Texas Department of Agriculture (TDA) visits, prior to approval, an applicant's administrative offices and storage facilities to assess the potential for successful operations of The Emergency Food Assistance Program (TEFAP). For more information, see *TEFAP Handbook*, Section 2, *Program Application*.

### Reviews

Administrative reviews are conducted for all contracting entities (CEs), subdistributing agencies, and sites to ensure program compliance according to the terms and conditions of *The Emergency Food Assistance Program Agreement Between Contracting Entity and Texas Department of Agriculture* (TEFAP Agreement) and the *Application for Participation/Plan of Operation* including, but not limited to, the following:

- Evaluation of overall TEFAP operations and activities
- Storage and warehousing practices
- Inventory controls and accountability
- Civil rights compliance
- Financial management systems
- Approval and monitoring of subdistributing agencies and sites to ensure program compliance
- Reporting and recordkeeping
- Other aspects of their programs, as determined by TDA

Each entity participating in TEFAP is reviewed by the entity that provides its U.S. Department of Agriculture (USDA) Foods.

- The site is reviewed by the subdistributing agency (if applicable) or the CE.<sup>1</sup>
- The subdistributing agency is reviewed by the CE.<sup>1</sup>
- The CE is reviewed by TDA.

**NOTE:** TDA may review subagencies without coordinating with the CE. CEs, subdistributing agencies, and sites are subject to review by USDA.

TDA may request, at any time, findings information from the CE's reviews of subagencies.

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<sup>1</sup> For more information, see *TEFAP Handbook*, Section 3, *Managing the Program*.

## Risk Assessment Tool

TDA uses the risk assessment tool to determine which CEs and subagencies to review. The tool determines reviews first by risk-based assessment, then by random sample.

**1. Risk-based assessment.** The risk factors include the following:

- Value of USDA Foods
- Amount of administrative funds received (if applicable)
- History of complaints
- History of TEFAP violations
- Length of time operating TEFAP
- Length of time since the last review
- Known turnover of the director or key staff
- Other applicable factors

**2. Random sample.** CEs and subagencies not selected for a risk-based review are subject to selection by random sample.

## Review Frequency

### TDA

Annually TDA reviews at the following frequency:

- CEs: At least 25%, and no less than once every three years
  - When TDA reviews a CE, TDA also reviews the CE's subdistributing agencies (if any exist).
- Sites: At least one-tenth or 20, whichever is fewer

### CE and Subdistributing Agency

TDA considers it a best practice for CEs or subdistributing agencies (as applicable) to review each site no less than once every other year. To the extent feasible, reviews must be scheduled to coincide with meal service, distributions to households, and/or when household eligibility is being determined.

## Storage Facility Review

CEs must annually review facilities where USDA Foods are stored to reconcile physical and book inventories of USDA Foods. CEs must document the results of each storage facility review and, as with all TEFAP records, retain the documentation for three years following the end of the federal fiscal year in which the review was done. Additionally, CEs must require subagencies that store USDA Foods to review their storage facilities annually.

CEs should schedule the storage facility review to coincide with the inventory of USDA Foods<sup>2</sup> reported to TDA on June 30 of each year. CEs will report a loss of USDA Foods discovered as a result of either the semi-annual inventory of USDA Foods or the storage facility review on *Report of Loss of USDA Foods* (Form H1638).<sup>3</sup> CEs must correct deficiencies discovered during a storage facility review and report the results to TDA.

A CE's storage facility review must ensure that the facility, at a minimum, meets these requirements:

- Sanitary
- Free from animal and insect infestation
- Secure from theft, spoilage, and other loss
- Maintained at proper temperatures
- Used appropriately to store food (e.g., the product is stored off the floor, boxes are safely stacked with USDA labels visible, and containers are spaced for proper ventilation)
- In compliance with other standards, as appropriate

## Documentation Review

### Record Retention

CEs and subagencies must retain all documents relating to the TEFAP for at least three years from the end of that federal fiscal year or until the resolution of issues pertaining to reviews, audits, or investigations.

When preparing for an administrative review, a CE or subdistributing agency must make all TEFAP records available to the reviewers. For a list of TEFAP-related documentation and more information on record retention, refer to Section 3, *Managing the Program*.

## Findings and Corrective Action Documents

The following definitions pertain to the discussion below administrative review process.

**finding** – The determination, usually during a review, of TEFAP noncompliance.

**NOTE:** A finding at a site is a finding for the CE.

**corrective action document (CAD)** – Developed by a CE, subdistributing agency, or site to correct noncompliance relating to TEFAP operations.

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<sup>2</sup> For more information, see *TEFAP Handbook*, Section 4, *USDA Foods*.

<sup>3</sup> For more information, see *TEFAP Handbook*, Section 4, *USDA Foods*.

## Request for CAD Letter

When a reviewer (TDA, CE, or subdistributing agency) finds TEFAP noncompliance, a request for corrective action will be issued that includes the following:

- A description of each finding
- The policy citation associated with each finding (if necessary)
- Recommendations for achieving corrective action
- Claims action to be pursued (if any)
- Due date of the CAD

## Corrective Action Document

To address noncompliance, CEs and subagencies must submit a CAD. Each TEFAP entity submits its CAD to the entity that provides its USDA Foods. TDA will provide CEs instructions on how to create and submit CADs to the agency if necessary as a result of its administrative review process.

- If applicable, the site submits the CAD to the subdistributing agency or the CE.
- If applicable, the subdistributing agency submits the CAD to the CE.
- The CE submits the CAD to TDA.

**EXAMPLE:** A subdistributing agency cannot locate site records during a compliance review by the CE. The subdistributing agency's CAD must include a plan to develop a system for maintaining site records of USDA Foods distributions.

**EXAMPLE:** In a CE's service area, eligible persons have no access to USDA Foods. In the CAD, the CE provides a plan to develop food providers in that area.

A CAD must state 1) how the organization will correct program violations and 2) include the following details:

- An outline of actions to be taken
- The expected outcome of each action
- The target date for completion of each action
- The date by which each violation will be eliminated

**EXAMPLE:** A CAD is required if the CE receives a finding for failing to maintain administrative records. In such a case, the CE's CAD to TDA will provide the following:

- The steps to rectify the lack of record maintenance
- What the result of those steps would be
- The target date for each step, including the end date for the corrective action

If a CAD is incomplete or inadequately addresses TEFAP noncompliance, the CAD may be returned, for clarification, to the entity that submitted it. Additionally, the reviewing entity may amend or modify the CAP based on new information, changes in circumstances, and/or progress to date.

The reviewing entity may perform a follow-up review to ensure the implementation of the CAD and correction of the TEFAP noncompliance. After the follow-up review, the reviewing entity may take the following action, as warranted by the circumstances:

- Determine that the corrective action is complete
- Extend the corrective action time frame
- Take steps to terminate the entity's participation in TEFAP

TDA has the option to withhold administrative funding from the CE until noncompliance is corrected.

## Audits

This section provides an overview of the Federal Audit requirements as found in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. It is not meant to be a comprehensive treatment of the Federal Audit requirements. For more specific guidance in this area, please see 2 CFR Part 200 and the latest *Compliance Supplement*.<sup>4</sup>

The CE's audit covers the entire scope of its operations and is conducted to determine whether:

- Financial operations are conducted properly;
- Expenditures of program funds comply with applicable laws and regulations;
- Internal procedures meet the objectives of federally assisted programs;
- Financial statements are correct; and
- Financial reports contain accurate information.

As a condition of eligibility for participation in TEFAP, TDA requires the CE to submit the *Annual Audit* form or complete the Annual Audit screen in the Texas Unified Nutrition Program System (TX-UNPS)<sup>5</sup> during the initial application and each year thereafter. This assures TDA that the CE will obtain an audit that meets the single audit requirements. Based on the information provided by the CE, TDA will notify the CE of the audit's due date six (6) months and again at eight (8) months after the end of the fiscal year for which the audit is due. However, failure to receive such notifications does not relieve a CE of the responsibility to submit an audit if required.

TDA will notify a CE that:

- The audit must be submitted, by the due date, to the Federal Audit Clearinghouse<sup>6</sup> and a copy (paper or electronic format) must be submitted to TDA. Notification will include submittal information for TDA.
- If a CE's audit is not submitted by the specified due date, the TEFAP Agreement will be terminated effective the first day of the month following the month in which the audit was due.

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<sup>4</sup> Found at <https://www.whitehouse.gov/omb/office-federal-financial-management/>

<sup>5</sup> TX-UNPS is found at [www.SquareMeals.org](http://www.SquareMeals.org).

<sup>6</sup> Found at <https://facweb.census.gov/uploadpdf.aspx>

## General Audit Policy

The frequency and scope of audits are determined by the amount and source of federal financial assistance expended in any year. Non-Federal CEs that expend **\$1,000,000** or more during their fiscal year in federal awards<sup>7</sup> must have a single or program-specific audit conducted for that year (2 CFR § 200.501(a)). CEs subject to audit requirements in 2 CFR Part 200, subpart F must be audited on a single (organization-wide) audit basis by independent auditors. If a CE expends federal awards under only one federal program (such as TEFAP), it may elect to have a program-specific audit if certain requirements are met (2 CFR § 200.501(c)). If the federal financial assistance expended in one year is less than **\$1,000,000**, then the CE is not subject to the single audit requirement. All audits must be conducted per Generally Accepted Government Auditing Standards (GAGAS).

In procuring audit services, the CE must follow the procurement standards in 2 CFR Part 200 (2 CFR §§200.509, and 200.317 through 200.326). The objective is to obtain high-quality audits. In requesting proposals for audit services, the audit's objectives and scope must be made clear and the CE must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS.

Factors CEs should consider in evaluating each proposal for audit services include:

- Responsiveness to the request for proposal;
- Relevant experience;
- Availability of staff with professional qualifications and technical abilities;
- Results of peer and external quality control reviews; and
- Price.

Whenever possible, the CE must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises.

### Value of USDA Foods for Audit

On December 2, 2016, USDA issued Memorandum [FD-104, Value of USDA-Donated Foods for Audits \(Revised\)](#)<sup>8</sup> to clarify the options in assigning value to USDA-donated food for audit purposes. In determining whether **\$1,000,000** in federal awards was expended, the value of USDA-donated foods must be considered. The following two steps should be used:

**Step 1:** Determining the quantity of each USDA-donated food "expended"

- The CE must consider as expended all USDA Foods donated per 7 CFR § 250.67 as received in a fiscal year.

**Step 2:** Assigning a value to the quantity of each USDA food "expended"

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<sup>7</sup> As used in this section, *federal award* means federal financial assistance and federal cost-reimbursement contracts that CEs receive directly from federal agencies or indirectly from pass-through entities. TDA is a pass-through entity for the TEFAP (2 CFR §200.38).

<sup>8</sup> <https://www.fns.usda.gov/value-usda-donated-foods-audits>

- USDA-donated foods must be valued at either fair market value at the time of receipt or the value determined by the USDA (2 CFR § 200.502(g)). Accordingly, for audit purposes, the TEFAP CE receiving USDA-donated food may use one of the following options:
  - The fair market value of USDA-donated foods at the time of their receipt. The fair market value must exclude non-food items.
  - One of the following donated food valuation methods included in 7 CFR § 250.58(e):
    - The cost-per-pound of USDA-donated food prices posted annually by USDA on its Food Distribution web page<sup>9</sup>:
    - The most recently published cost-per-pound price in the catalog of the USDA-donated food, found in the USDA-donated foods ordering system, [Web-Based Supply Chain Management \(WBSCM\)](#)<sup>10</sup>; or
    - The rolling average of the USDA prices based on each state distributing agency's<sup>11</sup> USDA-donated food sales orders in WBSCM. To calculate the rolling average, all prices that a particular material has been sold for during the current fiscal year are averaged together to get an average cost per pound price for the material.

**NOTE:** The value applied to USDA Foods for audit purposes does not apply for other purposes. For example, FNS Instruction 410-1 (Rev) is used when determining and pursuing claims for USDA Foods losses.

For additional assistance, contact TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or 1-877-TEX-MEAL (1-877-839-6325).

## Scope of Audit

### CE Responsibilities

The CE must provide auditors with access to:

- Personnel
- Accounts
- Books
- Records
- Supporting documentation
- Other information as needed to perform the audit  
(2 CFR § 200.508(d))

The CE must prepare:

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<sup>9</sup> <https://www.fns.usda.gov/usda-foods/foods-available>

<sup>10</sup> <https://www.usda.gov/topics/food-and-nutrition/web-based-supply-chain-management>

<sup>11</sup> TDA is the State distributing agency.

- Financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited (2 CFR § 200.510(a)).
- Schedule of Expenditures of Federal Awards (SEFA) for the period covered by the CE's financial statements which must include the total federal awards expended (2 CFR § 200.510(b)). At a minimum, the schedule must:
  - List individual federal programs by federal agency;
  - Name of the pass-through entity (TDA) and identifying number assigned to the CE by TDA;
  - Total federal awards expended for each federal program and the Catalog of Federal Domestic Assistance (CFDA) number or other identifying number when the CFDA information is not available;
  - Total amount provided to subrecipients from each federal program; and
  - Notes that describe the significant accounting policies used in preparing the schedule and whether the CE elected to use the **15% de minimis** indirect cost rate.
- Summary schedule of prior audit findings that report the status of all audit findings included in the prior audit's schedule of findings and questioned costs (2 CFR § 200.511(a) and (b)).
- A corrective action plan<sup>12</sup> to address each audit finding included in the current year auditor's report (2 CFR § 200.511(c)). The corrective action plan must provide:
  - Name(s) of the contact person(s) responsible for corrective action;
  - Corrective action planned; and
  - Anticipated completion date.

**NOTE:** If the CE does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons. (2 CFR § 200.511(c)).

#### Overview of CE's Responsibilities (2 CFR § 200.508)

- Arrange for Audit (2 CFR § 200.509)
- Prepare Financial Statements
- Prepare SEFA
- Provide Auditor with Access
- Take Corrective Actions on Findings
- Prepare Summary of the Prior Audit Findings
- Prepare Corrective Action Document

The CE must establish and maintain effective internal controls over the Federal award. Internal Controls provides reasonable assurance that the CE is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award (2 CFR §200.303).

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<sup>12</sup> The corrective action plan, as described in 2 CFR Part 200, subpart F, is used to address each audit finding. This corrective action plan should not be confused with a corrective action required by TDA as a result of a compliance review.

## Auditor Responsibilities

The auditor must report the following as audit findings (2 CFR § 200.516):

- Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs.
- Material noncompliance with the provisions of federal statutes, regulations, or the terms and conditions of federal awards related to a major program.
- Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program.
- Known questioned costs that are greater than \$25,000 for a federal program that is not audited as a major program.
- The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for federal awards.
- Known or likely fraud affecting a federal award unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for federal awards.
- Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding.

The auditor's report must include (2 CFR § 200.515):

- An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects per generally accepted accounting principles and opinion (or disclaimer of opinion) as to whether the schedule of expenditure of federal awards is fairly stated in all material respects concerning the financial statements as a whole.
- A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements.
- A report on compliance for each major program and a report on internal control over compliance.
- A schedule of findings and questioned costs.

### Overview of Auditor's Responsibilities (2 CFR § 200.514)

- Determine if financial statements are fairly presented
- Report on SEFA
- Understand and test internal control over compliance
- Determine whether CE complied
- Follow up on prior audit findings
- Report findings
- Complete and sign Data Collection Form

## Procedures for Compliance with Audit Requirements

As a condition of eligibility for participation in TEFAP, TDA requires CEs to submit documentation of compliance with single audit requirements. The audit must be completed and submitted by the CE to the [Federal Audit Clearinghouse \(FAC\)](#) either 30 days after receiving the auditor's report, or nine months after the end of the CE's fiscal year, whichever comes earlier.

The CE must submit to the FAC the data collection form (Form SF-SAC)<sup>13</sup> and a reporting package. The reporting package must include the following:

- Financial statements and schedule of expenditures of federal awards;
- Summary of a schedule of prior audit findings;
- Auditor's report(s); and
- Corrective action plan.

(2 CFR § 200.512)

The CE must retain one copy of each of the data collection forms and reporting packages on file for three years from the date of submission to the FAC (2 CFR § 200.512(f)).

The audit also must be submitted to TDA and copies of the audit report must be made available to the public. CEs and auditors must ensure that protected personally identifiable information is not made public. (2 CFR § 200.512(a)(2))

CEs should review and accept the completed audit before submitting the audit to the FAC and TDA. If corrective action is necessary, the CE should work with the auditing firm to develop a corrective action plan to address each audit finding (2 CFR § 200.511(c)).

If the audit is organization-wide but the TEFAP is not specifically audited, the CE must submit a letter to TDA from the auditor stating that the program was included in the random sampling process but was not selected for audit.

The proportional share of costs of required audits per 2 CFR Part 200, subpart F are allowable (2 CFR § 200.425). Projected costs of required audits must be included in the approved TEFAP budget to be allowable.

Submit audits to the Federal Audit Clearinghouse at  
<https://harvester.census.gov/facweb/>

Submit audits to TDA on paper, CD, or email to one of the following:

- Texas Department of Agriculture  
Attn: Business Operations — Audits  
P.O. Box 12847  
Austin, Texas 78711
- [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

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<sup>13</sup> Found on the FAC website, <https://harvester.census.gov/facweb/>.

The subject line must read: Audit – Organization name, CE ID#.

**EXAMPLE:** CE Food Bank of America with the CE ID 12345 emails its audit to CommodityOperations@TexasAgriculture.gov. The email's subject should read: Audit — Food Bank of America, ID 12345.

## **Sanctions for Noncompliance**

TDA must receive an acceptable audit either 30 days after receiving the auditor's report or within nine months of the last day of CE's

- Current fiscal year if submitting an annual audit, or
- The second fiscal year included in the biennial audit period if submitting a biennial audit.

TDA may terminate the TEFAP Agreement, effective the first day of the month following the month in which the audit was due, if:

- FAC and TDA does not receive the audit by the specified due date;
- The CE submits an audit that does not meet the regulatory requirements. TDA will notify the CE in writing that the audit is unacceptable. The CE must submit an acceptable audit within 30 calendar days of the date of the notice;
- A CE requests, but is not granted, an extension of the audit due date, and the CE does not submit an acceptable audit as required; and
- The CE requests and is granted an extension of the due date but fails to submit an acceptable audit by the extended due date.

If TDA determines that extenuating circumstances resulted in a CE's inability to submit an acceptable audit, TDA may conduct an audit, either directly or through a contract with a third party. The CE must pay all costs associated with such an audit.

Once the TEFAP Agreement has been terminated for failure to comply with the single audit requirement, a CE must provide an acceptable audit for any outstanding audit year(s) and comply with the federal audit requirements to be eligible to reapply to participate in TDA's nutrition programs.

## **Other Audits**

TDA retains, both for the agency and the federal government, the right to conduct additional audits, as necessary.

If violations such as fraud or misuse of funds occur and corrective action would not be practical, TDA will immediately terminate the TEFAP Agreement.

# Section 6

# Civil Rights

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## Section 6 Civil Rights

All nutrition assistance programs and activities that receive Federal funding are protected and subject to civil rights oversight. Contracting entities (CEs) are responsible for ensuring that all qualifying persons have equal access to The Emergency Food Assistance Program (TEFAP) by complying with the civil rights and nondiscrimination requirements of the U.S. Department of Agriculture (USDA). (7 CFR §251.10(c))

In the USDA nutrition programs administered by the Texas Department of Agriculture (TDA), there are six bases protected against discrimination. A protected basis refers to any person or group of people who have characteristics for which discrimination is prohibited based on law, regulation, or executive order. Protected bases in the USDA nutrition assistance programs administered by TDA are:

- Race
- Color
- National origin
- Sex
- Age
- Disability

Reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA is also prohibited.

A CE must strictly adhere to and enforce the provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

Refer to USDA Food and Nutrition Service (FNS) Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* for additional information.

# Title VI of the Civil Rights Act of 1964

## Public Notification

CEs must have a public notification system to inform applicants, participants, and potentially eligible persons of TEFAP availability, TEFAP rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. CEs must make TEFAP information available to the public upon request. CEs also must be able to provide informational materials related to TEFAP in languages other than English, if the need exists. Refer to “Limited English Proficiency” in this section for additional information.

CEs must convey the message of equal opportunity in all photographic and other graphics that are used to provide information related to TEFAP. Specifically, when human likenesses are used in such materials, reasonable efforts must be made to depict an ethnic and racial balance.

### **...And Justice for All Posters**

CEs and each contracted site must prominently display the USDA nondiscrimination poster ("...And Justice For All") in a place where it may be read by participants at all times. All "...And Justice for All" posters must be displayed in a specific size: 11 inches width x 17 inches height. More information about the “And Justice for All” poster may be found on USDA’s website.<sup>1</sup>

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<sup>1</sup> Found at [www.fns.usda.gov/cr/and-justice-all-posters-guidance-and-translations](http://www.fns.usda.gov/cr/and-justice-all-posters-guidance-and-translations).

## **Nondiscrimination Statement**

The CE and site must provide the following nondiscrimination statement and complaint-filing procedures in all applications and on all TEFAP materials that are produced for public information, public education, or public distribution:

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at:

<https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or
- (2) fax: (833) 256-1665 or (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

In Spanish, the nondiscrimination and complaint-filing procedure is:

De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo, discapacidad, edad, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Las personas con discapacidades que requieren medios alternos de comunicación para obtener la información del programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano (ASL), etc.) deben comunicarse con la agencia local o estatal responsable de administrar el programa o con el Centro TARGET del USDA al (202) 720-2600 (voz y TTY) o comuníquese con el USDA a través del Servicio Federal de Retransmisión al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA, el cual puede obtenerse en línea en: <https://www.usda.gov/sites/default/files/documents/ad-3027s.pdf>, de cualquier oficina de USDA, llamando al (866) 632-9992, o escribiendo una carta dirigida a USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse a USDA por:

- (1) correo: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or
- (2) fax: (833) 256-1665 o (202) 690-7442; o
- (3) correo electrónico: [program.intake@usda.gov](mailto:program.intake@usda.gov)

Esta institución es un proveedor que ofrece igualdad de oportunidades.

The nondiscrimination statement **must be printed in its entirety** on all TEFAP documents that are intended for the public unless the document fits one of the exceptions below:

- Sometimes, the material is too small to permit the full nondiscrimination statement. In this case, the material must include, in a font size no smaller than the other text, the following statement: “This institution is an equal opportunity provider.”
- The nondiscrimination statement is not required to be printed on items such as cups, buttons, magnets, and pens that identify TEFAP when the size or configuration makes it impractical.
- When advertising TEFAP through radio or television announcements, the entire nondiscrimination statement does not have to be read. Rather, a statement such as “TEFAP is an equal opportunity provider” is sufficient.
- The entire nondiscrimination statement does not have to be included on every page of a CE’s TEFAP information website; at minimum, the nondiscrimination statement or a link to the statement must be included on the CE’s home page.

## The Collection of Racial and Ethnic Data

Federal guidance exempts CEs from collecting racial and ethnic data. The only required information for TEFAP eligibility is specified in Section 3, *Managing the Program*, “Household Application for USDA Foods (Form H1555)/Household Application for USDA Foods-Alternate (H1555B).”

CEs may collect additional information, such as racial and ethnic data. **However, the collection of additional data must not be a real or perceived barrier to participation.** In other words, a CE must allow an applicant to supply only the federally required information to receive TEFAP foods.

If a CE creates a customized intake form, the form must state clearly that an applicant can receive TEFAP foods by providing **only** the information specified in Section 3, *Managing the Program*, “Household Application for USDA Foods (Form H1555)/Household Application for USDA Foods-Alternate (H1555B).”

## Limited English Proficiency

CEs must take “reasonable steps” to ensure meaningful access to their programs by participating persons with disabilities and for persons with Limited English Proficiency (LEP). People with LEP are those who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

CEs must reduce language barriers that can prevent meaningful access by LEP persons to important benefits, programs, information, and services of the TEFAP. CEs that fail to take reasonable steps may be discriminating based on national origin. Reasonable steps to ensure meaningful access is contingent on several factors, including:

- The number or proportion of LEP persons eligible to be served or likely to be encountered by TEFAP;
- The frequency with which LEP individuals come in contact with TEFAP;
- The nature and importance of TEFAP to people's lives; and
- The resources available to the CE and costs.

Elements that may help design an LEP policy or plan:

- Identifying LEP persons who need language assistance
- Identifying ways in which language assistance will be provided
- Training staff
- Providing notice to LEP persons
- Monitoring and updating LEP policy

## **Administrative Reviews**

Administrative reviews help to ensure that civil rights requirements are fulfilled at each level of TEFAP administration, including the application approval process and the federal and state monitoring efforts.

TDA will determine whether the CE and its subdistributing agencies and distribution sites comply with civil rights requirements before approving the initial application to participate. TDA determines compliance by examining the *Application for Participation/Plan of Operation*, and supporting documentation, as well as by conducting a visit prior to approval to verify the information. During reviews, TDA will also evaluate compliance with civil rights requirements.

## **Section 504 of the Rehabilitation Act of 1973**

### **Program Accessibility**

TEFAP, when viewed in its entirety, must be accessible to and usable by persons with one or more disabilities, including persons with impaired vision or hearing. CEs, subdistributing agencies, and distribution sites are not required to make every part of existing facilities physically accessible to differently-abled persons but must ensure that programs at those facilities are accessible. Each facility must offer the most integrated setting possible to enable persons with disabilities to fully benefit from TEFAP.

CEs, subdistributing agencies, and distribution sites can make programs accessible to persons with disabilities by taking the following steps:

- Delivering food packages at the curb
- Moving to accessible buildings
- Assigning aides to assist participants
- Delivering services at alternate accessible facilities (for facilities with 15 or fewer employees)
- Redesigning equipment
- Rearranging furniture
- Changing the schedule of service hours
- Altering existing facilities
- Constructing new, accessible facilities

CEs, subdistributing agencies, and distribution sites should develop a transition plan to ensure TEFAP accessibility if structural changes to buildings are necessary.

If a CE, subdistributing agency, or distribution site cannot provide services to a person with disabilities because a part of a facility where services are provided is not accessible, they must:

- Inform the person with disabilities of alternate facilities where they can receive services.
- Pay all or part of any additional cost the person with disabilities incurs as a result of being transported to the alternate facility. (There are some circumstances when CEs, subdistributing agencies, and distribution sites are not required to pay these costs. Contact your USDA Foods Specialist<sup>2</sup> for additional information.)

## **Public Notification**

CEs must have a public notification system to inform applicants, participants, and potential participants of TEFAP availability, TEFAP rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. The public notification system must include the following three basic elements:

1. TEFAP Availability. CEs must take specific action to inform participants of their rights and responsibilities.
2. Complaint Information. CEs must advise participants of the right to file a complaint, how to file a complaint, and the complaint procedures.
3. Nondiscrimination Statement. CEs must ensure all information materials and sources, including websites, used to inform the public about TEFAP contain the nondiscrimination statement located in “Nondiscrimination Statement” in this handbook section.

## **Employment**

CEs, subdistributing agencies, and distribution sites are prohibited from discriminating against any qualified person based on a disability. CEs, subdistributing agencies, and distribution sites must make reasonable accommodations for the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities. CEs, subdistributing agencies, and distribution sites are not expected to make accommodations that impose an undue hardship on the operation of TEFAP.

## **Civil Rights Assurances**

The statement of nondiscrimination is contained in the *TEFAP Agreement Between Contracting Entity and the Texas Department of Agriculture*.

## **Designation of Section 504 Coordinator**

If a CE, subdistributing agency, or site employs 15 or more people, it must designate one or more persons to coordinate compliance with Section 504 regulations. A CE, subdistributing agency, or site may designate an existing employee to perform this function. (7 CFR §15b.6)

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<sup>2</sup> Email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 877-TEX-MEAL (877-839-6325).

## Complaint and Grievance Procedures

If a CE, subdistributing agency, or distribution site employs 15 or more people, it must maintain procedures to process grievances and complaints. Procedures that are required by a program other than TEFAP may satisfy this requirement if they comply with due process standards and provide for prompt and equitable resolution of complaints. (7 CFR §15b.6(b))

For a complaint form, see [www.SquareMeals.org](http://www.SquareMeals.org). Choose I Need To . . . then File a Complaint.

## Self-Evaluation of Services

CEs, subdistributing agencies, and distribution sites must evaluate the quality and availability of services to people with disabilities, and begin to correct any inequitable policies or practices. The evaluation should be made with the assistance of people with disabilities or organizations that advocate for people with disabilities. CEs must maintain a list of interested persons with whom they consult, a description of areas that they examine, the problems that they identify, and descriptions of modifications that they make.

CEs must retain this information per TEFAP recordkeeping requirements. Refer to *TEFAP Handbook*, Section 3, *Managing the Program* for additional guidance.

## Americans with Disabilities Act

### Introduction

The Americans With Disabilities Act (ADA) became effective on January 26, 1992. This Act and Section 504 of The Rehabilitation Act of 1973 combine to prevent a wide range of discriminatory actions against disabled persons. However, the ADA does not replace Section 504. The ADA applies to all persons and is not limited solely to persons who receive federal financial participation.

The ADA comprises the following subjects:

- Non-discriminatory practices
- Reasonable accommodation

The ADA applies to the following areas:

- Services
- Employment

### Services

When evaluating the services that a CE, subdistributing agency, or distribution site offers, a CE should consider the following questions:

- Can a person with disabilities get to the facility with reasonable ease?
- If the person can reach the location, can they enter the facility and access the specific location where services are provided?
- If they can access the location where services are provided, is there an accessible bathroom?
- If they can access the location where services are provided, are necessary accommodations made for their particular disability?

## Employment

Under the ADA, CEs, subdistributing agencies, and distribution sites must comply with the following requirements:

- Must not discriminate against a person with a disability when hiring or promoting staff if the person is otherwise qualified for the job
- May inquire about a person's ability to perform a job, but cannot ask whether a person has a disability nor subject a person to tests that screen out people with disabilities
- Must provide "reasonable accommodations" to persons with disabilities, e.g., job restructuring and modification of equipment

**NOTE:** CEs, subdistributing agencies, and distribution sites are not required to provide accommodations that impose an undue hardship on its business. CEs faced with such a request are encouraged to contact TDA for further assistance.

## Sites Located at Religious Organizations

Federal civil rights laws address explicitly religious activities as part of TEFAP. For more information, see Section 3, *Managing the Program*.

## Complaints

CEs, subdistributing agencies, and distribution sites must have written grievance procedures for addressing and processing complaints. Administrative and site personnel must be able to provide documentation of the procedures and an explanation of the complaint process. The CE, subdistributing agency, or distribution site may incorporate the TEFAP grievance procedures into existing organization-wide complaint procedures rather than develop standalone grievance procedures for TEFAP.

### Civil Rights Complaints

Any person or representative alleging discrimination based on a prohibited basis has the right to file a complaint within 180 days of the alleged discriminatory action. Complaints can be written or verbal. If the complainant makes a verbal complaint, the person to whom the allegation is made must write up the elements of the complaint and should make every effort to obtain the following information:

- Name, address, and telephone number or other means of contacting the complainant;
- The specific location and name of the organization participating in TEFAP;
- The nature of the incident or action that led to the complaint of discrimination;
- The basis on which the complainant believes discrimination exists (race, color, national origin, age, disability or sex);
- The names, telephone numbers, titles, and business or personal address of persons that may have knowledge of the alleged discriminatory action; and
- The date(s) during which the alleged discriminatory action(s) occurred or, if continuing, the duration of such action(s).

If a civil rights complaint is filed, the CE must forward it to USDA immediately. The complaints should be sent to:

USDA Food and Nutrition Service  
 Attn: Regional Civil Rights Director  
 1100 Commerce St.  
 Dallas, Texas 75242

In addition to notifying USDA, all civil rights complaints must also be forwarded to TDA immediately. CEs may submit TDA's complaint form on behalf of the complainant via TDA's Complaints form (<https://app.smartsheet.com/b/form/063062f61d4d42e590290cbddb4ea35b>) located on the TEFAP Administration/Forms page on SquareMeals.org. Finally, CEs, subdistributing agencies, and distribution sites are also required to provide the complainants with contact information for USDA for filing a civil rights complaint<sup>3</sup> and explain that a complaint of a violation of their civil rights may be made directly to USDA.

## Anonymous Complaints

An anonymous complaint will be handled as any other complaint, to the extent feasible, based on available information.

### Complainant Confidentiality

CEs must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering TEFAP, except as necessary to conduct an investigation, hearing, or judicial proceeding, as applicable.

## Training

The CE, subdistributing agency, and distribution site personnel must be trained in all aspects of civil rights before assuming any TEFAP duty and in every program year thereafter.

Volunteers who regularly interact (i.e., have contact at recurring normal intervals) with TEFAP applicants

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<sup>3</sup> See "Nondiscrimination Statement" in this section.

and participants or determine eligibility must receive full civil rights training on an annual basis. Volunteers who handle the personal information of applicants and participants must also receive full training. Full training, according to USDA, includes but is not limited to, the following:

- Collection and use of data
- Effective public notification systems
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements for reasonable accommodations of persons with disabilities
- Requirements for language assistance
- Conflict resolution
- Customer service

Volunteers who do not handle personal information and only infrequently interact (i.e., seldom or rarely) with TEFAP applicants and participants must receive, at a minimum, limited civil rights training (i.e., customer service and any other subject matter applicable to each volunteer's role and responsibilities). As not all the subjects for full civil rights training are required, this training may be less time-intensive than the full training provided to the frontline staff and volunteers who regularly interact with or handle personal information of TEFAP applicants and participants.

Volunteers who do not interact in any way with TEFAP applicants and participants and who do not handle personal information do not need civil rights training.

If there is a concern that any volunteer cannot understand and/or abide by the training and civil rights requirements, then that volunteer should not interact in any way with TEFAP applicants and participants or handle personal information.

To meet the civil rights training requirements, CEs should follow the training guidance located on [www.SquareMeals.org](http://www.SquareMeals.org), under: <https://squaremeals.org/FandN-Resources/Training/Civil-Rights>.

# Section 7

# Financial Management

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## Section 7

# Financial Management

A contracting entity (CE) must maintain a financial management system that provides accurate, current, and complete disclosure of the financial status of the CE's operation of The Emergency Food Assistance Program (TEFAP). This system must ensure, but is not limited to, 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 the Texas Department of Agriculture (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.

## Financial Controls

A CE must comply with all applicable financial management requirements in the

- Code of Federal Regulations (CFR) at 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
- 7 CFR Part 251, *The Emergency Food Assistance Program* (TEFAP); and
- Texas Department of Agriculture (TDA) policies.

A CE must provide for:

- Identification, in its accounts, of the federal awards received and expended, and the federal programs under which they were received. Federal program and federal award identification must include (2 CFR §200.302(b)(1)):
  - The Assistance Living Number. For example, TEFAP #10.569;
  - Federal Award Identification Number (FAIN) and year;
  - Name of the federal agency<sup>1</sup>; and
  - Name of the pass-through entity<sup>2</sup>, if any.

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<sup>1</sup> The U.S. Department of Agriculture (USDA) is the federal agency for TEFAP.

<sup>2</sup> TDA is the pass-through entity for TEFAP.

- Accurate, current, and complete disclosure of the financial result of each federal award or program (2 CFR §200.302(b)(2)).
  - Up-to-date correct information supported by documentation
  - Accounts for all elements of the program
  - Complies with generally accepted accounting principles (GAAP)
- Records that adequately identify the source and applications of funds for federally funded activities. The records must contain information about the Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation (2 CFR § 200.302(b)(3)).
  - Source documentation includes, but is not limited to, canceled checks, paid bills, payroll, purchase orders, and contract and subcontract award documents.
- Effective control over, and accountability for, all funds, property, and other assets. The CE must adequately safeguard all assets and assure that they are used solely for authorized purposes (2 CFR §§ 200.302(b)(4) and 303).
- Comparison of expenditures with budget amounts for each federal award (2 CFR § 200.302(b)(5)).
- Written procedures for determining if costs are allowable per 2 CFR Part 200, Subpart E (2 CFR § 200.302(b)(7)).
- Internal controls that ensure the CE (2 CFR § 200.303):
  - Manages TEFAP in compliance with federal statutes, federal regulations, TDA rules, policies, and guidance.
  - Complies with federal statutes, federal regulations, TDA rules, policies, and guidance.
  - Evaluates and monitors its compliance with federal statutes, federal regulations, TDA rules, policies, and guidance.
  - Takes prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
  - Safeguards to protect personally identifiable and other information.

These internal controls should comply with the guidance in “[Standards for Internal Control in the Federal Government](#)” (the “Green Book”) issued by the Comptroller General of the United States<sup>3</sup> or the “[Internal Control Integrated Framework](#)” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).<sup>4</sup>

Federal awards include, but are not limited to, reimbursement for participation in any of the child nutrition and food distribution programs administered by TDA.

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<sup>3</sup> Website: <https://www.gao.gov/products/GAO-14-704G>

<sup>4</sup> Website: <https://www.coso.org/Pages/ic.aspx>

# Conflicts of Interest and Ethical Standards

Organizations participating in TEFAP are required to disclose and identify any conflicts of interest and potential conflicts of interest, including related party transactions; less-than-arm's-length transactions; and an ownership interest in equipment, supplies, vehicles, and facilities. Additionally, participants must disclose any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable.

Related parties include, but are not limited to, the following relationships:

- Brothers/sisters
- Spouse
- Parents/grandparents
- Children/grandchildren
- Half-brothers/sisters
- Domestic partners and parents thereof
- Any individual related by blood or affinity whose close association is the equivalent of a family relationship
- Affiliates of the organization
- Principal owners of the organization and immediate members of their families
- Management of the organization and immediate members of their families

A **less-than-arm's-length transaction** is one that is not between independent, unrelated, well-informed parties acting independently in their own interests. In a **related party transaction**, one party to the transaction may control or substantially influence the actions of the other(s). Such transactions include, but are not limited to, those between divisions of an organization; organizations under common control through common officers, directors or members; and an organization and a director, trustee, officer, a key employee of the organization or immediate family, either directly or through corporations, trusts, or similar arrangements in which a controlling interest is held, or one in which one party stands to benefit more than the other from the transaction. All related-party transactions are less-than-arm's-length transactions.

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services and must have written policies and procedures against conflicts of interest. No officer, agent, consultant, contractor, volunteer, or other employee of a CE may engage in any activity which causes or could cause the appearance of a conflict of interest in the operation of TEFAP, including, but not limited to:

- Renting or leasing from a firm in which any officer, agent, consultant, or employee (or relative) has an interest, and this related party transaction has not been fully disclosed.
- Soliciting or accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, sites, or parties to subcontracts.

- Soliciting donations or fees from the participating subagencies or sites.
- Asking subagencies to engage in any kind of business on the CE's behalf.

CEs must disclose annually any conflicts of interest or potential conflicts of interest, including related party transactions, less-than-arm's-length transactions, and any ownership interest in equipment, supplies, vehicles, and facilities when it submits its budget to TDA as part of its application packet for participation in TEFAP. At a minimum, the following information must be submitted to TDA:

- Budget item(s) impacted
- Amount of the contract or cost for the item(s)
- Relationship or ownership interest to the CE
- Any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable

**NOTE:** Rental costs under "less-than-arm's-length" leases must meet the requirements in 2 CFR §200.465. For TDA to determine the allowability of a less-than-arm's-length lease, expenses such as depreciation, maintenance, taxes, and insurance may need to be included in the disclosure for TDA to make an informed assessment of whether the rental cost is allowable.

Information regarding conflicts of interest or potential conflicts of interest may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "TEFAP Conflict of Interest Disclosure" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

This disclosure must be made in each program year's budget or each time before the cost is incurred. The disclosure must be made although it was previously disclosed to TDA. Conflict of Interest Disclosures require prior approval from TDA each year or before each occurrence of a transaction. When the conflict of interest or potential conflict of interest is properly disclosed, approval of the budget by TDA meets the requirement for prior approval, unless TDA specifically disallows the cost in writing.

## **Written Code of Standards – Ethical Conduct**

Per 2 CFR §§ 200.318 and 400.2, a CE must establish and maintain a written code of standards of conduct that govern the performance of its officers, employees, or agents who participate in the selection, award, and administration of contracts. The written code will prohibit conflicts of interest and potential conflicts of interest. This written code must:

- Prohibit owners, members, officers, or employees from soliciting gifts, travel packages, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Prohibit owners, members, officers, or employees from accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

- Prohibit an owner, member, officer, or employee from participating in the selection, award, and administration of any contract in which the owner, member, officer, or employee is related to a party of the contract or has a financial interest in the entity which is a party to the contract.
- Set standards when financial interest is not substantial, or the gift is an unsolicited item of nominal value, and therefore may be acceptable.
- Provide for the disclosure and prior written approval by TDA for all less-than-arm's-length transactions.
- Provide for penalties, sanctions, or other disciplinary actions to be applied for violations of the standards.

For CEs having a parent, affiliate, or subsidiary organization that is not a state or local government, the CE must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of the relationships with a parent company, affiliate, or subsidiary organization, the CE is unable or appears to cannot be impartial in conducting a procurement action involving a related organization.

## Procurement

### Overview

Procurement is the orderly process of acquiring, by lease or purchase, goods and services such as facilities, equipment, bookkeeping, and auditing. TEFAP CEs must comply with state and federal procurement requirements. These requirements enable CEs to purchase goods and services at the best available price and avoid conflicts of interest when making purchases.

Procurements must be conducted in a manner that allows for full and open competition, meaning that everyone is on a *“level playing field”* and has the same opportunity to compete.

Procurement ensures:

- Vendor participation
- Competitive cost of goods and services
- Quality goods and services

Improper procurements may lead to disallowed costs, withholding or recovery of reimbursements, corrective action, or termination from future TEFAP participation.

### The Procurement Process: A Multi-step Approach

A CE must follow the procurement process to ensure that all procurement requirements are met. As the process may take many months to complete, advanced planning and execution are strongly recommended. CEs are required to develop written procurement procedures. A CE's written procurement procedures will address how the CE will accomplish each step of the procurement process.

An overview of the procurement process is:

1. **Writing** procurement procedures
2. **Forecasting** quantities needed/**Scheduling** when quantities are needed
3. **Selecting** the proper procurement method
4. **Developing** a solicitation
5. **Advertising** the solicitation
6. **Evaluating** proposals and offers
7. **Awarding** the contract
8. **Managing** the contract

<b>Procurement Procedures: Why a CE Must Have Them</b>
<ul style="list-style-type: none"><li>• Required by federal regulations (2 CFR § 200.319(d))</li><li>• Ensure full and open competition</li><li>• Help identify potential suppliers for goods and/or services procured using the corresponding procurement method</li><li>• Help the CE to determine which procurement method(s) will be used</li><li>• Identify parties that will address issues raised throughout the procurement process</li><li>• Prohibit conflicts of interest</li><li>• Ensure ethical standards with a written code of conduct</li></ul>

## **Written Procurement Procedures**

A CE must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law (2 CFR §§ 200.318 and 200.319(d)).

Maintaining and following written procurement procedures ensures that a CE will conduct all purchases

- Efficiently and effectively;
- In compliance with federal, state, and local regulations; and
- While preventing fraud, waste, and abuse.

Written procurement procedures must include the position(s) which are responsible for carrying out each step, as well as the timing the actions will take place. The procedures must provide that proposed procurement actions will be reviewed by the CE's officials to avoid the purchase of unnecessary or duplicative items, and where appropriate an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. (2 CFR § 200.318(d)).

The procedures must encompass each procurement method discussed in this handbook. The level of detail should reflect CE operations.

At a minimum, a CE's written procedures must address the following elements of the procurement process:

### **Forecasting and Scheduling**

CEs plan procurements by evaluating resources, projecting expenses, and determining needs before initiating a procurement process by assessing:

- Current approach
- Storage capacity
- Equipment
- Resources, such as income, revenue, and staff
- Other operational needs

### **Selecting a Proper Procurement Method**

The aggregate amount<sup>5</sup> of the goods or services will determine the procurement method to be used; however, a CE may consider other factors as well.<sup>6</sup> A CE should consider:

- Any factors, other than the aggregate amount of the procured goods and services, which will determine the procurement method to be used
- How to avoid the acquisition of unnecessary or duplicative items (2 CFR § 200.318(d))
  - How to obtain a more economical purchase, considering the consolidation or breaking out of procurements (2 CFR § 200.318(d))

**NOTE:** A CE may not break up a procurement that exceeds the small purchase threshold for the sole purpose of avoiding following formal procurement procedures. This would violate federal requirements and may result in unallowable costs and/or findings.
- Cost Analysis/Equitable Distribution—How the CE will perform a cost analysis with every procurement action above the small purchase threshold, including contract modifications.
  - While a formal cost analysis is not required for micro-purchases, a CE must document how such purchases will be rotated **among qualified suppliers** and equitably distribute purchases.
  - Small purchase procedures also do not require a formal cost analysis; however, CEs must still obtain **at least three price quotes** from an adequate number of qualified sources.

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<sup>5</sup> **Aggregate amount** – The total amount of a single invoice for a single purchase of product(s) or service(s).

<sup>6</sup> See “Procurement Methods” in this handbook section for more information.

## **Solicitation Development**

When developing specifications, requirements, invitations for bids, or requests for proposals, CEs must consider:

- Type of contract
- Contract duration
- Goods and services specifications must correspond with items and/or services being procured; specifications may include product name, variety, grade, size, quantity, cleanliness, packaging, delivery, and other product/service requirements.
- Full and open competition is maintained when using all procurement methods.
- CEs may *not* create specifications which would eliminate or unduly restrict full and open competition, which would include, but are not limited to, the following situations (2 CFR § 200.319 (a)):
  - Specifying a brand name product instead of allowing an equal product to be offered
  - Product specifications which are too detailed, restricting competition
  - Placing unreasonable requirements on bidders
  - Requiring unnecessary experience and/or excessive bonding
  - Noncompetitive pricing practices between firms or between affiliated companies
  - Noncompetitive contracts to consultants/contractors that are on retainer contracts with the CE already
  - Organizational conflicts of interest
  - Any arbitrary action in the procurement process
- Solicitations must be clearly stated so bidders can fully understand the need for goods and services (2 CFR § 200.319(d)(1))
- Solicitations must clearly outline requirements the bidder must fulfill to be responsive (2 CFR § 200.319(d)(2))
- Renewal options
- Modification and change procedures, considering:
  - Communication of changes to the contractor regarding initially estimated needs and actual needs
- Default and breach provisions, remedies, and penalties
  - This includes how the CE will handle protests and disputes.
  - Supply copies of dispute resolution procedures to all potential bidders that include the name and address of the person who will decide whether the protest should be sustained.
  - Disclose information regarding all protests to TDA.

- CEs must ensure contractors do not develop any specifications, requirements, statements of work, Invitation for Bids (IFBs), Request for Proposals (RFPs), contract terms and conditions, or any other procurement documents. CEs must draft their own specifications and procurement documents.
  - If a CE allows a contractor to create any procurement documents, a CE must indicate in its procedures how that contractor will not compete for the contract or award.
  - If a CE chooses to use a contractor's information or assistance in developing procurement documents and the contractor is then allowed to compete for the award, the CE must not use any TEFAP funds for the resulting award.
- Local or geographic preference (if applicable and allowed)
  - A CE must include a definition(s) of "local" in its written policies and procedures if applying a geographic preference. However, this definition of "local" may not restrict full and open competition.
- Evaluation and scoring factors, with cost as the primary factor.

**NOTE:** CEs must draft their own specification and procurement documents. Any CE that copies a list of features or evaluation and ranking criteria drafted by a potential contractor and then permits that potential contractor to submit a bid has violated federal and state procurement regulations.

### **Advertising/Publicizing the Bid**

A CE must advertise competitive bids and must publicize competitive proposals (e.g., through advertisements) (2 CFR § 200.320). CEs should consider:

- Due dates —Time needed for pre-bid and award meetings, etc.
- Advertisements must provide sufficient information for potential bidders such as:
  - The general nature of the goods or services to be procured
  - Method of procurement that will be used
  - Ways the bidder can obtain the solicitation or more information
  - The due date for solicitation response
- Methods of advertisement to allow for full and open competition. This will vary from city to city, and a CE must be able to document how the method of advertisement will ensure circulation of the bid/proposal to the general public for the type of goods/services which are being acquired, as well as ensure that the CE is receiving an adequate number of bidders. Methods may include:
  - State, regional, or nation-wide newspapers
  - Trade periodicals
  - Designated internet sites
  - Direct mailing (for small purchase procurement method only)

- Other print media that serves the business community and the general public
- CEs must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are utilized when possible. (2 CFR 200.321).
- Include qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential resources.
- When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum small and minority business and women's business enterprises participation.
- Where the requirement permits, establish delivery schedules which will encourage the participation of small and minority businesses and women's business enterprises.
- Use the services of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce.
- If subcontracts are to be let, require the prime contractor to take the affirmative steps above.

### Evaluating responses

The CE must ensure that the solicitation is awarded to a responsive and responsible vendor. CEs must consider the following:

- **Responsive** means the contractor's goods or services meet all the CE's specifications as outlined in the solicitation.
- **Responsible** means a contractor can successfully fulfill the terms and conditions of the proposed procurement (2 CFR § 200.318(h)). A CE should determine whether a contractor is responsible by investigating the contractor's:
  - Integrity
  - Compliance with public policy
  - Record of past performance
  - Financial and technical resources
- Pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure full and open competition (2 CFR § 200.319(e)).
  - Potential responsive and responsible bidders not included in these pre-qualified lists cannot be excluded from bidding
  - **NOTE:** While pre-qualified lists may not be common for TEFAP CEs to have and use, if a TEFAP CE has a list of pre-qualified bidders, they must follow this requirement to allow for full and open competition.
- Contractors that are determined not to be responsible are ineligible for contract award.

- The CE must document this decision and supporting reasons as to why the contractor(s) was not responsible.
- The cost must be used as the primary factor.
- Bids must be evaluated without consideration of any included unallowable cost provisions.
- Any and all bids may be rejected if there is a sound documented reason.

## **Ethical Conduct**

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services. See “Conflicts of Interest and Ethical Standards” in this section for more information.

**NOTE:** In the absence of a written code of standards, or when TDA determines that a violation of the code has occurred, TDA will issue a finding and require corrective action.

## **Awarding and Managing the Contract**

The CE must award and effectively manage the contract (2 CFR § 200.318(h)). A CE must consider the following:

- The contract must be awarded to the responsive and responsible bidder possessing the ability to perform successfully under the terms and conditions of the proposed procurement.
- The contract is a
  - formal, legally enforceable agreement
  - record of the procurement transaction
  - dispute resolution mechanism
- The CE must monitor the contractor performance to ensure the following:
  - Performs per the terms, conditions, and specifications of the contract
  - Receives quantity and quality of the goods and services requested
  - Receives the goods and services on time
  - Is charged the correct prices as bid and within budget
- The CE is responsible for settling any contractual and administrative issues which may arise after an award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. (2 CFR § 200.318(k)).
  - The CE must specify dispute resolution measures for any action that diminishes full and open competition. Procedures must be provided to all potential bidders including the name and address of the person who will handle protests. The CE must disclose information regarding all protests to TDA.

**REMINDER:** CEs are responsible for maintaining up-to-date procedures and training staff on these procedures before the start of TEFAP operations, and as needed throughout the program

year (e.g., when there is a change to a procedure). Procedures are subject to review by TDA. TDA may issue a finding(s) and/or require corrective action(s) if a CE's procedures do not comply with TEFAP regulations and/or if a CE is not following its own procedures.

## Procurement Methods

CEs must use the appropriate procurement method depending on the cost of the good(s) or service(s) they need to procure. The procurement methods a CE must use when procuring (e.g., purchasing) goods and services are discussed and include (2 CFR § 200.320):

- Informal Procurement Methods
  - Micro-purchase
  - Small Purchase
- Formal Procurement Methods
  - Competitive sealed bids (Invitation for Bid (IFB))
  - Competitive proposals (Request for Proposal (RFP))

Whenever a CE is purchasing goods or services using federal funds in support of the TEFAP program, the appropriate procurement method must be followed.

### Simplified Acquisition Threshold

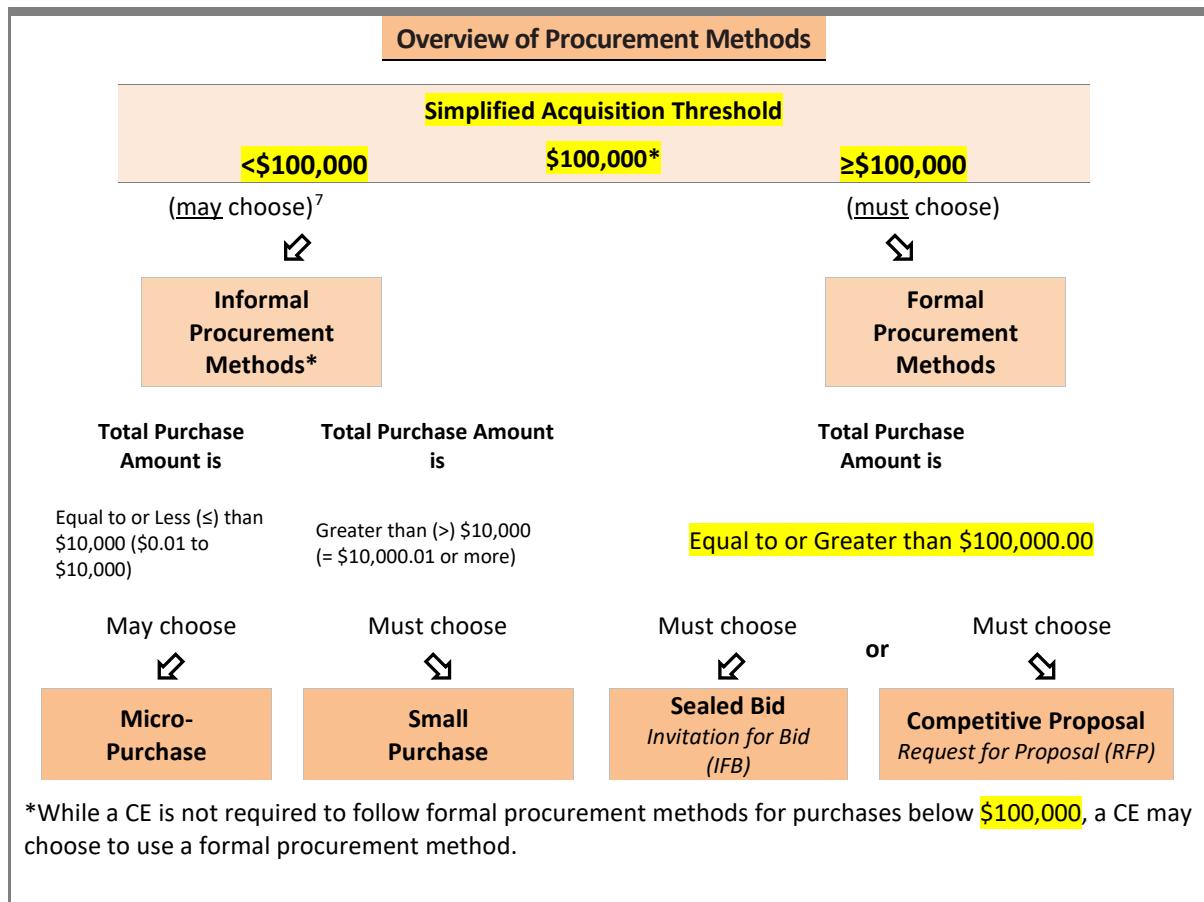
TDA's simplified acquisition threshold, also called the *small purchase threshold*, delineates the highest total cost limit for using the informal procurement methods.

- If the purchase is less than the simplified acquisition threshold, the purchase may be made using an informal or formal method.
- If the purchase is equal to or greater than (exceeds) the simplified acquisition threshold, the purchase must be made using the formal process.

The aggregate amount of the goods/services will determine which procurement method will be used. While the federal simplified acquisition purchase limit is set at \$250,000, TDA has set a more restrictive threshold of \$100,000.

### Overview of Procurement Methods

Except for the noncompetitive proposal, the chart below summarizes the types of procurement methods a CE must use when conducting the procurement of goods and services.



### Informal Procurement Method: Micro-purchase

A micro-purchase is the acquisition or purchase of goods and/or services that have an aggregate cost that does not exceed \$10,000. The \$10,000 aggregate total for a micro-purchase amount is the total cost for a single invoice for a single purchase or transaction. It is not an accumulation of weekly, monthly, or annual purchases. Rather, it is an individual purchase with an individual invoice.

A formal cost analysis is not required when a CE uses the micro-purchase method. However, the CE must have a method to document that the cost of the good and/or service is reasonable.<sup>8</sup> Acceptable documentation includes, but is not limited to:

- Newspaper advertisements from various suppliers/vendors
- Online advertisements from various suppliers/vendors
- Documentation of phone quotes from various suppliers to include the following:

<sup>7</sup> CEs may choose to use a formal procurement procedure for a total cost that is less than the simplified acquisition threshold to get a better price.

<sup>8</sup> 2 CFR § 200.404 states, “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

- Supplier/vendor name
- Name of the person providing information
- Date(s) of contact
- Information provided, including product and pricing
- Other documentation that allows TDA to determine the cost was reasonable if the price was not the determining factor, such as:
  - Maps showing the distance between vendors when the distance is the factor
  - Procedures that specify micro-purchase must be used because space is a factor, such as refrigeration/storage space

Purchases must be distributed equitably among all suppliers. The CE cannot make all its micro-purchases from one supplier and must, when feasible, “share the wealth” among suppliers. However, CEs located in rural areas may be limited in their ability to distribute purchases equitably among several merchants or suppliers because it is not economically feasible to do so, i.e., cost and time of travel. In these cases, the CE must document the reasons it is not feasible for the CE to distribute purchases among a variety of suppliers.

Routine purchases must not be broken into smaller purchase amounts to qualify for micro-purchasing. If the CE is routinely using the micro-purchase method for the same items, the CE must maintain documentation that demonstrates why this is the most suitable method for purchasing these goods and/or services and why the use of another procurement method is not possible or reasonable. If the CE breaks larger purchases into smaller amounts to qualify as a micro-purchase, then the costs are unallowable.

#### **Informal Procurement Method: Small Purchase**

If purchasing services, supplies, or other property with an aggregate cost that is greater than \$10,000 and less than \$100,000, a CE may use small purchase procedures or a formal procurement method. The \$100,000 threshold applies to:

- Single items (for example, rent), and
- Many items of the same general type (office supplies).

CEs cannot circumvent the procurement process by using small purchase procedures to award multiple contracts under \$100,000 to different vendors for a single item or many items of the same general type.

Small purchase procedures require CEs to obtain at least three price quotations from an adequate number of qualified sources. Price quotations must be documented; the CE must document the date, vendors consulted, and quotes received (including for verbal quotes). The U.S. Department of Agriculture (USDA) also allows for store advertisements to be used as documentation when receiving quotes.

When receiving price quotations, the CE must provide the vendor with a full and accurate description of the type of goods/services needed, so potential vendors can properly respond with an accurate quote.

If a CE is unable to obtain at least three price quotations, the CE must evaluate whether it has limited competition in any way. If the CE can document that it was unable to receive at least three price quotations after attempts to receive more quotes from qualified vendors, then the CE must document this.

Routine purchases must not be broken into smaller purchase amounts to qualify for the small purchase method. If the CE is routinely using the small purchase method for the same items, the CE must maintain documentation that demonstrates 1) why this is the most suitable method for purchasing these goods and services and 2) why the use of another procurement method is not possible or reasonable.

**NOTE:** If the CE routinely uses the small purchase method for the same goods or services, formal competitive bids may provide lower costs.

If the small purchase solicitation results in a contract, the CE must meet all requirements related to the development and use of a contract described in this handbook.

#### **Formal Procurement Method: Competitive Sealed Bids (Invitation for Bid)**

For purchases with an aggregate amount **that equals or exceeds** the small purchase threshold, or **\$100,000**, CEs are required to follow formal procurement procedures (2 CFR § 200.320). One formal procurement method is competitive sealed bids.

CEs following this procurement method must ensure the following conditions are met:

- Bids are publicly solicited, using an Invitation for Bid (IFB), and are formally advertised to the general public;
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time before the date set for opening the bids;
- The IFB will include:
  - any specifications and pertinent attachments, and
  - must define the items or services for the contractor/bidder to properly respond;
- Bids will be opened publicly at the time and place prescribed in the invitation for bids;
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if there is a sound, documented reason.

The following steps must be followed when soliciting competitive sealed bids:

1. Publicly announce the proposed contract at least once and not less than 14 calendar days before the opening of bids. Include the time and place of the bid opening in the public announcement.

2. Notify TDA about the time and place of bid opening at least 14 days before the bids are opened.
3. Open the bids publicly at the time and place stated in the invitation for bid.
4. Obtain TDA approval before awarding the contract, if required. Refer to *Texas Department of Agriculture Approval of Contracts* for more information (below).
5. Before program operations begin, CEs must:
  - a. Submit copies of all bids that were received, the name of and reason for selecting the contractor, a copy of the awarded contract, and certification of independent price determination.
  - b. Notify the chosen contractor by telephone, and then in writing, to provide the contractor with the necessary time to prepare an acceptance letter.
  - c. Notify the rejected bidders, in writing, of the name of the selected contractor.

All required documentation should be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include “TEFAP Documentation” and the name of the CE. For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

#### **Formal Procurement Method: Competitive Proposals (Request for Proposal)**

Competitive proposals are another type of formal procurement method used when a contract award **equals or exceeds \$100,000**. Competitive proposals are used when the conditions are not appropriate for the use of competitive sealed bids, such as when several factors are of equal or greater importance than price. A Request for Proposal (RFP) is used to solicit responses with this method.

CEs following this procurement method must ensure the following conditions are met:

- RFPs must
  - Be publicized
  - Identify all the evaluation factors and their relative importance
  - Be solicited from an adequate number of qualified sources (e.g., more than one vendor must submit an offer)
- The CE must have a written method for conducting technical evaluations of the proposals received and for selecting vendors.
- A firm fixed-price contract or a cost-reimbursable contract will be awarded to the proposal that is most advantageous to the program, with the price and other factors considered.
  - RFPs are generally more qualitative in nature.
  - The price must be the primary consideration when awarding a contract; however, a contract may be awarded to a proposal that is not the lowest in price.
  - In addition to price, the following factors may be considered: technical expertise, experience, years in business, marketing capabilities, etc.

## Noncompetitive Procurement Methods

Procurement by a non-competitive method is an appropriate method of procurement when one or more of the following circumstances apply:

- Inadequate Competition
- Sole Source
- Public Emergency or Unexpected Emergency Situation

### Inadequate Competition

Competition is deemed inadequate after the CE has actively and appropriately attempted to solicit offers from multiple sources, but the number of offers that met the solicitation specification and technical requirements (i.e., responsible and responsive offers) was less than expected. This would include when a CE receives only one responsible and responsive offer.

**EXAMPLE:** A non-competitive proposal may be used when a CE is so remote that there is an extremely limited number of qualified sources in the area. In this case, a CE may pursue a noncompetitive procurement if it has 1) ensured that the specifications in the original IFB or RFP are not too restrictive, thereby limiting other potentially qualified bidders, and 2) the solicitation has been publicized.

After engaging in competitive purchasing procedures, the CE does not need TDA approval to award a bid when there are a limited number of offers as long as documentation is retained by the CE demonstrating that the CE did not limit competition. Documentation would include, but is not limited to, the following:

- Proof of due diligence in ensuring that competition was not limited, which may include:
  - Performing reviews of the solicitation and advertising process
  - Surveying suppliers, distributors, or manufacturers to determine why a bid was not submitted
  - Copies of the solicitation, advertising, mailing lists, communication documents, contact logs, and other relevant documentation to support their findings.

### Sole Source

The good and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. Sole source noncompetitive procurement requires TDA approval.

Before offering a sole source noncompetitive contract, a CE must verify that the good and/or service can only be procured from a single source. A solicitation where there is only one offer is not necessarily a sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to.

**EXAMPLE:** Three companies commonly provide the type of equipment that a CE is attempting to procure. Company A chooses not to bid because it is unable to meet the delivery timeline. Company B no longer distributes the line of products that would have met the specifications and technical requirements. Therefore, Company C is the only offeror. In this situation, the single offer submitted is not a sole source. Rather, it is an inadequate competitive response to the solicitation. The CE must follow the guidance above for inadequate competition.

For a sole source method to be used, there must be only one possible source for the good and/or service. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the good and/or service is only available from a single source. To determine if the good and/or service is the sole source, a CE must:

- Attempt to solicit offers from other suppliers, distributors, or manufacturers
- Retain records that demonstrate its efforts to solicit offers for the good and/or service from other suppliers, distributors, or manufacturers.

TDA must approve all sole source procurement transactions before the award of the contract. To request approval, the CE must submit the [Emergency/Sole Source Procurement Request Form](#) found on the SquareMeals.org website. In this request, the CE must include the following information:

- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is a sole source.
  - CE's actions may include questioning other vendors of similar goods/services to determine if those vendors can meet the precise needs of the CE. If not, written justification should be provided to TDA as to why a particular vendor would not qualify as a source.
- Copies of the CE's solicitation, advertising, and other relevant documentation that demonstrate that the supplier, distributor, or manufacturer is a sole source.

When there is a compelling need to purchase a specific brand product and/or service, such as compatibility with current equipment, the CE must have documentation that demonstrates other available brands are not compatible with the CE's:

- Current equipment,
- Replacement part inventory, and
- Maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, the CE must still determine if there is more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement processes in awarding a contract.

**NOTE:** In some cases, suppliers for specific brands may be affiliated or associated suppliers which may result in collaboration among the suppliers and may restrict

competition. CEs will need to address this as appropriate to ensure full and open competition.

TDA will provide written notification of approval or disapproval.

#### **Public Emergency or Unexpected Emergency Situation**

A public emergency (exigency) or unexpected emergency situation<sup>9</sup> will not permit a delay resulting from the additional time required for a competitive solicitation for the good and/or service. Emergency noncompetitive procurement requires TDA approval.

To request approval to use a non-competitive method during an emergency, the CE must submit the [Emergency/Sole Source Procurement Request Form](#) found on the SquareMeals.org website. In cases of extreme emergency, a CE may call TDA directly to alert TDA about the situation. The request must still be submitted with the form, but a phone call will raise TDA's awareness of the need for an expedited response. In this request, the CE must include:

- Explanation of the circumstances that require an emergency purchase
- A detailed description of the goods and/or services to be procured
- Supplier, distributor, or manufacturer from whom the good and/or services will be procured
- Period the CE plans to use the noncompetitive method for the emergency

TDA will provide written notification of approval or disapproval.

#### **Documentation of Procurement Action and Submittal to TDA**

CEs must document and maintain records that sufficiently detail the procurement process (2 CFR § 200.318(i)). These records must include, but are not limited to, the following:

- The reasons for choosing the specific method of procurement.
- Copies of all opened bids, a certificate of independent price determination, and an explanation for selecting a particular contractor.
- List of contractors to whom a copy of the IFB was sent.
- List of newspapers, magazines, or another method of public notification in which advertisements were placed and the dates that they appeared.
- Copy of the contract.
- The basis for the cost or price of a contract.

CEs must submit the following items to TDA:

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<sup>9</sup> An unexpected emergency situation might include a supplier cancelling a contracted delivery without adequate notice or a presidentially declared disaster.

- Notification of the date, time, and location for the bid opening a minimum of 14 calendar days before the bid opening date (for competitive bidding).
- Copies of all opened bids, a certificate of independent price determination, and a CE explanation for selecting a particular contractor.
- The list of contractors to whom a copy of the IFB was sent.
- A list of newspapers, magazines, or another method of public notification in which advertisements were placed and the dates that they appeared.
- A copy of the contract between the contractor and CE before the start of the program operations.
- A copy of the award letter and a copy of each letter sent to all rejected bidders after the bid award has been determined.

All required documentation should be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

## **Contract Provisions**

The following elements, at a minimum, should be included in a contract:

### **General Contract Requirements**

- Contract duration
- Identification of the parties in the contract
- Required compliance certifications
- Type of contract (for instance, fixed-price)

### **Contract Management**

- Contracts **equal to or more than \$100,000** must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.
- Contracts more than \$10,000 must address termination for cause and convenience and include how it will be affected and the basis for settlement.
- Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes.
- Contractor recordkeeping requirements.
- Procedures for a contract modification.

## **Invoicing and Payments**

- Method to ensure that an adjustment or escalation clause is applied both upward and downward in alignment with the index at the frequency as described in the solicitation.
- Procedure for issuing payments, including sufficient information included on invoices to determine if costs are allowable.
- Ownership of any equipment or software purchased by the contractor on the CE's behalf or for the contract.
- Procedures for a contract modification.
- Sanctions for noncompliance.

## **Other Requirements**

- Laws and regulations including, but not limited to, the following: local preference; small and minority firms; women's business enterprise; labor surplus area firms; and health and safety.

## **Products or Services to Be Provided**

- Product technical specifications.
- Professional certification requirements or minimum levels for required experience or education.
- Sanitation and licensing requirements.
- Scope of work (such as a detailed description of duties to be performed; hours of work, if applicable; performance descriptions; levels of performance; and required outcomes).

## **Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

All contracts using federal funds must contain the contract provisions identified in 2 CFR Part 200, Appendix II, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*. While all provisions may not apply to all contracts, CEs must ensure the appropriate provisions are included in all contracts.

## **Debarment and Suspension Certification**

TDA requires CEs to obtain debarment certifications for covered contracts. The three types of covered contracts are:

1. Any non-procurement transaction that involves federal funds of any amount.
2. Any procurement contract for goods or services at or above the small-purchase threshold of \$100,000.

3. Any procurement contract for goods or services where a person or entity will have a critical influence on or substantive control over the covered transaction. Such a person or entity includes, but is not limited to, the following:
  - a. consultant,
  - b. principal investigator,
  - c. provider of audit services required by TDA or a federal funding source, or
  - d. researchers.

In its written procedures, the CE must define how it will obtain a debarment and suspension certification from each of its contractors. The certification must ensure that the federal contract award will not be made to a contractor (vendor) listed on the government-wide exclusions in the System for Award Management (SAM). A CE may provide the debarment certification by having the contractor (vendor) do one of the following:

- Include the following debarment and suspension certification in the written agreement with the contractor:
  - (1) The prospective contractor certifies to the best of its knowledge and belief that it and its principals:
    - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    - (b) Have not within three years preceding this agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
    - (d) Have not within three years preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
  - (2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.
- Require the contractor to sign and submit the *TDA Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (H2048),<sup>10</sup> or
- Print the page from the System for Award Management (SAM) which indicates the contractor is not presently debarred or otherwise excluded from participation in the contract by any federal

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<sup>10</sup> Located at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input the name of the form into the appropriate search field.

department or agency or by the State of Texas and maintains that document on file with the subcontract documents. The System for Award Management can be accessed at <https://www.sam.gov>.

### **Lobbying Certification (Applicable to contracts over \$100,000)**

Contractors that apply or bid for an award exceeding \$100,000 must provide the required *Certification Regarding Federal Lobbying* (Form H2049).<sup>10</sup>

If applicable, a contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award; in this case, a contractor must complete and submit *Standard Form – LLL, Disclosure of Lobbying Activities*<sup>11</sup>

### **Civil Rights Statement**

FNS Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* requires all vendor agreements include an assurance of nondiscrimination.

### **Other Provisions**

Other required contract provisions include:

- Notice of awarding agency requirements and regulations about reporting.
- Notice of awarding agency requirements and regulations about patent rights concerning any discovery or invention that arises or is developed during or under such a contract.
- Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- A provision to allow for the audit, examination, excerpt, and transcription of records that are pertinent to the contract by the USDA, the Comptroller of the United States, TDA, and their authorized representatives.
- The mandatory retention of all required records for three years after the end of the federal fiscal year to which they pertain. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the retention period, the records shall be kept until all issues are resolved.
- A requirement that mandates compliance with the energy efficiency standards and policies contained in the Texas Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

## **Texas Department of Agriculture Approval of Contracts**

A CE must forward the bid(s) to TDA for approval before awarding a contract if the following condition applies:

- The bid selected was not the lowest bid that was received. The CE must also include an explanation for the award decision.

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<sup>11</sup> Located at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input “Disclosure of Lobbying Activities” into the appropriate search field.

TDA responds to the request for contract approval within 5 working days of receipt.<sup>12</sup>

## Additional Guidance

### Compensation for Purchased Services

If a CE agrees or contracts with a consultant or subcontractor for the purchase of a service, the CE will compensate the consultant or subcontractor for that service based on the provisions of the contract or agreement. When a contract or agreement identifies a fee or compensation that is based on a set percentage, the subcontractor or consultant cannot require additional fees from the CE.

**EXAMPLE:** A subcontractor or consultant cannot charge sales tax on services in addition to a set percentage that is assessed for that service as stated in the contract or agreement. If a subcontractor or consultant charges sales tax on the service provided, the tax must be extracted from the compensation (set percentage) that is stated in the contract or agreement.

### Disputes

It is a CE's responsibility to obtain legal counsel for the resolution of any disputes arising from participation in a third-party arrangement outside of the TEFAP Agreement.

### Disposal of Equipment/Supplies

When items of equipment/supplies acquired with program funds are no longer needed, the CE will notify TDA of any intended disposal. Items of equipment/supplies with a current per unit fair market value of less than \$10,000 may be retained, sold, or otherwise disposed of with no further obligation to the CE.

Individual equipment items or unused supplies in aggregate with a current fair market value of more than \$10,000 may be retained or sold. If sold, the CE will return to TDA an amount based on the percentage of program funds used for the original purchase of the equipment or supplies.

TDA will review records related to the disposal of equipment or supplies during any administrative review.

## Administrative Costs

Administrative costs are limited to the CE's allowable expenses for planning, organizing, and managing TEFAP. These costs are approved as part of the CE's *Application for Participation/Plan of Operation* annual budget<sup>13</sup> and whenever budget amendments are submitted to TDA.

<sup>12</sup> Requests for TDA approval may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "TEFAP Contract Review" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

<sup>13</sup> For more information, see *TEFAP Handbook*, Section 2, *Program Application*.

## **Allocation by a “60/40” Formula**

Each year, after reserving funds needed for TEFAP operation, TDA allocates available administrative funds to 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 unemployed county residents. (7 CFR §251.3(h))

**EXCEPTION:** TDA allocates administrative funds to CEs based on USDA Foods usage information (see “Allocation by Usage Rates” below).

### **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.

### **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
- equitably distribute USDA Foods.

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.

### **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.

### **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.

## Allowable Costs

This section summarizes the federal cost principle requirements as found in 2 CFR part 200, subpart E, *Cost Principles*, which establishes the principles for determining the allowable costs incurred by CEs as part of TEFAP. Additional guidance in this area can be found in:

- 7 Code of Federal Regulations (CFR) Part 251, *The Emergency Food Assistance Program*,
- 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*
- Other applicable federal and state rules, regulations, and guidance for financial management systems including the CE's Agreement with TDA.

### Determining Allowable Costs

Allowable costs must be:

- Reasonable and necessary
- Allocable
- Consistent

A cost is considered **reasonable** if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing when the decision was made to incur the cost. (2 CFR §200.404)

A cost is considered **necessary** if it is of a type generally recognized as ordinary and necessary for the CE's operations or the proper and efficient performance of TEFAP.

A cost is **allocable** to TEFAP if the goods or services involved are chargeable or assignable to TEFAP per the relative benefits received. (2 CFR § 200.405)

A cost must be **consistent** with the policies and procedures that apply uniformly to both federally financed and other activities of the CE.

Costs that do not conform to the cost principles summarized in this section are unallowable. Reimbursement must be used only for those costs that are **reasonable** and **necessary** for TEFAP purposes and otherwise satisfy the allowability criteria outlined in 2 CFR Part 200. TEFAP purposes include the administration and operation of the TEFAP as outlined in 7 CFR Part 251. All costs must be budgeted in the approved *Application for Participation/Plan of Operation*.<sup>14</sup> All costs must be allowable expenditures under the TEFAP and any other applicable Federal, State, or local law and regulations or guidance.

A CE's costs must meet the following general criteria to be allowable under TEFAP (2 CFR §200.403):

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<sup>14</sup> For more information, see *TEFAP Handbook*, Section 2, *Program Application*.

- Necessary and reasonable for proper and efficient performance and administration of TEFAP.
- Be allocable to TEFAP under the Federal cost principles in 2 CFR Part 200.
- Be authorized or not prohibited under Texas State or local laws and regulations.
- Conform to any TEFAP-specific limitations or exclusions in 7 CFR Part 251 as well as any limitations or exclusion in 2 CFR Part 200.
- Be consistent with the policies and procedures that apply uniformly to all activities of the CE.
- Be accorded consistent treatment. A cost may not be assigned to TEFAP as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to TEFAP as an indirect cost.
- Be determined following generally accepted accounting principles (GAAP).
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or prior period.
- Be net of all applicable credits (purchase discounts, rebates, allowances, etc.) (2 CFR §200.406).
- Be adequately documented.

### **Allowable Costs in TEFAP**

The following costs are specifically identified as allowable in TEFAP (7 CFR § 251.8(e)) and including, but not limited to, the following:

- Nutrition education services provided to participants and used for training site staff members
- Transporting USDA Foods and administering the food distribution system
- Interpreters and translators for TEFAP materials
- Outreach services
- Audits
- General administration, including, but not limited to, personnel, warehousing, and insurance
- Monitoring and reviewing TEFAP operations
- Transportation for participants to and from the CE's administrative office or a specific site (when the site has determined and documented the need for such assistance)

CEs must obtain prior approval before charging to TEFAP any cost items designated by 2 CFR Part 200 as requiring prior approval, including capital expenditures. Capital expenditure requests must include supporting documentation that provides a detailed justification for the purchase as well as at least two vendor quotes.<sup>15</sup>

### **Selected Items of Cost**

*Administrative labor* – Administrative labor costs include salaries and benefits for administrative personnel, such as, but not limited to, secretaries and accountants. Each element of an individual's compensation must be reasonable for the services provided by the individual and conform to the organization's written compensation policy. Such costs include the following:

- Salaries or hourly rates for administrative labor. These are reasonable when the rates that are charged are the same as the rates paid for similar work throughout the organization.

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<sup>15</sup> Email request and supporting documentation to [capital.expenditures@texasagriculture.gov](mailto:capital.expenditures@texasagriculture.gov).

- The employer's share of federal, state, and local employment taxes such as, but not limited to, Social Security, withholding tax, and state unemployment taxes.
- The employer's share of fringe benefit costs such as, but not limited to, vacation leave; military leave; health benefits; life and disability insurance; paid non-work holidays; and retirement benefits.
- Payment of overtime, holiday pay for work performed on a non-work holiday, and compensatory leave. These are allowed with specific prior written approval from TDA for each instance, except for cases of emergencies. The CE must contact the Program Specialist<sup>16</sup> within two working days of any emergency situation.
- Incentive payment or award given to an employee. Specific prior written approval from TDA is required for costs of an incentive payment or award given to an employee, except for awards of nominal or minimal value. Awards of minimal value include, but are not limited to, length of service pins, certificates of appreciation, floral arrangements, live plants, mugs, and plaques.
- Severance or dismissal pay. This is compensation paid to an employee whose employment is terminated. The cost of severance pay is allowed on a case-by-case basis, with specific prior written approval from TDA.

*Accounting* – The CE may include the cost of establishing and maintaining accounting and other information systems required for the management of TEFAP. However, the CE may not claim the cost of maintaining central accounting records to meet all the organization's requirements.

*Advertising* – Advertising media can include, but is not limited to, magazines; newspapers; radio; television; direct mail; exhibits; and electronic or computer transmittals. CEs may claim the costs of advertising media and resulting administrative costs, such as the following:

- The recruitment of personnel required by TEFAP
- The procurement of goods and services for the performance of TEFAP
- The disposal of scrap or surplus materials acquired in the performance of TEFAP except when the CE is reimbursed for disposal costs at a predetermined amount
- TEFAP outreach and other specific purposes necessary to meet the requirements of TEFAP

*Public relations* – Activities dedicated to 1) maintaining the CE's image or 2) maintaining or promoting understanding and favorable relations with the community or the public. The only allowable public relations costs are given below:

- Costs specifically required by TEFAP
- Costs necessary to the outreach effort for TEFAP, including costs of communicating with the public and press about specific activities or accomplishments that result from the performance of TEFAP
- Costs of conducting general, necessary communication and liaison with news media and government public relations officers for the specific purpose of informing the public on matters of public concern (for instance, notices of funding opportunities, financial matters, etc.)

*Audits* – The CE may claim the cost of audits required for the administration and management of TEFAP.

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<sup>16</sup> Email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 1-877-TEX-MEAL (839-6325).

*Communications* – Includes the costs of supplies and services such as telephone; telegrams; fax; license fees for email software; internet services; postage; and messenger services. Costs for communication supplies and services must be prorated accordingly.

*Conferences* – Meetings and conferences include federal, state, county, national, or regional conferences. (Meetings and conference costs are different from training costs.) With prior approval from TDA, the following **administrative costs** are allowed:

- Rental costs of properly procured meeting and conference room space
- Fees for speakers who are not employees, officers, directors, trustees, or immediate family members
- Costs for meals and nonalcoholic beverages served to participants (but not guests) when TEFAP training is presented concurrently with the meal service

With prior approval from TDA, the travel and registration fees for attending meetings and conferences devoted solely to TEFAP are allowable costs.

With specific prior written approval from TDA, the prorated share of travel and registration fees when TEFAP is only a portion of a larger related agenda.

When the CE hosts or sponsors the conference, allowable costs include the following:

- Rental of facilities
- Speakers' fees
- Costs of meals and refreshments
- Local transportation
- Other items incidental to such conferences

*Insurance* – The CE may include insurance costs that are required for the administration of TEFAP.

*Rental costs of real property and equipment* – Allowable when considered considering certain factors and limitations, which include

- rental costs of comparable property, if any;
- market conditions in the area;
- available alternatives; and
- the type, life expectancy, condition, and value of the property leased.

Limitations include, but are not limited to, leases that involve 1) sale and lease-back and 2) less than arm's length arrangements.

All rental arrangements must be reviewed periodically to determine if circumstances have changed and if other options are available.

*Legal* – The CE may include legal expenses required for the administration of TEFAP. However, the CE may not claim the cost of maintaining legal staff with general responsibilities.

*Memberships, subscriptions, and professional activity* – Included in this category are membership costs in civic, business, technical, and professional organizations; and subscriptions to professional and technical periodicals. Allowable costs include the following:

- Membership fees and annual dues for the CE's membership in business, technical, and professional organizations related to TEFAP
- Membership fees and annual dues for one individual membership per CE in business, technical, and professional organizations related to TEFAP when the organization will accept only individual but not organizational memberships
- Costs for the CE's subscription to periodicals related to TEFAP

*Materials and supplies, including computing devices* – Costs incurred for materials, supplies, and fabricated parts necessary to run TEFAP are allowable.

Materials and supplies that are purchased. These items must be charged at their actual prices, net of applicable credits.

Materials or supplies that are withdrawn from general stores or stockrooms. These items must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

Materials and supplies that are used for the performance of TEFAP. These items may be charged as direct costs. For computing devices, charging as direct costs is allowable when the devices are essential and allocable to — but are not solely dedicated to — the performance of TEFAP. Cell phone expenses are only reimbursable if the phone and contract are directly in the name of the CE.

Materials federally donated that are used in performing TEFAP. These items will be used without charge.

*Meals for Volunteers and Staff* – Site volunteers and staff (referred to here as *volunteers*) may eat at the site if doing so still allows distribution to all participants. For example, closing a site for volunteers to eat a meal limits distribution to participants.

Volunteers' meals may be claimed as an allowable cost if the costs are reasonable and the following records are maintained:

- Each volunteer's name
- Hours each volunteer worked
- Receipts, invoices, or other documents showing the cost of feeding volunteers
- Each volunteer's signature for each meal

*Space and facilities* – Space and facilities costs may be charged through rental fees, lease fees, or depreciation. Whether in privately or publicly owned buildings, the total cost for space and facilities cannot exceed the rental costs of comparable space and facilities for privately owned buildings in the same locality.

*Procurement* – Procurement service costs include the cost of soliciting bids; preparing and awarding contracts; and all phases of the contract administrative system related to TEFAP.

*Publication* – Publication, printing, and reproduction include the costs for in-house and outside publication, printing, and reproduction costs. All allowable costs are limited to the direct costs for publication, printing, and reproduction of materials related solely to TEFAP, or the prorated share when necessary.

*Records* – Costs for supplies, storage, and maintenance of records necessary for the administration of TEFAP.

*Services* – Costs of utilities, purchased security, and janitorial service, etc., not already included in space and facilities costs or labor compensation costs.

*Taxes* – Taxes, or payments in lieu of taxes, that the CE is legally required to pay because of operating TEFAP.

*Training and education* – The cost of training and education provided for TEFAP employee development.

*Travel* – The expenses for transportation, lodging, subsistence, and related items incurred by employees while traveling on the CE's official business for TEFAP.

Travel costs may be charged on an actual cost basis; on a per diem or mileage basis in lieu of actual costs incurred; or on a combination of the two. However, the method used 1) must be following the CE's written travel reimbursement policies and 2) must be applied to an entire trip (not to selected days of the trip). Additionally, the method must result in charges that are consistent with charges typically allowed in similar circumstances in the CE's non-TEFAP activities.

**Vehicle Expenses**. When employees use their personal vehicle or a CE's vehicle to conduct TEFAP business, the reasonable cost is an allowable administrative cost. Each CE may develop its travel form containing these elements:

- The date of each trip
- The driver's name
- The mileage
- The origin and destination of each trip
- Parking costs
- The reason for each trip

**Lodging and subsistence**. As defined above, lodging and subsistence costs are reasonable and allowable only when they do not exceed charges typically allowed by the CE in its regular operations, as described in its written travel policy.

**Travel costs charged directly to TEFAP**. The CE must maintain documentation to reflect the following:

- The traveler's participation is necessary for TEFAP.
- The costs are reasonable and consistent with the CE's written travel policy.

Commercial air travel. Airfare costs of the basic, least expensive unrestricted accommodations class offered by commercial airlines.

### **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.

### **Unallowable Costs**

Federal regulations identify specific costs or categories of costs that cannot be charged to any federally funded program. These costs are never allowed. Unallowable costs are generally defined in 2 CFR Part 200, subpart E under “General Provisions for Selected Items of Cost” (2 CFR § 200.420-476). Expenditures by CEs that are not applicable to TEFAP objectives are considered unallowable.

CEs are responsible for understanding the principles to be applied in establishing the allowability of certain items involved in determining the cost. Failure to list a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost and based on the principles described above and in 2 CFR §§ 200.402 – 411 (2 CFR §200.420).

Unallowable costs include, but are not limited to, the following:

- Administrative costs not approved by TDA,
- Bad debts,
- Contingencies,
- Contributions and donations,
- Entertainment,
- Fines and penalties,
- Fundraising,
- Interest and other financial costs, such as insufficient funds/returned check charges and late payment fees,
- Legislative expense,
- Political or partisan costs,
- Under-recovery of costs under grant agreements (these are costs exceeding income in other federal programs, including all grant agreements regardless of funding source or program year),
- Disallowed costs in the current or prior program years, and
- Personal income taxes, corporate income taxes, and taxes resulting from non-TEFAP operations.

## 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.

(Texas Administrative Code (TAC), Title 4, Part 1, §26.109(f))

## Capital Expenditures in TEFAP – Depreciation

In TEFAP, capital expenditures<sup>17</sup> are only allowable as direct costs with prior approval of TDA.

The loss in value of a CE's capital assets allocable to TEFAP may be capitalized and the depreciation claimed as an allowable cost in TEFAP. However, like other costs, this must be submitted to TDA for review and approval as part of the CE's budget. Additionally, if the capital expenditure benefits other programs, the depreciation for the capitalized costs must be expensed proportionately across all programs that benefit from the capital asset.

**NOTE:** Tangible capital costs must be depreciated to comply with the cost principles described above in *Allowable Costs*. Reimbursements for capital expenditures must be used only for those tangible capital costs that are allocable, reasonable, and necessary for accomplishing the objectives of TEFAP.

Depreciation allocates the tangible costs of a CE's fixed assets to periods of TEFAP operations benefiting from the use of the assets. This means the CE's costs are recognized over a period that represents the useful life of the capital assets via depreciation. This matches the cost of an item (capital asset) to the entire period it is used, which may not represent when the CE incurred the cost. A CE may claim the loss in value of its capital assets (buildings, capital improvements, equipment, motor vehicles, etc.) allocable to TEFAP as an allowable cost by depreciating the value of the capital asset as follows:

1. Depreciation of capital assets must follow generally accepted accounting principles (GAAP). The method of computing depreciation must be consistently applied for all like assets for all affected federally sponsored programs. The depreciation method must result in equitable charges considering the use of assets and the benefits to TEFAP.
2. The computation of depreciation must be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. For computing depreciation, the acquisition costs exclude:
  - a. The cost of land;

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<sup>17</sup> Helpful definitions from 2 CFR Part 200 related to capital expenditures are found below.

- b. Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or where it is presently located;
- c. Any portion of the cost of buildings and equipment contributed by or for the CE where law or agreement prohibits recovery;
- d. Any asset acquired solely for the performance of a non-federal award; and
- e. Any portion of the asset allocable to other program funds.

3. The period of useful life must take into consideration such factors as the type of construction, nature of the equipment, technological developments in certain areas, historical data, and renewal and replacement policies followed for the individual assets.

4. Depreciation is not allowed on any assets considered fully depreciated.

5. All depreciation claimed by the CE must be documented. In addition, physical inventories must be taken at least once every two years **of all equipment purchased with federal funds (whether partially or totally)** to ensure the assets exist and are usable, used, and needed in the operation of the TEFAP. Records in memorandum form are acceptable to document depreciation. Depreciation records showing the amount of depreciation taken each period must be maintained. All records for the full depreciation period must be retained during the life of the asset and for 3 years after the end of the Federal fiscal year during which an asset item is fully depreciated. Records must be retained beyond this period if audit findings have not been resolved. **To assist with equipment inventory records management, CEs may use the Equipment Inventory Form<sup>18</sup>. During the CE's scheduled administrative review, this form or a similar version created by the CE will be reviewed.**

(2 CFR § 200.436)

For additional guidance in this area, see 2 CFR Part 200.

#### Helpful Definitions from 2 CFR Part 200 related to Capital Expenditures

**Capital assets** mean tangible or intangible assets used in operations having a useful life of more than one year which are capitalized under GAAP. Capital assets include:

1. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
2. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). (2 CFR § 200.1)

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<sup>18</sup> Located at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input the name of the form into the appropriate search field.

**Capital expenditures** mean expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. (2 CFR § 200.1)

**Equipment** means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or **\$10,000**. (2 CFR § 200.1)

**General purpose equipment** means equipment that is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. (2 CFR § 200.1)

#### Resources for Depreciation

- Texas Comptroller of Public Accounts Website (search for “depreciation schedule” from the main page) at [www.comptroller.texas.gov/](http://www.comptroller.texas.gov/)
- Internal Revenue Service, Publication 946, *How to Depreciate Property* at <https://www.irs.gov/forms-pubs/about-publication-946>

## Additional Funding

USDA may provide additional TEFAP funding, most commonly for emergency or disaster situations. If additional funding is provided, TDA may mandate that these funds are used before standard TEFAP funding.

# Section 8

# Denials and Terminations

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## Section 8

# Denials and Terminations

## Disputes

If a contracting entity (CE) has a dispute or disagrees with The Emergency Food Assistance Program (TEFAP) guidance, policies or procedures, notify<sup>1</sup> the Food and Nutrition Program Specialist by telephone or in writing. The Food and Nutrition Program Specialist coordinates the resolution of the dispute in consultation with the Texas Department of Agriculture (TDA) management.

## Application Denials

TDA may deny an application to participate in TEFAP if TDA determines at any time that an organization

- is ineligible to participate in TEFAP,
- submitted false information to TDA,
- did not comply with food distribution requirements,
- failed to maintain adequate records,
- claimed reimbursement for administrative costs that were not related to TEFAP operations,
- have an outstanding or unresolved single audit, or
- failed to comply with procurement standards or contract requirements.

## Terminations

TDA will terminate the TEFAP Agreement if it is determined that there is cause for termination or if the CE mutually consents to the termination.

### Contracting Entity's Failure to Reapply

If a CE fails to reapply to participate in TEFAP, the TEFAP Agreement will be terminated.

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<sup>1</sup> Email the Food and Nutrition program specialist at [commodityoperations@texasagriculture.gov](mailto:commodityoperations@texasagriculture.gov) or call 1-877-TEX-MEAL (1-877-839-6325).

## Termination by Mutual Consent

A CE and TDA may mutually consent to terminate the TEFAP Agreement at any time. Termination by mutual consent generally occurs as a result of a CE's decision to withdraw from TEFAP and can occur at any time during the program year, including at the time of reapplication.

## Termination for Cause

TDA may terminate the TEFAP Agreement if a CE does any of the following:

- Fails to resolve TEFAP noncompliance as detailed in a corrective action **document (CAD)**
- Submits falsified documents or fraudulent billings
- Fails to provide services specified in the TEFAP Agreement and *Application or Participation/Plan of Operation*
- Fails to submit a complete and correct application within the specified time
- Fails to meet basic eligibility requirements
- Fails to comply with applicable bid procedures
- Fails to maintain required records
- Fails to submit a balanced and reasonable budget
- Claims reimbursement for administrative costs that are not related to TEFAP operations
- Fails to comply with applicable federal or state regulations in its administration of TEFAP

**NOTE:** Indications of fraud, embezzlement, abuse, or misuse of funds must be reported to TDA.

Based on the report, TDA may determine whether to refer the incident either to the U.S.

Department of Agriculture (USDA) Southwest Regional Office or to the USDA Office of Inspector General for investigation.<sup>2</sup>

Before terminating the TEFAP Agreement for cause, TDA will consider the following:

- The severity of the noncompliance
- The reason for the noncompliance
- Efforts to correct the noncompliance
- Whether providing or arranging additional training or technical assistance would help to correct the problem

If the TEFAP Agreement is terminated, TDA will notify the CE in writing of the specific reason for termination.

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<sup>2</sup> For more details on fraud and misuse, see *TEFAP Handbook*, Section 3, *Managing the Program*.

# Section 9

# Terms, Definitions, and

# Acronyms

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## Section 9

# Terms, Definitions, and Acronyms

## Terms and Definitions

**Agent** – A carrier, a company that leases storage space, or another entity that receives, handles, and/or stores USDA Foods on behalf of a TEFAP contracting entity (CE).

**Aggregate** – Total amount of a single invoice for a single purchase of product(s) or service(s). The purchase(s) can occur weekly, monthly, or annually.

**Allocation** – A process of distributing shares of USDA Foods and administrative funds. Allocation methods may vary. For example, USDA allocates USDA Foods and funds to each state, each state allocates to eligible CEs, and CEs allocate (or distribute) to other agencies and organizations that serve eligible persons. In some cases, CEs may distribute directly to eligible persons.

**Authorized representatives** – An authorized representative is an individual who is individually authorized on behalf of the contracting organization to

- make written agreements with TDA,
- sign documents or reports about the agreement, and
- present claims for reimbursement, when appropriate.

An authorized representative must be an employee of the organization.

**Bonus commodities** – Also known as *bonus foods*. Special USDA Foods purchased by USDA that are uncertain from year to year and do not require entitlement.

**Charitable institution (CI)** – An organization that

- possesses tax-exempt status
- provides food assistance to eligible people
- is public

A CI is not 1) a penal institution nor 2) a correctional institution that conducts rehabilitation programs.

**Child and Adult Care Food Program (CACFP)** – Nutrition program that provides aid to child and adult care institutions and family or group day care homes.

**Code of Federal Regulations (CFR)** – The codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government. 7 CFR 250 and 251 guide the operation and administration of TEFAP.

**Commodities (or donated commodities)** – A term identifying food donated to the states by USDA for distribution to eligible persons and households. If so specified, the term also includes food donated from non-USDA sources. Formerly known as *donated foods* or *USDA-donated commodities*. Now known as *USDA Foods*. Also referred to as *donated foods* or *USDA Foods*.

**Compliance review** – The review TDA conducts of its CEs or their subdistributing agencies, and the review that a CE conducts of its subdistributing agencies. Also referred to as an administrative review.

**Congregate meal** – A meal prepared with USDA Foods and provided to eligible persons who gather in a setting to participate.

**Congregate setting** – A place where people gather to receive meals prepared with USDA Foods.

**Contracting entity (CE)** – An entity that holds a TEFAP agreement with TDA.

**Corrective action document (CAD)** – Developed by a CE, subdistributing agency, or site to correct noncompliance relating to TEFAP operations, sometimes referred to as a corrective action plan.

**Covered contracts** – Three types of covered contracts exist.

1. Any nonprocurement transaction that involves federal funds of any amount. This type of transaction includes (but is not limited to) a subgrant between the TDA and the CE or between the CE and the subdistributing agency.
2. Any procurement contract for goods or services at or above the small-purchase threshold of **\$100,000**.
3. Any procurement contract for goods or services where a person or entity will have a critical influence on or substantive control over the covered transaction. Such a person or entity includes (but is not limited to) a
  - consultant,
  - principal investigator,
  - provider of audit services required by the TDA or a federal funding source, or
  - researchers.

Also, see *debarment*.

**Debarment** – An action taken by a debarring official to exclude a person or entity from participating in covered contracts. A person or entity so excluded is “debarred.”

**Denial of benefits** – Upon review of an application, a determination that a household is ineligible.

**Direct cost** – Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.

**Distribution receipt** – A receipt to document the receipt of USDA Foods by a contracting entity or subagency.

**Electronic receipting** – The entering of shipment receipts into an online management system such as TX-UNPS or WBSCM.

**Eligible person** – Someone in need of food assistance because of their

- economic status,
- eligibility for a specific food assistance program (known as categorical eligibility), or
- survivors of a disaster or situation of distress.

**Eligible recipient agency (ERA)** – A public or private entity that has an agreement with TDA or a CE to receive USDA Foods. Each site must be an ERA. An ERA cannot be a penal institution.

An ERA provides food assistance either

- exclusively to eligible persons for household consumption (according to a means test) or
- predominantly to eligible persons in the form of prepared meals.

An ERA must fall into one of the following categories:

- Emergency feeding organizations (including food banks, food pantries, and soup kitchens)
- Charitable institutions (including hospitals and retirement homes)
- Summer camps for children
- Child nutrition program providing food service (such as a CACFP site)
- Disaster relief programs

**Emergency feeding organization (EFO)** – An eligible recipient agency (ERA) that provides nutrition assistance to relieve situations of emergency and distress by providing food to eligible persons.

Examples of EFOs include, but are not limited to, food banks, food pantries, and soup kitchens. In TEFAP's priority system, EFOs have priority over other ERAs.

**Entitlement** – Value of USDA Foods that USDA authorizes TDA to receive in a specific program per program legislation.

**Expiration** – When a household's certification or eligibility period ends.

**Fair market value (FMV)** – A price at which buyers and sellers are willing to do business.

**Federal Fiscal year (FY)** – A period from October 1 through the following September 30.

**Food and Nutrition (F&N)** – The Texas Department of Agriculture division that administers certain USDA federal nutrition programs in Texas.

**Food and Nutrition Service (FNS)** – The USDA agency that administers TEFAP and other USDA nutrition programs.

**Food bank** – A public or charitable institution that regularly provides donated food or food products to other institutions that prepare meals or distribute food to eligible persons regularly as an integral part of their normal operations. "Other institutions" include food pantries, soup kitchens, hunger relief centers, and other food or feeding centers.

**Food loss** – When food provided by USDA does not reach its end-user. Reasons for loss include negligence, fraud, waste, theft, spoilage, damage, or the fact that an inventory control system cannot

account for the food's absence (because of a mis-pull, for instance).

**Food pantry** – A public or private nonprofit organization that distributes foods donated by USDA or others, to eligible households.

**Fraud** – The intentional concealment or willful misrepresentation of information to receive USDA Foods.

**Homeless person** – A person without a fixed and regular nighttime residence or whose primary nighttime residence is a

- supervised shelter, designed to be temporary,
- halfway house or similar institution,
- temporary accommodation in the residence of another individual, or
- place not designated for, or ordinarily used for, sleeping accommodations.

**Household** – An individual or group of related or non-related individuals (excluding boarders and residents of institutions) who live together as a single economic unit and customarily purchase and prepare food in common.

**NOTE:** Foster children and foster adults are included in the foster family's household. If the foster family is ineligible or applies only for foster children or foster adults, then the foster family, as an authorized representative, may apply on behalf of each foster child or foster adult. If income-eligible, each child or adult is a separate household of one. Foster children and foster adults who receive Medicaid or Supplemental Security Income (SSI) are automatically eligible.

**Indirect cost** – Expenses are incurred for the benefit of multiple programs or functions and are necessary for the general operation of TEFAP but cannot be directly attributable to the program.

**In-kind replacement** – The replacement of USDA Foods losses with a quantity of the same food, of U.S. origin, that is of equal or better quality than the lost food and that is of at least equal monetary value to USDA's cost of replacing the lost food. TDA must approve the replacement of USDA Foods losses with in-kind items.

**Invitation for Bid (IFB)** – A formal method of procurement that uses sealed bidding and results in a fixed-price contract. The primary consideration is cost, and the expectation is that competitive bids will be received and an acceptance (award) will be made to the bidder whose bid is lowest in price.

**Means-test** – A method for determining a household's eligibility for receipt of USDA Foods based on income. Also see the following terms: *household, eligible person, recipient*.

**Misuse of USDA Foods** – Includes (but is not limited to) selling, trading, or giving them to ineligible persons.

**Negligence** – Improper distribution or use of USDA Foods; or failure to properly store, handle, or care for the food.

**Operational issues** – Often revealed during a compliance review. Examples include (but are not limited to) the following:

- Severe understaffing (not enough personnel to properly operate the program)

- Major physical issues with the facility(ies) where USDA Foods are stored
- Severe pest infestation that is not kept under control promptly

**Perpetual inventory** – An ongoing accounting system that requires daily entries to document the amounts of food added to or removed from storage.

**Physical inventory** – The actual number of food items in storage and/or the process to manually count and record each item.

**Policy** – Any instructions, guidance, rules, laws, handbooks, manuals, etc. issued by USDA or TDA to clarify or explain existing rules and regulations (both federal and state).

The policies for operating and administering TEFAP are based on 7 CFR 250 and 251 (as applicable) and in the Texas Administrative Code. TDA may communicate TEFAP policy by *TEFAP Handbook*; emails; forms and form instructions; and other types of communication. TDA may implement changes 1) before amending state rules; 2) as required by federal laws and regulations, and 3) as needed to implement an option allowed by federal laws, federal regulations, or state rules.

**Procurement** – The orderly process of acquiring, by lease or purchase, goods and services such as food, meals, equipment, bookkeeping, and auditing.

**Program year (PY)** – A period of 12 calendar months beginning October 1 of any year and ending September 30 of the following year.

**Proxy** – A person designated by a participant to act for the participant throughout every step of the TEFAP process: application, certification, food package distribution, and recertification.

**Recipient** – A person or household receiving USDA Foods. See *homeless*, *eligible person*, and *household*.

**Recipient agency (RA)** – A public or private nonprofit agency or organization eligible to receive distributions of USDA Foods. Examples of RAs are CEs, subdistributing agencies, sites, emergency feeding organizations, charitable institutions (to the extent they serve eligible people), summer camps/nutrition programs for children, nutrition programs for the elderly, and disaster relief programs.

**Resident** – Individual who lives in the service area. At the time of application, households must have established residency within the service area. While federal regulations state that a minimum length of residency is not required to establish eligibility, the intent of the program is to serve individuals who live in the area and are not visiting temporarily. Overnight residency or an overnight stay does not meet the intent of the regulation.

**60/40 formula** – A method of allocating administrative funds based on 60% of the number of county residents who live at or below the official poverty line, and 40% of the number of unemployed county residents.

**Service area** – The specific geographical area served by a single TEFAP CE. Service areas are determined by predefined areas within the state, including, but not limited to, the following: county or counties; zip codes; or neighborhoods.

**Site** – A place at which an emergency feeding organization certifies applicant eligibility and/or distributes USDA Foods packages or meals to needy persons. A site may work directly with a CE or a subdistributing agency. A site can include but is not limited to a food pantry or soup kitchen.

**Soup kitchen** – A public or charitable institution that maintains an established feeding operation to provide food to eligible persons regularly as an integral part of its normal activities.

**Subagency** – The collective term for subdistributing agencies and sites.

**Subdistributing agency** – An entity (usually a food bank) that holds a TEFAP agreement with a CE. Not all CEs have subdistributing agencies.

**Tax-exempt** — Refers to a nonprofit agency or organization's status with the IRS, such as §501(c)(3) of the IRS Code, which exempts the agency or organization from paying income tax.

**Texas Administrative Code (TAC)** – State rules governing the administration and operation of a program, such as TEFAP.

**Texas Unified Nutrition Programs System (TX-UNPS)** – The web-based application, and claims processing system for all food and nutrition programs managed by TDA.<sup>1</sup>

**TEFAP** – The Emergency Food Assistance Program

**Unique entity identifier** – An identification by which entities doing business with the federal government create an identification that replaces previous methods of identification. For more information, please visit SAM.gov.

**User access manager** – A designated person at each CE who is responsible for security management of users within that entity. The UAM can add, modify, and deactivate users, ensures users have the correct security permissions and helps users with their password resets directly in Texas Unified Nutrition Programs System. For more information, please access SquareMeals here:

<https://squaremeals.org/FandNResources/TXUNPSProgramResources/TXUNPSUserAccessManager.aspx>

**USDA Foods** – Foods purchased by USDA and provided to states for distribution to eligible recipient agencies; previously referred to as donated foods or USDA-donated commodities or commodities.

**USDA Foods for children** – Nutrition program in which organizations (for example, schools) provide USDA Foods to eligible children.

**U.S. Department of Agriculture (USDA)** – The federal agency responsible for administering TEFAP.

**Web-Based Supply Chain Management System (WBSCM)** – The web-based ordering and procurement system for USDA Foods. All USDA Foods orders, solicitations, bids, awards, deliveries, invoices, and payments occur in WBSCM, and all business partners are required to use this system.

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<sup>1</sup> Access TX-UNPS through [www.SquareMeals.org](https://squaremeals.org).

## Acronyms

<b>CACFP</b>	Child and Adult Care Food Program
<b>CAD</b>	corrective action document
<b>CAP</b>	corrective action plan
<b>CE</b>	contracting entity
<b>CFR</b>	Code of Federal Regulations
<b>CI</b>	charitable institution
<b>CSFP</b>	Commodity Supplemental Food Program
<b>CY</b>	contract year
<b>EFO</b>	emergency feeding organization
<b>FMV</b>	fair market value
<b>F&amp;N</b>	Food and Nutrition at the Texas Department of Agriculture
<b>FNS</b>	U.S. Department of Agriculture Food and Nutrition Service
<b>FY</b>	fiscal year
<b>IFB</b>	invitation for bid
<b>PY</b>	program year
<b>RA</b>	recipient agency
<b>SNAP</b>	Supplemental Nutrition Assistance Program (formerly Food Stamps)
<b>SSI</b>	Supplemental Security Income
<b>TAC</b>	Texas Administrative Code
<b>TANF</b>	Temporary Assistance for Needy Families
<b>TDA</b>	Texas Department of Agriculture
<b>TEFAP</b>	The Emergency Food Assistance Program
<b>TX-UNPS</b>	Texas Unified Nutrition Programs System

<b>UAM</b>	user access manager
<b>UEI</b>	unique entity identifier
<b>USDA</b>	U.S. Department of Agriculture
<b>WBSCM</b>	Web-Based Supply Chain Management System

# Section 10

# Disaster Policies and

# Procedures

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## Section 10

# Disaster Policies and Procedures

The U. S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) coordinates with state, local, and voluntary organizations to accomplish the following goals:

1. Provide food for shelters and other mass feeding sites
2. Distribute food packages directly to households in need in limited situations
3. Issue Disaster Supplemental Nutrition Assistance Program (D-SNAP) benefits

## Presidentially Declared Disasters and Situations of Distress

### Resources

In addition to the discussion below, the following resources provide information about disasters and situations of distress.

- USDA maintains the *USDA Foods Program Disaster Manual* at <https://www.fns.usda.gov/disaster/disaster-assistance>.
- [www.SquareMeals.org](http://www.SquareMeals.org) contains frequently updated information for CEs and subagencies. From the home page, choose Food Assistance for Disaster Relief.

The Texas Department of Agriculture (TDA) distributes The Emergency Food Assistance Program (TEFAP) foods during a presidentially declared disaster, emergency, or situation of distress. Contracting entities (CEs) must obtain approval from TDA (via USDA regional and national offices) before diverting USDA Foods from intended purposes to assist victims of disasters.

These definitions are pertinent to the discussion below:

**disaster** – A presidentially declared disaster or emergency that results in USDA Foods assistance (and other federal assistance) for eligible people because of the disaster or emergency. Throughout this discussion, disaster is used for emergency and distress.

**situation of distress** – A natural catastrophe or another event that does not meet the definition of disaster as defined above, but that TDA or USDA determines warrants the distribution of USDA Foods to assist survivors. Examples include, but are not limited to, a hurricane, flood,

snowstorm, or explosion. Throughout this discussion, disaster is used for a situation of distress.

## Sites as Emergency Feeding Organizations

When necessary, a CE and subdistributing agency identifies an organization as an emergency feeding organization (EFO). See the USDA Foods Program Disaster Manual at <https://www.fns.usda.gov/disaster/disaster-assistance>.

## Approval of Disaster Organizations

An organization that wishes to become a disaster organization with TDA must apply to TDA electronically or in written form. TDA must review and approve an application from each disaster organization before the distribution of USDA Foods to that organization. The table below, Application for Disaster Organization, details the information for each particular type of distribution.

Application for Disaster Organization		
1. Type of benefit	2. To the extent possible, necessary information	3. Additional, required information
<b>Congregate meals</b>	<ul style="list-style-type: none"><li>• A description of the disaster situation</li><li>• The number of people requiring assistance</li><li>• The time period for which USDA Foods are requested</li><li>• The quantity and types of necessary foods</li><li>• The number and location of sites where USDA Foods are to be used</li></ul>	None
<b>Household distribution</b>	<ul style="list-style-type: none"><li>• A description of the disaster situation</li><li>• The number of people requiring assistance</li><li>• The time period for which USDA Foods are requested</li><li>• The quantity and types of necessary foods</li><li>• The number and location of sites where USDA Foods are to be used</li></ul>	<ul style="list-style-type: none"><li>• An explanation of why the distribution is necessary</li><li>• The available method(s) of distribution</li></ul>

## **Disaster Household Distribution (DHD) Program**

USDA's Disaster Household Distribution (DHD) Program<sup>1</sup> is designed to provide food assistance in disasters through USDA Foods that are typically distributed through TEFAP. CEs and subagencies must not initiate DHD — TDA will contact CEs when DHD is to be implemented.

### **Congregate Meals**

TDA may provide a disaster organization with USDA Foods from any recipient agency's (RA's) current inventories to provide congregate meals during a disaster. A disaster organization may provide USDA Foods to emergency relief workers at congregate meal sites who are engaged in providing relief assistance.

### **Households**

TDA may provide a disaster organization with USDA Foods from any RA's current inventories to provide foods to households during a disaster. Occasionally, a household has been approved for Disaster SNAP (D-SNAP) benefits but has not yet received the benefits. In this case, the disaster organization must obtain the following information from the household and report the information to TDA:

1. Name and address of household members applying
2. Total number of household members
3. A statement from the head of the household certifying the following:
  - The household needs food assistance.
  - An indication of understanding that selling or exchanging USDA Foods is prohibited.

## **Frequently Asked Questions**

The policies and procedures are conveyed below in a question and answer (Q&A) format. Additional questions and answers, as well as more information regarding the U. S. Department of Agriculture (USDA) Food Distribution Division disaster and emergency policies and procedures, may be found online.<sup>2</sup>

### **Q 1. Will the Food and Nutrition Service (FNS) automatically replace foods used for disaster or emergency assistance?**

FNS will replace all USDA Foods removed from inventory at the state or local level that are used 1) for FNS-approved disaster or emergency mass feeding programs and 2) through the Disaster Household Distribution Program within presidentially declared disaster or emergency areas. Texas must submit a request for a replacement within 30 days of the end of the disaster, although interim requests for replacement may be made.

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<sup>1</sup> For more information, see the USDA Foods Program Disaster Manual at [www.fns.usda.gov/disaster/disaster-assistance](http://www.fns.usda.gov/disaster/disaster-assistance).

<sup>2</sup> Website: [www.fns.usda.gov/disaster/disaster-assistance](http://www.fns.usda.gov/disaster/disaster-assistance)

FNS has neither the authority nor the resources to replace non-USDA Foods used for disaster or emergency feeding. Except for intra-state transportation costs (see below), FNS has neither the authority nor resources to reimburse organizations for other costs. All requests for such reimbursement should be directed to the Texas Division of Emergency Management<sup>3</sup> for possible reimbursement, either directly or through submission to the Federal Emergency Management Agency (FEMA), which has the primary responsibility for providing disaster assistance.

**Q 2. Will FNS replace foods in inventory at the local level that were lost or made unfit for consumption by a disaster or emergency?**

FNS does not have the authority to replace foods that are lost, destroyed, contaminated, or otherwise rendered unusable in a disaster or emergency. Per federal regulations at 7 CFR 250.12(d), certain agencies<sup>4</sup> must obtain insurance to protect the value of USDA Foods at their storage facilities. See USDA Policy Memorandum FD-139, Clarification on Inventory Protection Requirements, for further information on insurance requirements. The memo is available at [www.fns.usda.gov/usda-foods/clarification-inventory-protection-requirements](http://www.fns.usda.gov/usda-foods/clarification-inventory-protection-requirements).

**Q 3. Are disaster or emergency evacuees who are boarders or residents of institutions eligible for TEFAP benefits?**

No. Consistent with federal regulations at 7 CFR 250.2 (see the definition of *household*), boarders or residents of institutions are not eligible to receive TEFAP benefits. Should these individuals' circumstances change to where they are no longer considered boarders or residents of institutions, they are encouraged to apply for TEFAP benefits where available.

**Q 4. May TEFAP participants who have evacuated their homes and are temporarily living in areas not normally served by TEFAP continue to pick up benefits from the agency in the service area they evacuated?**

Yes. During a presidentially declared disaster or emergency, evacuees may be temporarily housed at a location where TEFAP service is not normally available. In such circumstances, TEFAP participants who have evacuated their homes may choose to continue to pick up benefits from the agency in the service area they evacuated if that agency continues to operate and retains the ability to serve participants.

The evacuation of a TEFAP participant during a presidentially declared disaster or emergency is considered a temporary absence from home. During this time, evacuees may choose to be considered residents of the service area they evacuated. Therefore, evacuees who choose this option will continue to meet TEFAP residency requirements for the duration of the presidential declaration or until the evacuee establishes a permanent residence outside the original service area. TEFAP participants must continue to meet all other TEFAP eligibility requirements to continue to receive benefits.

Evacuees must provide the agency with their temporary address and date of evacuation. The agency

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<sup>3</sup> Website: <https://tdem.texas.gov/>

<sup>4</sup> CEs and state-contracted warehouses must obtain insurance. The following are not required to obtain insurance: distribution sites; food pantries; soup kitchens; community action agencies. This list may not be all-inclusive. For more information about insurance requirements, see *TEFAP Handbook*, Section 4, *USDA Foods*.

must note this information in the certification or case file, if applicable, as well as the beginning and ending dates of the presidential declaration, if available. Certification periods may be assigned to coincide with the expected timeframe of the presidential declaration.

**Q 5. Will agencies be required to set up distribution sites outside their normal service areas to serve TEFAP participants who have evacuated to temporary housing?**

Agencies are not required to establish temporary distribution sites (that is, tailgate distribution sites) in areas where displaced TEFAP participants have relocated if TEFAP does not normally serve those areas. At the option of the applicable agency, however, accommodations may be made to serve evacuees in these areas. Accommodations may include, but are not limited to, the following:

- Adjusting food issuance schedules
- Assisting evacuees in designating authorized representatives or proxies to pick up foods
- Using TEFAP staff or volunteers to deliver foods to eligible evacuees living in temporary housing outside the established service area

**Q 6. What options are available to disaster/emergency evacuees for participation in TEFAP when they are housed with a host family?**

During a presidentially declared disaster or emergency, evacuees may choose to evacuate their homes and temporarily stay with a host family in an area served by TEFAP. For the duration of the presidential declaration, agencies must give the evacuees the option to be considered a separate household from the host family to determine eligibility for TEFAP.

Eligible evacuees may pursue **one** of the following three options for TEFAP participation:

1. Pick up benefits from the service area they evacuated, but only if the individual or family participated in TEFAP before the presidentially declared disaster or emergency. This is applicable only if the agency continues to operate and retains the ability to serve participants in that area. If evacuees choose this option and TEFAP service is available, the agency must consider the evacuees to be residents of its service area. This applies only until the presidential declaration ends, or the evacuees establish permanent residence outside the original service area, whichever occurs first.
2. Apply for TEFAP benefits as a separate household in the service area where they are temporarily living with the host family. The household must end TEFAP participation in the evacuated area by notifying the appropriate agency before applying for TEFAP benefits in the service area where the host family resides.
3. Apply for TEFAP benefits as a combined household in the service area where they are temporarily living with a host family. If the individual or family opts to be considered part of the host household, the newly combined household must meet TEFAP eligibility standards in effect for the agency serving the host family's place of residence.

**Q 7. In addition to the flexibility provided concerning evacuee residency requirements during a presidentially declared disaster or emergency, will FNS waive or modify other eligibility requirements for TEFAP?**

TDAs have a great deal of discretion in determining the eligibility criteria for TEFAP, including the income eligibility guidelines. Given the flexibility afforded, FNS will not waive or modify other TEFAP eligibility requirements.

**Q 8. Are disaster or emergency evacuees eligible for TEFAP benefits after the presidential declaration or temporary housing status ends?**

When the presidentially-declared disaster or emergency ends, or the household chooses to leave temporary housing to establish permanent residence, **whichever occurs first**, an otherwise eligible household must reside in an area currently served by TEFAP and meet all other applicable criteria to remain eligible for TEFAP. Self-declaration by the household of temporary or permanent residence is acceptable.

If individuals or families choose to relocate to a permanent residence in an area not currently served by TEFAP, they would no longer be eligible to participate in TEFAP. These individuals and families may qualify for benefits under other nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program), or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

**Q 9. Will FNS waive the eligibility requirements for organizations that wish to distribute regular TEFAP benefits to evacuees?**

No. FNS believes there are sufficient organizations that already meet the eligibility requirements and can provide the necessary assistance to disaster or emergency evacuees. Waiving TEFAP requirements would be unnecessary and would compromise TEFAP integrity. TEFAP has well-established distribution networks in most areas in which TEFAP operates. Therefore, FNS does not believe that it is in the best interest of TEFAP or individuals requiring assistance for FNS to waive the current eligibility requirements for organizations that wish to participate in TEFAP.

**Q 10. How can my agency determine and monitor the duration of a presidential declaration?**

Agencies should monitor the FEMA website at <http://www.fema.gov> or contact FEMA via telephone at 1-800-621-3362 to determine and monitor the duration of a presidential disaster or emergency declaration.