

Texas Department of Agriculture



Commodity Supplemental Food Program Handbook

Commodity Supplemental Food Program Handbook

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Section 1000

Introduction

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Section 1000

Introduction

1100 Program Description

The Commodity Supplemental Food Program (CSFP) was authorized under the Agriculture and Consumer Protection Act of 1973. The purpose of the CSFP is to improve the health and nutritional status of low-income elderly persons through nutrition education activities and the donation of supplemental foods.

When the CSFP began, it also included pregnant and postpartum women; infants; and children. As of February 7, 2014, however, USDA began to phase out the participation of women under age 60, infants, and children in the CSFP¹.

1200 Administration

The Texas Department of Agriculture (TDA) has an agreement with the United States Department of Agriculture (USDA) to administer the Commodity Supplemental Food Program in Texas, and does so in accordance with federal and state requirements. The CE can reference these requirements in the following sources:

- Code of Federal Regulations (CFR) at 7 CFR Part 247
- 7 CFR 250
- 2 CFR 200
- Texas Administrative Code at Title 4, Part 1, Chapter 24.

¹ For more information about the participation of these groups in the CSFP as well as other programs for which these groups may be eligible, see the *CSFP Handbook*, Section 4000, *Managing the Program*.

TDA distributes funds and USDA Foods to participating contracting entities (CEs), such as nonprofit organizations and public agencies that fulfill the following requirements:

- Determine the eligibility of applicants
- Receive, store, transport, and distribute USDA Foods to eligible clients
- Conduct nutrition education activities for eligible clients

TDA's responsibilities include the following:

- Administer the CSFP in Texas
- Disburse administrative funds
- Assist CEs in the operation and management of the program
- Monitor the program to ensure that reimbursement is used for program purposes and USDA Foods are distributed to eligible clients

CEs' responsibilities include the following:

- Comply with the terms of *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502)
- Implement and operate an approved financial management system
- Maintain program records
- Submit claims for reimbursement

NOTE: The CE may find forms on the Texas Department of Agriculture (TDA) website. Access the TDA website at www.squaremeals.org, go to "Programs," click on "Commodity Supplemental Food Program," choose "CSFP Administration and Forms," then input the form title or form number in the correct field. TDA posts revised forms and instructions on the website then notifies CEs via email.

For any required form that does not have an electronic version, TDA will provide a paper version for CEs' use.

1300 Other Programs

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

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Fresh Fruit and Vegetable Program (FFVP)
- Special Milk Program (SMP)
- Child and Adult Care Food Program (CACFP)
- Summer Food Service Program (SFSP)
- Food Distribution Program (FDP) for Child Nutrition (CN) Programs
- The Emergency Food Assistance Program (TEFAP)
- Senior Farmers' Market Nutrition Program (SFMNP) (in limited areas)
- Farmers' Market Nutrition Program (FMNP) (in limited areas)

The CE may receive additional information about these programs by contacting:

Food and Nutrition
Texas Department of Agriculture
P.O. Box 12847
Austin, TX 78711
1-877-TEX-MEAL (839-6325)

Or visit our website at www.squaremeals.org.

If a CE is approved to participate in more than one program, the CE must ensure that it

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

1400 Funding

Each year, USDA Foods and administrative funding are provided by USDA to TDA to administer and operate the CSFP in Texas.

1500 Appeals

CEs have the right to appeal certain actions TDA takes that adversely affects their participation in the CSFP. Refer to *CSFP Handbook*, Section 8000, *Denials, Terminations and Appeals*, for additional information regarding appeal rights.

Section 2000

Eligibility and Application Requirements

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Section 2000

Eligibility and Application Requirements

As a Commodity Supplemental Food Program (CSFP) contracting entity (CE), the CE accepts final administrative and financial responsibility for all sites at which it operates or delegates program activities. For complete details, organizations interested in applying should contact the Food and Nutrition Program Specialist who handles the CSFP¹.

2100 Eligibility Requirements

The CE must demonstrate adequate administrative and financial responsibility to manage an efficient and effective distribution system to be considered a potential CSFP CE. An organization may be eligible to participate as a CSFP CE if it meets the following conditions:

- Accept final administrative and financial responsibility for program operations
- Are a nonprofit organization or a public agency
- Attend all required Texas Department of Agriculture (TDA) training
- Provide adequate supervisory and operational personnel to effectively manage and monitor CSFP operations
- Restrict employees from securing additional employment that interferes with their CSFP responsibilities and duties (for example, scheduling or conflict-of-interest issues)
- Have a satisfactory performance record if it participated during previous program years

2110 Potential Contracting Entities

USDA issues USDA Foods and administrative funding to TDA, which may approve only those applications and agreements from CEs that will serve eligible participants in the service areas. Preference is given to organizations that have an established system for the receipt, storage, transportation, and distribution of USDA Foods.

Currently, food banks operate in all potential CSFP service areas of Texas. However, TDA may contract with organizations other than food banks to operate the CSFP.

¹ Email commodityoperations@texasagriculture.gov or call 1-877-TEX-MEAL (839-6325).

2110.1 Food Bank Contracting Entities. The combined service areas of individual food banks include all Texas counties. A food bank that is a CSFP CE coordinates distribution of CSFP to eligible persons in the service area of that food bank.

2110.2 Contracting Entities Other Than Food Banks. TDA may contract with organizations other than food banks to ensure the operation of the CSFP in a specific service area. As necessary, TDA coordinates with the appropriate food bank CE to determine the following:

- The need for organizations other than food banks in a specific service area
- Eligible agencies or organizations available and willing to distribute USDA Foods

2120 General Requirements

2120.1 Organizational Structure. An organization is eligible to participate in the CSFP as a CE only if it is a nonprofit organization with tax-exempt status or a public agency, including, but not limited to, city, county, or state agencies.

2120.2 Tax Exemption. Nonprofit 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.

Exception: Churches are not required to provide proof of tax exemption. However, an organization must ensure that it qualifies as a church according to IRS publication 557, *Tax Exempt Status for Your Organization* and IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*. Organizations that represent themselves as a church but do not meet the qualifications of a church will be required to submit to TDA proof of tax exempt status.

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 nonprofit 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 a CE's tax-exempt status, the CE must notify TDA immediately.

2120.3 Special Filing for Small Tax-Exempt Organizations. The IRS maintains specific filing requirements for small tax-exempt organizations whose 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 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.

2120.4 IRS Automatic Revocation of Exemption List. CEs and sites must maintain their tax-exempt status. (Exceptions include many faith-based organizations as well as, but not limited to, city, county, and state agencies.) The IRS maintains a list of organizations that lose their tax-exempt status at www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption-List.

At least annually, TDA will review the list to ensure that TDA's CEs have not lost their tax-exempt status.

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

- Notify the site in writing that it has 30 days to provide documentation that it has applied for reinstatement of tax-exempt status. If the site does not provide documentation within 30 days, the site will be terminated from the CSFP.
- Forward documentation of IRS recognition of tax-exempt status to TDA within 180 days of the notification specified in the above bullet. If the site does not provide proof within 180 days, the site will be terminated from the CSFP.

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

2120.5 Single Audit Requirements. All nonfederal organizations must submit one or more of the following to verify their compliance with Single Audit Act requirements:

- A copy of an organization-wide or program-specific audit that has been determined to meet the requirements of the Single Audit Act
- A completed *Annual Audit* form (via TX-UNPS or paper), certifying that the CE will obtain, if necessary, an acceptable audit that meets the requirements of the Single Audit Act

Refer to the *CSFP Handbook*, Section 5000, *Visits, Reviews, and Audits*, Item 5400 for specific information related to audit requirements.

2120.6 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 obtain debarment certifications for 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 TDA and the CE or between the CE and its sites.
2. Any procurement contract for goods or services above the small-purchase threshold of \$50,000.
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
 - o consultant,
 - o principal investigator,
 - o provider of audit services required by TDA or a federal funding source, or
 - o researcher.

TDA offers the following three options for CEs to obtain debarment certification:

- Search the website The System for Award Management (SAM) and print the webpage 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 _____ (person or entity name) 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 *Agreement Between Contracting Entity and Site* (Form H1501) if an organization fails to obtain one of the options above for any site, person, or entity that is a party to a covered contract. Any contract with TDA that contains federal assistance and that is held by a person or entity who is excluded from entering into such contracts will be considered void, effective on the date of exclusion.

For a copy of *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), go to www.squaremeals.org/, choose “Programs,” choose “Commodity Supplemental Food Program,” choose “CSFP Administration and Forms,” and enter the form number in the appropriate field.

2120.7 Dun and Bradstreet Data Universal Numbering System (DUNS). Nonfederal agencies and organizations that do business with the federal government must use the Dun and Bradstreet Data Universal Numbering System (DUNS) as their identifier. The DUNS number will not replace the Employer Identification Number (EIN), but will become an identifier for a nonfederal entity to apply for funding under a federal assistance program.

The DUNS number is a nine-digit number issued by Dun & Bradstreet to each business located in the Dun & Bradstreet database having a unique, separate, and distinct operation. The DUNS number is random, and the digits have no apparent significance. It is a tool of the federal government to track how federal money is distributed. The DUNS number is free of charge.

To obtain a DUNS number, access the following website at: <http://fedgov.dnb.com/webform>. A CE can also call Dun & Bradstreet using the toll-free number 1-866-705-5711 and indicate that the organization is a federal grant applicant/prospective applicant. The waiting period to obtain a DUNS number can be anywhere from 24 hours to several weeks, so organizations should request their number as soon as possible.

2200 Application Process

2210 Contract Packet

The contract packet gathers information about the organization and how it plans to operate the CSFP. Applicants complete the entire packet once, whereas renewing CEs complete portions of it 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 CSFP. 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.

2210.1 Application for Participation/Plan of Operation. As part of the contract packet, applicants complete and submit the *Application for Participation/Plan of Operation*. Through it, applicants accomplish the following:

- Provide information for each proposed certification, distribution and storage site
- Provide an administrative budget
- Submit a complete management plan that includes staffing needs
- Describe the plan to integrate nutrition education into the CSFP operation
- Certify that the applicant will train administrative and site personnel
- Establish an authorized representative for the organization

2220 Amendments to a Contract

The CE may request amendments to its contract packet by contacting TDA². The CE may be required to supply supporting documentation.

A CE's claims for reimbursement may be delayed or negatively affected if it fails to properly request an amendment in advance.

For Example: If a CE wants to increase its expenditure on program outreach by an additional \$100 per year and reduce its expenditure on nutrition education by \$100 per year, TDA must approve each proposed change in advance even though the total budget would remain unaffected.

2220.1 Retroactive Budget Amendments. TDA will not approve retroactive budget amendments that increase individual budgeted line items or the total budget for any claim month before the month in which the request was received. TDA must have sufficient time to review and approve each request. All budget changes are effective for an entire claim month (that is, these changes will not be prorated for part of a month).

2230 Pre-Approval Visit

TDA conducts pre-approval visits of applicants' administrative offices and potential sites 1) to verify information provided in the *Application for Participation/Plan of Operation* and 2) to assess the ability to complete program operations. Additionally, TDA will visit the following:

- CEs that did not participate in the program during the previous program year
- CEs that, as a result of operational problems noted during the previous program year, have been determined by TDA to need a pre-approval visit before being approved in the current program year
- Sites that TDA has determined to need a pre-approval visit

² Email commodityoperations@texasagriculture.gov or call 1-800-TEX-MEAL (1-800-839-6325).

2240 Review of Contract Packets

TDA will notify an applicant of the approval or disapproval of a complete contract packet. If TDA denies an application, TDA will notify the applicant in writing of the reasons and explain the applicant's right to appeal. Refer to section 8000, *Denials, Terminations and Appeals* in this handbook for additional information.

(NOTE: If an applicant submits an Application for Participation/Plan of Operation to serve an area for which there are no allocated funds, TDA will notify the applicant that there are no funds available for program initiation or for expansion in that service area. This decision may not be appealed.)

2300 Agreements

2310 Agreement Between Contracting Entity and Texas Department of Agriculture (Form H1502)

If an applicant is approved to participate in the CSFP, the CE and TDA will complete and sign *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) ("CSFP agreement") Then the CE will receive copies of the approved CSFP agreement as well as supporting documents that the CE will need to operate the program.

For more information about the CSFP agreement, see the *CSFP Handbook*, Section 3000, *Program Agreement*.

2320 Agreement Between Contracting Entity and Site (Form H1501)

A site is any organization that will be responsible for distributing, transporting, or storing USDA Foods; or for certifying CSFP participants³. CEs execute, with each site, the *Agreement Between Contracting Entity and Site* (Form H1501). CEs then keep the executed H1501 on file.

For more information about Form H1501, see item 2120.6, "Debarment Certification" in this handbook section.

³ For a full definition of this term, see the *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

Section 3000

Program Agreement

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Section 3000

Program Agreement

The *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) (“CSFP agreement”) provides the terms and conditions for participation in the Commodity Supplemental Food Program (CSFP). These terms and conditions relate to the following topics:

- Use, storage, and disposition of USDA Foods
- Accountability and reporting
- Misuse of USDA Foods
- Information Technology
- Fair Hearings
- Debarment, suspension, ineligibility, or voluntary exclusion for covered contracts
- Federal lobbying
- Conflicts of interest
- Subcontracts for goods and services
- Civil rights
- Nutrition education
- Program payments

The CSFP agreement, which is a legally binding document, is permanent unless terminated by either party — so CE and TDA sign it once (rather than annually). TDA will not issue USDA foods or reimbursement for administrative costs before the CSFP agreement is signed by the CE’s authorized representative and TDA. TDA’s Food and Nutrition Program Specialist can answer questions and provide technical assistance.¹

¹ Call the Food and Nutrition Program Specialist at 1-877-TEX-MEAL (839-6325) or email commodityoperations@texasagriculture.gov.

3100 Program Requirements

3110 Financial Management System

CEs must maintain a financial management system that provides accurate, current and complete disclosure of the financial status of CSFP operation. This system must ensure the following:

- Accounting records are supported by source documentation, including canceled checks, paid bills, payroll, and contract and subcontract award documents.
- Records identify the source and application of funds and contain information about program 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 program participation and the financial results of the program.
- Audits are conducted at least every other year 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 used to resolve audit and review findings and recommendations.
- Monthly reimbursement claims and adjusted claims are received by TDA in TX-UNPS in a timely manner. TDA recommends no later than 60 days after the claim month has ended.

3120 Allowable Administrative Costs

TDA determines the necessity and acceptability of administrative cost incurred by the contracting entity (CE) in accordance with federal regulations and state rules.

Requirements can be referenced in these publications:

- Code of Federal Regulations (CFR) at 7 CFR, Part 247, Commodity Supplemental Food Program
- 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; specifically, 200.420–.475
- Texas Administrative Code (TAC) at Title 4, Part 1, Chapter 24

TDA must approve the CE's administrative costs as part of the annual budget and whenever budget amendments are submitted.

3120.1 Brief List of Allowable Costs

- Nutrition education services provided to participants and used for training site staff members
- Transporting United States Department of Agriculture (USDA) Foods and administering the food distribution system
- Interpreters and translators for CSFP materials
- Outreach services
- Audits and fair hearings
- General administration, including but not limited to, personnel, warehousing, and insurance
- Monitoring and reviewing CSFP 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)

3120.2 Detailed List of Common Allowable Costs

Administrative labor – Administrative labor costs include salaries and benefits for administrative personnel, e.g., 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.
- The employer's share of federal, state, and local employment taxes such as Social Security, withholding tax, and state unemployment taxes. The employer's share of fringe benefit costs such as vacation leave, military leave, health benefits, life and disability insurance, paid nonwork holidays, and retirement benefits.
- Payment of overtime, holiday pay for work performed on a nonwork holiday, and compensatory leave. These are allowed with specific prior written approval for each instance, except for cases of emergencies. The CE must contact the Food and Nutrition Program Specialist² within two working days of any emergency situation.

² Email commodityoperations@texasagriculture.gov or call 1-877-TEX-MEAL (839-6325).

- Incentive payment or award given to an employee. Except for awards of nominal or minimal value, specific prior written approval is required for costs of an incentive payment or award given to an employee. Awards of minimal value include 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.

Accounting – CEs may include the cost of establishing and maintaining accounting and other information systems required for management of the nonprofit food service. CEs may not claim the cost of maintaining central accounting records to meet all of the organization's requirements.

Advertising and public relations – Advertising media can include, but is not limited to, magazines, newspapers, radio, television, direct mail, exhibits, 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 the CSFP
- The procurement of goods and services for the performance of the CSFP
- The disposal of scrap or surplus materials acquired in the performance of the CSFP except when the CE is reimbursed for disposal costs at a predetermined amount
- CSFP outreach and other specific purposes necessary to meet the requirements of the CSFP

Public relations are 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:

1. Costs specifically required by the CSFP
2. Costs necessary to the outreach effort for the CSFP, including costs of communicating with the public and press about specific activities or accomplishments that result from performance of the CSFP
3. 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 – CEs may claim the cost of audits required for the administration and management of the CSFP³.

Communications – Includes the costs of supplies and services such as telephone, telegrams, fax, license fees for electronic mail 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 not the same as training costs.)

With prior approval, 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 or trustees, or immediate family members
- Costs for meals and nonalcoholic beverages served to participants, but not guests, when CSFP training is presented concurrent with the meal service

With prior approval, the travel and registration fees for attending meetings and conferences devoted solely to the CSFP are allowable costs.

With specific prior written approval, the prorated share of travel and registration fees when the CSFP 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

Equipment – To be classified as equipment, an item must cost at least \$5,000 per unit and have a useful life of at least one year. Instead of using depreciation, an organization, with specific prior written approval from TDA, can charge the program for capital expenditures for special purpose equipment at the time the items are purchased. CEs must keep invoices, bills of sale, purchase orders, leases, contracts, and procurement documents to meet documentation requirements.

³ See section 5000, *Visits, Reviews and Audits* of this handbook for more details about audits.

Equipment management. Equipment purchased in whole or in part with CSFP funds must be managed according to, at a minimum, these requirements.

- A description of the equipment
- A serial number or other identification number
- The source of funding for the equipment (including the federal award identification number)
- The name of who holds the title
- The acquisition date
- The equipment's cost
- If not wholly used for CSFP, the percentage of CSFP funds used to acquire the equipment.
- The equipment's location
- The equipment's use
- The equipment's condition
- The ultimate disposition data, if applicable, including the date of disposal and the sale price

Equipment inventory. At least once every two years, CEs must take a physical inventory of the equipment and reconcile the inventory against the equipment records.

Equipment safeguards. CEs must develop a control system to adequately safeguard equipment against loss, damage, or theft. Similarly, CEs must develop adequate maintenance procedures to keep the equipment in good condition. CEs must investigate any loss, damage, or theft.

Equipment sales. If the CE is authorized or required to sell the equipment, proper sales procedures must be established to ensure the highest possible return.

Insurance – The CE may include insurance costs that are required for the administration of the CSFP.

Rental costs of real property and equipment – Allowable when considered in light of certain factors and limitations. Factors include

1. rental costs of comparable property, if any,
2. market conditions in the area,
3. available alternatives, and
4. the type, life expectancy, condition, and value of the property leased.

Limitations include, but are not limited to, leases that involve sale and lease-back and less than arm's length arrangements.

All rental arrangements should be reviewed periodically to determine if circumstances have changed and if other options are available.

Legal – CEs may include legal expenses required for the administration of the CSFP. However, CEs may not claim the cost of maintaining a legal staff with general responsibilities.

Memberships, subscriptions, and professional activity – Membership costs in civic, business, technical and professional organizations and subscriptions to professional and technical periodicals are included in this category. Allowable costs include the following:

- Membership fees and annual dues for the CE's membership in business, technical, and professional organizations related to the CSFP
- Membership fees and annual dues for one individual membership per CE in business, technical, and professional organizations related to the CSFP when the organization will accept only individual and not organizational memberships
- Costs for the CE's subscription to periodicals related to the CSFP

Materials and supplies, including computing devices – Costs incurred for materials, supplies, and fabricated parts necessary to run CSFP 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 the CSFP. These items may be charged as direct costs. Specifically 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 the CSFP.

Materials that are federally-donated are used in performing the CSFP. These items will be used without charge.

Space and facilities – Space and facilities costs may be charged through rental/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 the CSFP.

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 the CSFP, or the prorated share when necessary.

Records – Costs for supplies, storage, and maintenance of records necessary for the administration of the CSFP.

Services – Costs of utilities, purchased security, and janitorial service, etc., not already included in space costs or labor compensation costs.

Taxes – Taxes or payments in lieu of taxes that the organization is legally required to pay as a result of operating the CSFP.

Training and education – The cost of training and education provided for CSFP employee development.

Travel – The expenses for transportation, lodging, subsistence, and related items incurred by employees while traveling on the CE's official business for CSFP.

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 in accordance with 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-CSFP activities.

Vehicle Expenses. When employees use their own vehicle or a CE's vehicle to conduct CSFP business, the reasonable cost is an allowable administrative cost. Each CE may develop its own travel form containing these elements:

1. The date of each trip
2. The driver's name
3. The mileage
4. The origin and destination of each trip
5. Parking costs
6. 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 the CSFP. The CE must maintain documentation to reflect the following:

- The traveler's participation is necessary to the CSFP.
- 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.

3130 Unallowable Costs

CEs' expenditures that are inapplicable to CSFP objectives are unallowable and include the following:

- Administrative costs not approved by TDA
- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fund raising
- Interest and other financial costs, such as insufficient funds/returned check charges as well as late payment fees
- Lobbying to obtain grants, contracts, cooperative agreements, or loans
- 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. Also included are disallowed costs in the current or prior program years.)
- Personal income taxes, corporate income taxes, and taxes resulting from non-CSFP operations

3200 Program Payments and USDA Foods

3210 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 *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502). For additional information, refer to Section 4000, *Managing the Program*, in this handbook.

3220 USDA Foods

TDA orders USDA Foods on behalf of CEs, at each CE's caseload. Refer to section 4000, *Managing the Program* in this handbook for additional information.

Section 4000

Managing the Program

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Section 4000

Managing the Program

4100 USDA Foods

The Texas Department of Agriculture (TDA) allocates USDA Foods according to the Commodity Supplemental Food Program (CSFP) caseload that it receives for a given service area by the U.S. Department of Agriculture (USDA).

Contracting entities¹ (CEs) receive direct shipments of USDA Foods. The main requirement for CEs to receive CSFP direct shipments is the ability to receive, store, and handle a truckload of a single USDA Food (approximately 40,000 pounds). Unless otherwise specified by TDA, non-food bank CEs receive distributions of USDA Foods from food bank CEs.

4110 Ordering of USDA Foods

4111 Compliance with Agreement Terms and Conditions

When ordering USDA Foods, CEs must comply with the terms and conditions of the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502), federal regulations, state rules, and the policies in this handbook, including, but not limited to, the following:

- Control inventory
- Complete and submit an annual inventory report
- Complete and maintain a record of storage facility reviews (completed in conjunction with the annual inventory)
- Report changes that may affect the terms and conditions
- Agree to be monitored by the USDA and TDA
- Review and monitor sites to ensure program compliance

¹ See *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms* for a definition of this term.

4112 Coverage of Contracted Service Area

CEs assume final administrative and financial responsibility for distributions of USDA Foods within their contracted service areas. Efforts to meet the needs of eligible participants in a CE's service area should include the following:

- Improve the accessibility to USDA Foods by eligible individuals
- Meet the special needs of the elderly; including the elderly with disabilities, those who are homebound, and those with transportation difficulties in plans to expand or improve program services
- Cooperate with TDA to identify areas within a contracted service area where CEs other than food banks may be needed

4120 Receipt of USDA Foods

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

4121 Inspection of USDA Foods Shipments

CEs are responsible for unloading the USDA Foods and must inspect shipments to ensure the product and quantities are identified on the delivery or pick-up document (bill of lading or invoice) and that the product is in good condition. If the product is in questionable condition (for example, damaged or spoiled), the CE must notify the Program Specialist². If the quantity is incorrect, then the CE must take the following steps:

1. Notate exceptions on the delivery or pick-up document when signing
2. Obtain the signature of delivery/warehouse personnel on the delivery or pick-up document

4122 Electronic Receipting for USDA Foods

CEs must complete electronic receipting³ into TDA's Texas Unified Nutrition Programs System (TX-UNPS) within 24 hours of the receipt of USDA Foods shipments. Following that, TDA must receipt electronically into USDA's Web-based Supply Chain Management System (WBSCM) within 24 hours. The entire receipting process, including CE and TDA responsibilities, must be completed within 48 hours.

² Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

³ For definitions of *electronic receipting*, *WBSCM*, *direct shipments* and *multi-food shipments*, see *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

This requirement applies both to direct shipments and to multi-food shipments of USDA Foods. USDA requires shipment receipts to be entered within 48 hours in order to meet contractual requirements and to provide prompt payment to vendors.

4130 Storage

Any entity that stores USDA Foods for any period of time must safeguard the food, and entities must become familiar with and adhere to state and local health codes that apply to stored food products. USDA requires storage practices designed to ensure that both USDA Foods and the areas in which they are stored are maintained in good condition.

4131 Temperature

Entities that store USDA Foods must ensure that storage conditions will prevent premature deterioration and follow instructions for storage temperatures. Verify food temperatures on delivery and annotate on the receiving document when proper temperatures are exceeded.

NOTE: USDA Foods fact sheets (<http://www.whatscooking.fns.usda.gov/fdd/household-material-fact-sheets>) may provide shelf life information for a product at various temperatures (for example, flour or cornmeal at 40, 70 and 90 degrees Fahrenheit). Products will not spoil during the shelf life; however, storage at higher temperatures increases the likelihood of insect infestation and may shorten shelf life. Therefore, products must be stored at temperatures recommended by state and local health codes.

Cooler and freezer temperatures must be checked and recorded using *Temperature Record* (Form H1639) during regular business hours as well as during shut-down 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).

4132 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.

4133 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, and
- away from steam, heat, or moisture.

4134 Protection of Stored Food

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

- Check all products frequently for deterioration
- Inspect for torn sacks and broken cartons
- Keep all storage areas in a clean and orderly condition
- Store foods away from pesticides, cleaning supplies, and paper products
- Use security measures to prevent theft
- Inspect storage areas monthly and exterminate 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	
<i>TDA recommends . . .</i>	Grain products to be stored in cool storage.
<i>TDA requires . . .</i>	Grain products in cool storage remain there until distribution. <i>NOTE: Grain products moved from cool storage to dry storage are at risk of spoilage. CEs are liable for such spoilage.</i>

4140 Insurance

Food banks and sub-distributing agencies must obtain insurance to protect the value of USDA Foods inventories.

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 valuation methods in 7 CFR§250.12(d)). Reasonable insurance premiums are allowable costs.

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

- Distribution sites
- Food pantries
- Soup kitchens
- Community action agencies

4150 Inventory Requirements

CEs must maintain complete and accurate records of USDA Foods received and distributed. CEs must differentiate between USDA Foods and other purchased or donated foods. All recipient agencies that receive USDA Foods are responsible for good inventory management. 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** — An annual 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. Submit the *Annual Inventory Report* (Form H1526) as requested by TDA. Form H1526 must include physical inventory information about USDA Foods stored at CEs' storage sites, at commercial facilities, and at any other storage sites. CEs must include on Form H1526 the names and locations of off-premise storage sites.

4151 Date of Possession

CEs must record the date of possession of USDA Foods on the perpetual inventory.

For example: The date of possession of USDA Foods by a CE is the date the CE accepts delivery directly from USDA.

4160 USDA Foods Distribution

4161 Program Recipients

The method of distributing USDA Foods directly to participants is subject to the review and approval of TDA. Sites must distribute a food package each month, or a two-month supply every other month.

In all circumstances, sites must ensure that participants are not discriminated against on the following bases:

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

For additional information, refer to Section 6000, *Civil Rights*.

When funds are unavailable to provide CSFP benefits, or if all available caseload has been allocated, CEs must maintain a waitlist of eligible applicants. TDA recommends that eligible applicants be placed on the waitlist on a first-come, first-served basis. When caseload becomes available – even on a temporary basis — CEs must enroll eligible applicants from the waitlist according to the date the application was received.

Food packages are based on the food package guide rates established by the USDA.⁴ Although the quantity of each item in the package will vary, the basic food items will remain the same. All items must be canned or packaged. Participants may refuse any food item they cannot use or do not want. Refused food items must be returned to the CE and placed back into the CE's physical inventory.

CSFP participants and proxies must present some form of personal identification to pick up food packages. Examples include an ID card or a bill with identifying information.

Local agencies may not distribute food packages to participants retroactively. If a participant is unable to collect a food package, the site may neither keep the food package to be picked up at a later date nor provide an additional food package the next month. Rather, the uncollected food package must be returned to the CE and placed back into the CE's physical inventory. To the

⁴ For more information, email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

extent possible, the site should provide service to participants who are unable to pick up food packages. Home delivery is one option.

4162 Product dates

Product dates on foods are not federally regulated, so these dates are not an indicator of wholesomeness or food safety. 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 and product quality.

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 prior to 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 sub-agencies should use first-in-first-out (FIFO) inventory management by marking food cases or other containers with the date of receipt. However, CEs and sub-agencies 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.

For 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 because pack and manufacture dates do not necessarily provide useful information on product wholesomeness or nutritional value. As always, CEs and sub-agencies must practice proper storage and inventory management system to ensure that USDA Foods are distributed in optimal condition.

4163 Distribution during a disaster or situation of distress

CEs and sub-agencies must not initiate emergency feeding using CSFP USDA Foods. Rather, TDA will contact CEs if USDA implements its Disaster Household Distribution (DHD) Program. For more information, see the USDA Foods Program Disaster Manual at <https://www.fns.usda.gov/disaster/disaster-assistance>. Also see Section 12000, *Frequently Asked Questions*, in the CSFP Handbook.

4164 USDA Foods Preferences

Conditions affecting USDA purchases of USDA Foods include market conditions; the amounts, types and costs of foods available; and price support requirements. However, when purchasing USDA Foods, USDA considers the recommendations of CEs and sites.

A CE may contact the Program Specialist⁵ to report USDA Foods preferences or suggestions. The Program Specialist will then forward any preferences or suggestions to USDA.

4170 Caseload Management

TDA monitors and works with CEs to maximize caseload usage. Depending on a CE's caseload usage rates, TDA may adjust the CE's caseload. In this case, TDA will ensure that service to participants is **not** discontinued due to the CE's caseload adjustment. Additionally, TDA may review a CE's policies and procedures to ensure service to participants in each service area. A CE's distribution method is subject to review and approval by TDA. TDA maintains the right to adjust caseload and administrative funding.

4171 Ensure full use of caseload

There are various methods to ensure full caseload use. Several of these are the waitlist, temporary certification, and the use of proxies. For more information, see Item 4300, *Certifying Participants* in this handbook section.

Frequent, Positive Communication. A key component of full caseload utilization is frequent and positive communication, which enables CEs to meet the following responsibilities:

- Serve as many participants as possible
- Provide clear expectations to participants
- Address challenges with food package pickup or home delivery

At Initial Certification. Participants must be informed of distribution time, location, and date, including delivery to homebound participants. CEs may choose to provide

⁵ Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

calendars with this information. CEs must explain the process of distribution (such as waiting in line, taking a number, etc.).

Regularly Phone. CEs or sites can call participants to confirm the date, time, location, and the participant's intention to participate that month. When CEs know in advance that caseload is temporarily available, they have the opportunity to distribute it to wait-listed applicants.

Missed Distribution. It is a best practice for CEs to contact participants who miss a distribution. This contact allows the CE to arrange, if possible, an alternative pickup or delivery date or time. When contacted, participants can express their intention to continue participation.

NOTE: Sites must not keep unclaimed packages. Rather, unclaimed packages must be returned to the CE and placed back into inventory.

Early Distribution. To the extent possible, CEs should distribute food packages early in the month. This allows sites to make arrangements for unforeseen circumstances, such as staff shortages, road closures, lack of electricity, or poor weather conditions. If unforeseen circumstances prevent distribution and the distribution cannot be rescheduled during the same month, CEs must contact TDA.⁶

4180 Food Losses

The CE must report⁷ all losses regardless of the cause. TDA will make a determination to pursue a claim depending on the circumstances. CEs and sub-distributing agencies (as applicable) are responsible to ensure that sites take appropriate steps to reduce losses. Further, USDA may pursue a claim against CEs and sub-distributing 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 a number of reasons for the loss.

4181 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.

⁶ Email CommodityOperation@TexasAgriculture.gov or call 1-800-TEX-MEAL.

⁷ Report of loss is discussed below.

4182 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.

4183 Uncontrollable event

Events including but not limited to 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.

4184 Report of Loss of USDA Foods

To report a loss CEs must complete and submit to the Program Specialist⁸ *Report of Loss of USDA Foods* (Form H1638) and any other supporting documentation, including documents provided by sub-agencies.

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 the destruction of the food loss.

The form should be submitted within 30 days of a loss and should explain how and why the loss occurred. For a copy of the *Report of Loss of USDA Foods*, go to www.Squaremeals.org. Choose Programs then Commodity Supplemental Food Program; click on CSFP Administration and Forms, then input the proper form number into the appropriate search field.

⁸ Email CommodityOperations@TexasAgriculture.gov.

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

Type of Documentation	Details about Documentation
<i>Condemnation certificate</i>	From health official
<i>Destruction certificate</i>	Must include when, where, and how the USDA Foods were destroyed; and by whom
<i>Temperature logs</i>	If USDA Foods were stored in the freezer or cooler
<i>Police report</i>	If theft or vandalism was involved <i>Also, include precautions taken to prevent future theft or vandalism.</i>
<i>Fire department report</i>	If the loss was due to fire
<i>Extermination records</i>	If the loss was due to infestation
<i>Refrigeration repair information</i>	If the loss was due to refrigeration failure

4185 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 emails pertinent information to CEs. In some cases, the email also directs CEs to TX-UNPS, where CEs respond to a survey. Via the survey, CEs report the amount of affected product in their possession, as well as whether the product was delivered to sub-agencies.

If USDA Foods are *on hold*, the CE and sub-agencies, if applicable, segregates 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 at <http://www.fns.usda.gov/food-safety/hold-and-recall-procedures>.

4186 Public Notification of a Recall

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

4187 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 sub-distributing 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, CEs 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 distribution sites 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, 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

4188 Salvage license

CEs must maintain a valid salvage license. TDA will request to see the license at each monitor review.

4190 Prohibited Actions

4191 Payment for USDA Foods

CEs must not require, solicit, or accept payment from CSFP applicants or participants or sites 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.

CEs and sites must not use the distribution of USDA Foods as a means of furthering the political interest of any person or party.

4192 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.

4193 Activities Unrelated to USDA Foods

A person(s) conducting an activity that is unrelated to USDA Foods distribution at any site must take the following precautions:

- Clarify that the activity is not a part of CSFP, is not endorsed by USDA or TDA, and is not a condition for receiving USDA Foods
- Ensure that the activity does not disrupt USDA Foods distribution

TDA investigates claims of violations of unrelated activity requirements.

NOTE: Claims of unrelated activity violations may include the distribution of written material on or with food packages to participants from sources other than federal, state, or local governments.

4200 Enrolling Participants

4210 Application Process

The application process must be completed in a space that provides confidentiality. To accomplish this, the waiting area must be separated from the application area.

4220 Other Public Assistance Programs

CEs must inform applicants in writing of other public assistance programs for which applicants might be eligible. (7 CFR §247.12(a)(3)) CEs must also make referrals as appropriate to the following programs:

- Supplemental Security Income (SSI)
- Medical assistance provided under Title XIX of the Social Security Act, including medical assistance provided to a qualified Medicare beneficiary
- Supplemental Nutrition Assistance Program (SNAP)

TDA recommends that CEs also inform elderly applicants of the Senior Farmers' Market Nutrition Program (in limited areas) and the Child and Adult Care Food Program, which is offered in some adult day care centers if the CE is aware of the availability of these programs within its service area.

4230 Written Application Procedures

CEs must maintain written procedures for the application process. The procedures must be available for monitor and compliance reviews at all levels of distribution — the CE level and the site level. The CE is responsible to train sites on the application procedures. Within the application procedures the *Written Notice of Beneficiary Request* must be provided.

4240 Participant Application

Low-income persons sixty years old and older may apply to participate in the CSFP. A proxy may apply for the applicant. For detailed information on the proxy, see Item 4340, *The Proxy* in this handbook section.

For each individual who wishes to participate in the CSFP, Form H1504, *Participant Application*, must be completed. For a copy of Form H1504, access the TDA website at <http://www.squaremeals.org/>, go to "Programs," click on "Commodity Supplemental Food Program," choose "CSFP Administration and Forms," then input the form title or form number in the appropriate search field. This form is provided in English and Spanish.

Regardless of the availability of CSFP caseload and the potential ineligibility of an applicant, a

CE must complete Form H1504 for each individual who wishes to participate in the CSFP.

4241 Electronic information

A CE and sub-agency may record participant and applicant information, including signatures, electronically. CEs and sub-agencies must protect electronic information to ensure confidentiality.

4242 Confidentiality

CEs must protect the confidentiality of any information that has been provided on an application, whether the application is paper or electronic. For instance, CEs must ensure that information is physically secure against theft or misuse.

The CE may use the information to determine eligibility for CSFP benefits and to verify income.

A CE may release information only for the following two purposes:

1. To aid the administration and enforcement of the CSFP
2. To assist with the investigation and prosecution of CSFP violations

4243 Participant Rights and Responsibilities

CEs or sites must provide *Participant Rights and Responsibilities* (Form H1516) at application, at denial of certification, and at termination. The form gives brief instructions about how to request a fair hearing, as well as information about other rights and responsibilities of participants.

4250 Application Information

To establish eligibility, applicants must provide their name, age, address, and household income on Form H1504, *Participant Application*. (7 CFR §247.8). This form must be filled out completely to certify and document the eligibility of CSFP applicants for CSFP benefits.

There are no citizenship requirements for participation in the CSFP. CEs and sites cannot require applicants or participants to prove citizenship.

Applicants must reside within a designated CSFP service area on the day of certification to be eligible to participate in the CSFP. Examples of service areas include, but are not limited to, county or counties; zip codes, or neighborhoods.

4251 Full name, address, and date of birth

The CE must ensure that the full name, address, and date of birth of the applicant are entered on the *Participant Application* (Form H1504). At the time of application, some form of identification for each applicant must be provided. Identification may include, but not limited to, any of the following:

- Birth certificate
- Baptismal certificate
- Health card
- Identification card
- Driver license
- Military ID
- Veteran ID
- Passport
- Refugee visa

Applicants must reside within a designated CSFP service area on the day of certification to be eligible to participate in the CSFP; therefore, the address must be provided on the application. Proof of residency is not required.

4252 Total gross income (before deductions) for all household members

Applicants must provide their total gross income from all sources of income. Refer to Item 4262, *Determining Household Income*, for a list of income sources that are excluded. For example, SNAP benefits do not count as income for purposes of determining income eligibility in CSFP. Applicants with zero income are income-eligible. On the *Participant Application*, indicate zero income.

Applicants are required to provide income information; however, applicants are not required to provide proof of income.

Applicants must indicate the number of household members.

4260 Income Eligibility

On the day of certification, applicants must meet income eligibility guidelines:

- Household income must meet income eligibility guidelines on *Income Eligibility Guidelines for the Elderly* (Form H1666).
- Eligibility for SNAP benefits does not make applicants automatically eligible for CSFP benefits. Applicants must meet the income eligibility guidelines for CSFP.
- Applicants who meet all other CSFP eligibility requirements cannot be denied CSFP benefits simply because they participate in SNAP.
- Applicants who meet the income eligibility requirements for CSFP also meet the income requirements for the Senior Farmers' Market Nutrition Program.⁹

TDA posts the updated federal income guidelines online each year. The CE may obtain a copy of the guidelines by accessing the TDA website at www.squaremeals.org. Choose Programs, then Commodity Supplemental Food Program; click on CSFP Income Eligibility Guidelines.”

4261 Determining Household Size

When determining the household size, CEs must include all related and unrelated individuals, exclusive of boarders¹⁰, who are not residents of an institution, but who live as one economic unit and for whom food is customarily purchased and prepared in common.

4262 Determining Household Income

When determining household income, CEs must calculate the total gross income of all household members before deductions. Total net household income is not valid when determining income eligibility.

Applicants are not required to provide proof of income, however, all sources of the applicant's household income, not excluded below, must be used to calculate the total gross income of all household members.

⁹ Organizations interested in applying for the Senior Farmers' Market Nutrition Program should go to www.squaremeals.org and choose Programs, then Senior Farmers Market Nutrition Program.

¹⁰ See *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms* for a definition of this term.

The following items are excluded from consideration as income for households when determining program eligibility:

- Supplemental Nutrition Assistance Program (SNAP) benefits
- Family Subsistence Supplemental Allowance
- National Flood Insurance Program payments
- Medicare Prescription Drug Card subsidy
- Filipino Veterans Equity Compensation Fund payments authorized by the American Recovery and Reinvestment Act of 2009 for certain veterans, or for surviving spouses of veterans, who served in the military of the Government of the Commonwealth of the Philippines during World War II.
- Lump sums or periodic payments from the *Cobell* settlement

The value of CSFP benefits may not be considered as income or resources when determining eligibility for other public assistance programs. Contact the Program Specialist¹¹ if you have a question about an item that might be excluded from consideration as income.

4270 Determination of Eligibility

After reviewing all data elements on the application, CEs must determine the applicant's eligibility by selecting one of these options:

1. Eligible
2. Eligible and on Waitlist
3. Ineligible

4341 Eligible

Only those applicants who meet all eligibility criteria are eligible for CSFP benefits.

4342 Eligible and on Waitlist

Only applicants who meet all eligibility criteria can be certified for CSFP benefits. However, when a CE does not have available caseload, each CE must maintain a waitlist of applicants. The best practice is to determine eligibility and certification before placing an applicant on the waitlist to enable the CE to move quickly when a caseload slot opens. For more information, see Item 4280, *The Waitlist*.

¹¹ Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

4343 Not Eligible

Applicants must be low-income and elderly. Otherwise, the applicant is ineligible. See Item 4200, *Enrolling Participants* in this handbook section for details regarding eligibility.

NOTE: CEs or sites may use the *Application Notification* (Form H1515) when an application has been denied or terminated. This form provides an applicant with an explanation for denial or termination and an applicant's right to a fair hearing. To find Form H1515, go to www.squaremeals.org, choose Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then enter the form number into the correct field.

As of February 7, 2014, women under age 60, infants, and children applicants are no longer eligible to apply for the CSFP. CEs should refer them to other nutrition assistance programs for which they might be eligible.

4280 The Waitlist

The waitlist contains eligible, certified applicants¹² who are waiting for a caseload slot¹³. When caseload becomes available, the CE must certify a wait-listed applicant in the order they applied. The waitlist must include at least

1. the applicant's name,
2. address or telephone number, and
3. the date the applicant is placed on the waitlist.

¹² The best practice is to determine eligibility and certification before placing an applicant on the waitlist to enable the CE to move quickly when a caseload slot opens.

¹³ A caseload slot is the actual available benefits for a participant.

The table below contains further details about the waitlist.

Waitlist Details	
<i>When the applicant remains on the waitlist fewer than six months, the Eligibility Specialist must . . .</i>	Confirm the following information: • Has your address changed? • Do you still want to receive CSFP benefits? • Does the CE or site believe that the participant still has an income that meets eligibility requirements?
<i>When an applicant remains on the waitlist longer than six months, the Eligibility Specialist must . . .</i>	. . . Perform a full certification before providing the applicant benefits.
<i>When a participant transfers to a CE's service area that doesn't have a caseload slot, the participant. . .</i>	. . . Must be placed on the waitlist ahead of all waiting applicants ¹⁴

4300 Certifying Participants

CEs may certify eligible participants for a period not to exceed three (3) years and on an annual basis, the CE must verify continued eligibility as outlined below.¹⁵

4310 Certification

CEs may certify eligible participants for a period not to exceed three (3) years. The certification period extends to the final day of the month in which eligibility expires. The month of certification counts as the first month. For example, an applicant is determined to be eligible and was certified on May 13, 2019. The three-year certification period would expire on May 31, 2022.

When an applicant on the waitlist begins to receive benefits, the certification period begins the month that benefits begin. For example, an applicant is determined to be eligible on June 8, 2019, and was placed on the waitlist. Caseload opened on July 2, 2019, and benefits were

¹⁴ See Item 4360, *Transfer of Certification*

¹⁵ For the purpose of this Handbook, CE is used when discussing the certification of participants; however, site personnel, such as an eligibility specialist, may certify eligible participants on behalf of the CE.

received the same day. The certification period for this participant would expire on July 31, 2022.

Upon expiration of the certification period, the CE must conduct a formal review of the participant's eligibility based on the applicable portion of *Participant Application* (Form H1504).

4320 Annual Validation

As noted above, the certification period, may not exceed three (3) years and on an annual basis, the CE must verify that the following conditions are met:

- 1) The participant's address remains the same.
- 2) The participant still wants to receive CSFP benefits.
- 3) The CE has sufficient reason to believe that the participant still meets income eligibility standards.

If any of these three conditions are not met, the CE must conduct a formal review and, if determined to meet eligibility requirements, certify the participant for another period not to exceed three (3) years. The CE may use any method of its choice to conduct the annual validations. For example, the CE may conduct the annual validation over the phone or in person.

The CE or site must maintain documentation that the annual validation was conducted. During compliance reviews, TDA will review and verify the documentation. Page 3 of the *Participant Application* (Form H1504) may be used to document the annual validation.

4330 Temporary Certification

CEs may issue temporary monthly certifications to fully utilize caseload if a certified participant is unable to receive CSFP benefits. The CE may provide a temporary certification period, not less than one month in length, to wait-listed applicants to receive temporary benefits.

When temporary certification begins, the CE must clarify several points:

- The benefits are temporary.
- Once temporary certification ends, the recipient might
 - receive a temporary certification extension,
 - be certified for a period not to exceed three (3) years, or
 - be placed back on the waitlist.

The *Temporary Certification* (Form H1509) provides the necessary information to the temporarily certified participants. If CEs choose not to use this form, they must nevertheless provide the participant with the information in the bullet points above.

For example: A participant missed the regular distribution in November. Although Star Food Bank made reasonable efforts, the food bank was unable to reach the participant. To fully utilize caseload, the food bank certifies the first wait-listed applicant for one month and gives the participant the Temporary Certification form.

NOTE: While temporary certification is generally granted for on a month-to-month basis to participants on the waiting list, there may be circumstances where temporary certification may be granted for more than one month at a time.

For example, TDA may request a CE to increase caseload temporarily to help compensate low performance at another CE. The length of time needed for the temporary caseload increase was determined to be four months. Therefore, CE's could grant a four-month temporary certification period to participants from the waitlist rather than month-by-month.

CEs must consult with TDA prior to granting a temporary certification period for greater than six months.

To obtain the *Temporary Certification* (Form H1509), visit the TDA website at www.squaremeals.org. Go to "Programs," "Commodity Supplemental Food Program," "CSFP Administration and Forms," then enter the form name into the correct field.

4340 The Proxy

A proxy is a person designated by a participant to act for the participant as necessary throughout every process of CSFP. For example, proxies can provide a signature on forms. Proxies may also act for the participant at application, certification, food package distribution, and recertification. A proxy must provide proof of identification prior to picking up a food package.

4341 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.

4342 Requirements

CEs must collect at least the following information:

1. Participant's name
2. Name of distribution site
3. Authorization including proxy name
4. Participant's signature

5. 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.

4343 Proxy Change

The participant must change a proxy in two ways:

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

The *Proxy Form* collects federally required information for the proxy, including, but not limited to, the proxy change. The use of the form is not required. The form is available at www.Squaremeals.org, Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then input the form's name into the appropriate search field.

4350 Dual Participation

Dual participation means participation by an individual in CSFP at more than one distribution site. CEs and sites must protect against dual participation. Participants found dually participating may be discontinued from the CSFP. For more information on discontinuance, see Item 4380, *Discontinuance* in this handbook section.

4360 Transfer of Certification

Occasionally, a CSFP participant must transfer from one CE or site to another, either within or outside of the jurisdiction of TDA. The participant's certification remains valid until the certification period expires — so sites must serve transferring participants through the end of their current certification. TDA knows this might cause CEs to exceed caseload across several months. This fluctuation is acceptable.

To verify a current certification, the CE completes the *Participant Transfer Form*. The CE may give the form to the participant or may mail or email the form. However, the use of the *Participant Transfer Form* is not mandatory. As an alternative, CEs may use other verification methods, which must include the following information:

- Participant's name, address, and signature
- The date
- The date the certification began
- The date the certification expires

- Signature and printed or typed name of the eligibility specialist in the originating jurisdiction
- Name, address, and phone number of the current CE
- CE or site's representative signature

When the transferring participant's certification expires, the transferring participant shall be placed at the top of the list, ahead of all other applicants. Refer to Item 4242, *Eligible and on Waitlist* in this handbook section for additional instructions. CEs must keep records of transfers.

4370 Certification Expiration

CEs must notify participants in writing at least 15 days before the certification expires. CE's may use the *Certification Expiration Notice* to notify CSFP participants that certification expiration is approaching. This form is not required; however, CE's must provide written notice and inform participants that program standards are applied without discrimination by race, color, national origin, sex, or disability. (7 CFR § 247.16(d))

To obtain the *Certification Expiration Notice*, visit the Texas Department of Agriculture (TDA) website at www.squaremeals.org. Go to Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then enter the form name into the correct field.

4380 Discontinuance

Discontinuance is the cessation of administering CSFP, which can occur for reasons including, but not limited to, the following:

- A participant becomes ineligible during the certification period
- A participant misses two (2) consecutive distributions
- Insufficient number of caseload slots

The CE must provide the participant with a written notification at least 15 days before the discontinuance becomes effective. The CE has two options for notification, each discussed below.

If the CE chooses to provide *each* discontinued participant a written notification, the following information must be included on it:

1. The effective date of discontinuance
2. A statement of the individual's right to appeal the discontinuance
3. A statement informing the participant that the CSFP is administered without discrimination by race, color, national origin, age, sex, or disability.

When a participant misses distributions, however, it can be difficult to notify *each* of them in writing of discontinuance. In this case, CEs have the option to post a CSFP Missed Distribution Notice. If the CE chooses the notice, it must be posted with the “And Justice for All” poster at each site. The Missed Distribution Notice satisfies the requirement to notify participants of discontinuance due to repeated missed distributions.

A participant that appeals the discontinuance within the 15 days of notification will continue to receive CSFP benefits until the hearing official reaches a decision. However, the applicant that is denied benefits at initial certification, or at subsequent certifications, may appeal the denial of benefits but will not receive benefits while awaiting the hearing.

4400 Program Violations

Program violations are actions taken by applicants, participants, or their caregivers to improperly obtain or use CSFP benefits. Program violations may result in a participant’s termination from the CSFP. Program violations include, but are not limited to, the following actions:

1. Intentionally making false statements orally or in writing
2. Intentionally concealing information that pertains to eligibility
3. Selling CSFP foods
4. Trading CSFP foods for non-food items
5. Physically abusing, or threatening physical abuse of, program staff
6. Participating simultaneously at multiple sites

CEs must report negligence, fraud, embezzlement, or other abuses of the CSFP. If a CE is aware of such activity but fails to notify TDA, the CE assumes financial liability for the activity. Based on a CE’s notification, TDA may determine whether to refer the incident either to the USDA Food and Nutrition Service or to the USDA Office of Inspector General for investigation.

4410 Violations Not Involving Fraud

TDA may require CEs to disqualify participants for up to one year if applicants, participants, or their caregivers commit one of the following program violations:

1. Physically abusing, or threatening physical abuse of, program staff
2. Participating simultaneously at multiple sites.

NOTE: If the eligibility specialist concludes that a serious health risk will result from disqualification from the CSFP and the participant is currently eligible, then the disqualification shall be waived.

4420 Violations Involving Fraud

Fraud includes the following actions:

- Intentionally making false or misleading statements, orally or in writing, to obtain USDA Foods
- Intentionally withholding information to obtain USDA Foods
- Selling USDA Foods
- Trading USDA Foods for non-food items

TDA requires CEs to disqualify applicants and participants from participating in the CSFP for up to one year if applicants, participants, or their caregivers commit program violations that include fraud.

NOTE: If the eligibility specialist concludes that a serious health risk will result from disqualification from the CSFP and the participant is currently eligible, then the disqualification shall be waived.

TDA may require CEs to pursue claims against participants for fraudulent activity. See Item 4430, *Claims against Participants for Fraud* in this handbook section for more information.¹⁶

4521 Three Fraudulent Violations

TDA requires CEs to permanently disqualify participants and applicants that commit three fraudulent program violations.

4430 Claims against Participants for Fraud

TDA must ensure that CEs pursue claims against participants when the value of USDA Foods fraudulently received is more than \$500. To begin the claims process, the CE must contact TDA with the participant's name and any supporting documentation¹⁷.

The CE must then provide the participant with the following information in writing:

1. The participant's opportunity to appeal the claim through the fair hearing process and
2. The participant's disqualification from the CSFP for up to one year.

¹⁶ For more information about fraud, see the *CSFP Handbook*, Section 8000, *Denials, Terminations, and Appeals*.

¹⁷ Supporting documentation includes, but is not limited to, notes or emails the CE makes when someone informs about a CSFP participant fraudulently receiving USDA Foods.

NOTE: If the eligibility specialist concludes that a serious health risk will result from disqualification from the CSFP and the participant is currently eligible, then the disqualification shall be waived.

4440 Pursuing Claims for Fraud

When pursuing a claim against a participant, the CE must take the following steps:

- 1) Issue a letter demanding repayment for the value of the USDA Food improperly received or used
- 2) If repayment is not timely made, contact the Program Specialist ¹⁸ for additional collection actions that are cost-effective according to the TDA-established standards
- 3) Maintain all records regarding claim actions taken

4450 Notification of Disqualification from the CSFP

Disqualification means the act of ending CSFP participation of a participant as a punitive sanction. Reasons for disqualification include, but are not limited to, fraud, which is:

- Intentionally making false or misleading statements to obtain CSFP commodities;
- Intentionally withholding information to obtain CSFP commodities;
- Selling CSFP commodities or exchanging them for non-food items.

Each CE must provide a disqualified participant with written notification at least 15 days before the effective date of disqualification. The notification must include all of the following information:

1. The effective date and length of disqualification.
2. The reason for the disqualification.
3. A statement that the participant may appeal the disqualification through the fair hearing process. (See Item 4600, *Appeal for Fair Hearing* in this handbook section for information regarding a fair hearing.)

¹⁸ Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

4500 Participant Rights and Responsibilities

The following sentences shall be read by, or read to, the applicant or the applicant's caretaker at the time of certification:

Standards for participation in the program are the same for everyone regardless of race, color, national origin, age, sex, or disability. You may appeal any decision made by the site regarding your denial or termination from the program. If your application is approved, the site will make nutrition education available to you, and you are encouraged to participate.

NOTE: When a significant proportion of the population that the CE serves is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand.

Additionally, CEs must perform the following notification responsibilities:

1. Each applicant shall be informed during certification of the right to a fair hearing and of the illegality of participation in the CSFP with more than one CE or site
2. A person found ineligible for the CSFP during a certification visit shall be advised in writing of the ineligibility and of the right to a fair hearing according to Item 4600, *Appeal for Fair Hearing* in this handbook section. CEs must properly document the reasons for ineligibility and maintain the documentation with its program records.
3. A person found ineligible for the CSFP at any time during the certification period shall be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing.
4. Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the CSFP is about to expire.
5. Each participant shall receive an explanation of how the food delivery system at the site operates.
6. Each participant shall be advised of the importance of participating in ongoing routine health care, the types of health services available, where they are located and how they may be obtained.

Participants must consent to the release of information to the following:

- CSFP staff;
- Another CFSP agency, if transferring site and to prevent dual participation;
- USDA;
- TDA;
- The site;
- The CE

Participants are informed of this potential information release when they receive the *Participant Rights and Responsibilities* (Form H1516).

4600 Appeal for Fair Hearing

TDA maintains a hearing procedure through which any individual may appeal¹⁹ an action that results in the denial or termination of benefits.

4610 Appeal Rights

At the time of initial certification as well as at denial or termination of benefits, CEs must notify an applicant in writing of the right to appeal and receive a fair hearing.

This notification must include the following information:

- The assurance of the right to a fair hearing
- The method by which a hearing may be requested
- An assurance that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel, or another spokesperson

Notification is not required at the expiration of a certification period.

4620 Request for a Fair Hearing

A request for a hearing is any clear expression by the individual or the individual's caretaker, or another representative, that an opportunity to present his or her case to a higher authority is desired. CEs must not limit or interfere with the individual's freedom to request a hearing.

4621 Time Restriction for Request

An individual has the right to request a fair hearing at any time within 60 days of receiving notice of adverse action to deny or terminate benefits.

¹⁹ For definitions of terms, including, but not limited to, appeal, hearing, denial, termination of benefits, see *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

4622 Denial or Dismissal of Request

A request for a hearing shall not be denied or dismissed unless the:

- request is not received within the time identified in Item 4621, *Time Restriction for Request* in this handbook section;
- request is withdrawn in writing by the individual or representative; or
- individual or representative fails, without good cause, to appear at the scheduled hearing.

4630 Continuation of Benefits

Participants must receive written notice within 15 days of the date that benefits will be discontinued. Participants who appeal (that is, request a fair hearing) the termination of benefits within the 15-day advance adverse notice period shall continue to receive CSFP benefits until the hearing official reaches a decision.

Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

4640 Hearing Details

4641 Hearing Official

An administrative review official (ARO)²⁰ will be appointed by TDA. The official will be an individual who was not involved in the decision that the applicant, participant, or CE is appealing (referred to as “appellant”).

4642 Conducting the Hearing

The hearing shall be accessible to the appellant and their representative, if applicable. TDA will provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose the rules of procedure. TDA will also provide the appellant or their representative, if applicable, an opportunity to take the following steps:

- Examine, before and during the hearing, the documents, and records presented to support the decision under appeal
- Be assisted or represented by an attorney or other persons
- Bring witnesses
- Advance arguments without undue interference

²⁰ For a definition of this term, see the *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

- Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses
- Submit evidence to establish all pertinent facts and circumstances in the case

4643 Hearing Decisions

The ARO makes a decision based on a complete review of the administrative record and sends a copy of the decision to the appellant by certified mail, return receipt requested. The decision shall be binding on the appellant and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations.

4700 Program Administration

4710 Sites

4711 Site Requirements

When selecting CSFP sites, CEs must evaluate the administrative cost and ability of the site to operate CSFP in light of the *Agreement Between Contracting Entity and Site* (Form H1501).

Each site must have a site coordinator that is separate and apart from the CE's administrative staff. At distribution sites, the CE must plan for and instruct the site coordinator on the proper handling of a USDA Foods package when a participant is unavailable. CEs must ensure that the USDA Food package is either

- returned to one of its storage sites, **or**
- properly stored at the site.

NOTE: Before storing a USDA Food package for a period of one day or longer, CEs must complete and sign Agreement Between Contracting Entity and Site (Form H1501) with the agency that will store the package.

4712 Site List

Use *Site Information* (Form H1503) to maintain a complete list of all sites. During the program year, CEs must revisit each site to monitor program operations and verify compliance with program requirements according to *Agreement Between Contracting Entity and Site* (Form H1501). Refer to Item 4740, *Monitor Reviews by Contracting Entities* in this handbook for specific instructions related to these visits.

During the application process, CEs are required to visit each site as provided in the *CSFP Handbook*, Section 2000, *Eligibility and Application Requirements*, Item 2200, *Application Process*.

4813 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* (Form H1501)
- Execute *Agreement Between Contracting Entity and Site* (Form H1501) with each site that will certify the eligibility of applicants or that will transport, distribute, or store USDA Foods
- Complete *Site Information* (Form H1503) for each certification, distribution, or storage site
- Submit Form H1503 and Form H1501 to the Program Specialist ²¹ to obtain TDA approval

4714 Eliminating Sites

If a CE wishes to eliminate a site, it must notify the Program Specialist, who will provide guidance.

4720 Sites Located at Religious Organizations

Federal civil rights laws address explicitly religious activities at some sites:

1. Organizations must not engage in explicitly religious activities as part of CSFP, including overt religious content such as worship, religious instruction, or proselytization.
2. An explicitly religious activity at a site must be separated in time or location from CSFP services.
3. Organizations must not require participants or applicants to participate in explicitly religious activities to receive CSFP.

²¹ Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

4721 CSFP and Explicitly Religious Activities

The following table provides examples to guide explicitly religious activities at CSFP sites. TDA encourages CEs to contact the Program Specialist²² with questions about specific circumstances.

<i>It is acceptable to...</i>	<i>It is unacceptable to...</i>
Hang a cross on a wall at the CSFP site.	Require participants to stand by a cross and recite a prayer prior to CSFP 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.
Display faith-based pamphlets at the front or back of the site for interested people.	Insert faith-based pamphlets into CSFP bags or boxes that will be distributed to participants.
Have a religious official, such as a pastor, assist with CSFP distribution.	Require or encourage participants to have a religious conversation prior to or during CSFP distribution.
Hold a prayer service on the second level of a church building while CSFP distribution occurs on the lower level.	Hold a prayer service in the same room and at the same time as CSFP distribution.
Invite participants or applicants to participate in a voluntary — and clearly separate — prayer before CSFP distribution.	Lead participants in a prayer at the beginning of CSFP distribution.

4722 Written Notice of Beneficiary Rights

Certification or distribution sites located at faith-based or religious organizations must protect applicants' and participant's rights regarding participation in religious activities. The CSFP *Written Notice of Beneficiary Rights* form must be made available to all applicants.

For example: Some CEs laminate the Written Notice of Beneficiary Rights and make it available to the applicant.

²² Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

Upon the request of the applicant or participant, CEs must give them a copy of the *Written Notice of Beneficiary Rights*, which details the following information:

- The site must not discriminate against applicants on the basis of religion or religious belief; a refusal to hold a religious belief; or a refusal to attend or participate in a religious practice.
- The site must not require applicants to attend or participate in any explicitly religious activities. Applicants' and participants' participation in these activities must be purely voluntary.
- The site must separate, in time or in location, any privately funded, explicitly religious activities from activities supported with USDA direct assistance.
- If the applicant or participant objects to the religious character of the site, then the site must make reasonable efforts to refer them to an alternative provider to which he or she has no objection, with the understanding that the site cannot guarantee that an alternate provider will be available in every instance.
- Applicants and participants may report violations of these protections (including denials of services or benefits) by either a site or a CE to TDA at www.Squaremeals.org.

The CE or site may include the bulleted information in its application form as long as the form's content reads verbatim to the *Written Notice of Beneficiary Rights*.

The CE (and site, if applicable) must maintain written application procedures that include the provision of the *Written Notice of Beneficiary Rights* to applicants. The procedures must be available for monitor and compliance reviews at the CE and the site. The CE is responsible to train sites.

4723 Beneficiary Referral Request

When an applicant or participant objects to the religious character of sites, the site or CE must make reasonable efforts to refer them to an alternative site. "Reasonable efforts" depend on the situation. At a minimum, the site or CE must 1) attempt to identify an alternative provider and 2) determine the service that the provider offers. A referral may be made to non-USDA funded providers if necessary and if the provider has the capacity to accept the beneficiary.

The *TEFAP and CSFP Beneficiary Referral Request* form documents the referral efforts. Copies of the form must be easily available at each site. The form is available at www.Squaremeals.org. Choose Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then input the form name into the appropriate search field.

The CE or site must maintain records, including referral records, for three years from the close of the fiscal year to which they pertain. Upon request, referral records must be made available to TDA and CEs.

4730 Training

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

4731 Staff Training

After an organization's application has been approved, it must conduct training for administrative and site personnel, including volunteers, before they assume any CSFP duty. CEs must provide annual training thereafter. Training topics must include but are not limited to, civil rights, eligibility determinations (for staff who determine applicant eligibility), recordkeeping requirements, and distribution of 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.

4740 Monitor Reviews by Contracting Entities

CEs conduct monitor reviews²³ of their administrative and site personnel as well as their sites to confirm the following:

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

NOTE: Monitor reviews can reveal site supervisors with a poor performance record, such as the inability to implement or complete corrective action. Depending on the nature of previous performance problems, TDA may not approve such sites for participation in future program years.

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.

²³ For a full definition of this term, see *CSFP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

Independently or in coordination with TDA, as appropriate, CEs will review sites to ensure that they are complying with *Agreement Between Contracting Entity and Site* (Form H1501).

4741 Storage Facility Review

CEs must annually review facilities where USDA Foods are stored. A report of findings to TDA is not required; however, documentation of findings must be available to TDA or USDA upon request. CEs must document the results of each storage facility review and retain the documentation for three years following the end of the program year in which the review was done. Additionally, CEs must require sites that store USDA Foods to review their storage facilities annually.

CEs should schedule the storage facility review to coincide with the annual inventory of USDA Foods reported to TDA on the *Annual Inventory Report* (Form H1526). Follow procedures to report a loss of USDA Foods discovered as a result of either the annual inventory or the storage facility review (use both *Annual Inventory Report* (Form H1526) as well as *Report of Loss of USDA Foods* (Form H1638)). CEs must correct deficiencies discovered during a storage facility review. A CE storage facility review must ensure that the facility is, at a minimum:

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

4750 Nutrition Education

- CEs must provide nutrition education²⁴ that can be easily understood by participants, that is related to their nutritional needs and household situations, and that accounts for specific ethnic and cultural characteristics whenever possible. The CE must make nutrition education available to all participants.

The Goal of Nutrition Education. The goal of nutrition education is to provide both immediate and long-term improvement in the health status of participants. Nutrition education should be thoroughly integrated into program operations. Nutrition education has a dual purpose: 1)

²⁴ For more about CSFP's Nutrition Education Plan, go to www.squaremeals.org, choose Programs, click on Commodity Supplemental Food Program, then click on Nutrition Education Plan.

ensuring that CSFP foods are properly used and 2) emphasizing the relationship of proper nutrition to the total concept of good health.

Nutrition Education's Five Topics. The CE must provide nutrition education that includes the following information:

1. The nutritional value of CSFP foods and their relationship to the overall dietary needs of the population groups served
2. Nutritious ways to use CSFP foods
3. Special nutritional needs of participants and how these needs may be met
4. The importance of health care and the role nutrition plays in maintaining good health
5. The importance of the use of the foods by the participant to whom they are distributed, and not by another person

Implementing Nutrition Education. The CE's nutrition education materials must meet the following expectations:

- Cover the five topics listed above
- Be accurate, current, and relevant in content
- Be based on sound, established, and scientific evidence
- Account for specific ethnic and cultural characteristics whenever possible
- Be tailored to meet any limitations experienced by participants, such as lack of running water, lack of electricity, and limited cooking or refrigeration

What Does Nutrition Education Look Like? Examples of nutrition education include

- cooking demonstrations;
- nutrition handouts or newsletters;
- written information about health issues;
- introduction to online resources such as USDA's website and MyPlate;
- recipes incorporating CSFP foods; and
- nutrition classes.

Evaluation of Nutrition Education. Annually, each CE must evaluate the effectiveness of its nutrition education program using TDA's evaluation tool.²⁵ Homebound elderly should also be included in the evaluation process. Information provided by the completed evaluations shall be considered in formulating future plans, goals, and objectives for the CE's nutrition education plan. Copies of evaluation results must be kept on file by the CE and must be made available to TDA staff during compliance reviews.

²⁵ CEs receive the evaluation tool via email from the Program Specialist.

4760 Filing and Submitting Monthly Claims

A CE's claim is an actual participation report submitted for the purpose of receiving financial assistance with administrative costs associated with its CSFP operation. TDA reimburses claims depending on the availability of funds. Monthly reimbursement claims should be received by TDA in TX-UNPS within 60 days after the claim month has ended, and costs reported by the CE must appear in the approved budget. The claims should include allowable costs of distributing USDA Foods as well as commodities donated from other sources. Only a person authorized on *Certificate of Authority for External Users* (Form FND-101), may enter the claim in TX-UNPS.

4761 Adjusted Claims

TDA will suspend claim payments if a CE repeatedly submits adjusted claims. The suspension remains in effect until the CE demonstrates that it has procedures in place to produce a final claim on time each month.

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 are not sufficient to reconcile the adjusted claim, TDA will process payment to the CE for any underpayment and will require the CE to submit any remaining overpayment.

If TDA receives an adjusted claim for a month that is not in the current program year, and funds are available, then TDA will process payment to the CE for any underpayment and will require the CE to submit the amount of any overpayment.

4770 Negligence and Fraud

Negligence is misuse or improper distribution of USDA Foods; or failure to properly store, handle, or care for the food.

Fraud includes intentionally making false or misleading statements; intentionally withholding information to obtain USDA Foods; or selling or exchanging USDA Foods obtained through CSFP for non-food items.²⁶

A CE must immediately report suspected fraud or misuse of USDA Foods to TDA. Include information related to the amount of USDA Foods involved; location of the incident; suspected parties; and other details and facts. If a CE does not immediately report it, the CE is liable for the fraud.

²⁶ For a further discussion of fraud, see Item 4430, *Claims against Participants for Fraud* in this handbook section.

4771 CEs, Sites, and CSFP Funds

If a CE or its sites misuse CSFP funds through negligence, fraud, theft, embezzlement, or other causes, TDA must initiate and pursue a claim against the entity to repay the amount of the misused funds.

4772 CEs, Sites, and USDA Foods

TDA must initiate and pursue claims against any entity that misuses USDA Foods in the CSFP. Misused USDA Foods include foods improperly distributed, lost, spoiled, stolen, or damaged as a result of improper storage, care, or handling.

4773 Participants and USDA Foods

See Item 4430, *Claims against Participants for Fraud* in this handbook section.

4800 Program Documentation

TDA is able to observe only the CE's daily operation of the CSFP when conducting onsite compliance reviews and monitor reviews. Therefore, TDA must rely on the records that the CE maintains to determine compliance with program requirements and verify the reimbursement to which the CE is entitled. If a CE's records do not support eligibility or claims for reimbursement, the CE must repay any amount that was received improperly.

4810 Retention Period

CEs must retain all documents relating to participation in the CSFP, such as claims and supporting documents that are specific to a particular program year, for at least three years from the end of that program year. These documents include but are not limited to, financial and supporting documents and statistical records.

For example: All documents specific to the program year 2016 (October 1, 2015, through September 30, 2016) must be retained until September 30, 2019.

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

4820 Availability of Records

CEs, and each site must allow TDA, USDA, the 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 site, and CSFP records must be maintained separately from records of other programs. If the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) is terminated or is not renewed, the CE must still retain all records according to the retention period and make them available upon request.

4830 Statistics by County

CEs must provide annual statistics by county for the areas they serve. This information is based on data from the previous state fiscal year, September 1st through August 31st, and is due by November 30 of each year. This information should be submitted on an Excel spreadsheet, with the fields listed in the order below:

1. Name of CE
2. Name of county
3. Number of sites in the county
4. The quantity of USDA Foods received by the CE for the state fiscal year (total pounds);
5. The total value of USDA Foods received by the CE for the state fiscal year
6. Quantity of USDA Foods distributed by the CE for the state fiscal year (total pounds)
7. Quantity of USDA Foods distributed by county for the state fiscal year
8. Percentage of total USDA Foods distributed by county
9. The total amount of CSFP administrative funds that have been reimbursed to the CE during the state fiscal year
10. Total administrative CE expense for the state fiscal year
11. The administrative expense for the county for the state fiscal year

Section 5000

Visits, Reviews, and Audits

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Section 5000

Visits, Reviews, and Audits

5100 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 Commodity Supplement Food Program (CSFP).

5200 Reviews

TDA reviews CEs and sites to ensure compliance with either the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) or the *Agreement Between Contracting Entity and Site* (Form H1501). CEs also review sites.

During reviews, CEs and sites must allow representatives of TDA and the U.S. Department of Agriculture (USDA) to inspect facilities and examine and copy all CSFP records during normal business hours.

There are two types of reviews:

1. Compliance review – The review TDA conducts of its CEs.
2. Monitor review – The review a CE or TDA conducts of a site.

Each type of review is discussed below.

5210 Compliance Reviews by Texas Department of Agriculture

At its discretion, TDA conducts a compliance review of each CE either annually or once every two years. As part of a compliance review, TDA determines whether a CE is complying with the terms and conditions of the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) as well as with CSFP requirements.

During a compliance review, TDA may look at the following:

- Documents concerning the *Application for Participation/Plan of Operation*
- Storage and warehousing practices
- Financial management system
- Nutritional education
- Inventory controls
- Civil rights compliance
- Other aspects of the program, as determined by TDA

5211 Examination of Contracting Entity Records. Compliance reviews include examination of records, such as the following:

- Documents concerning the *Application for Participation/Plan of Operation*
- Health and sanitation documentation
- Data collected about racial and ethnic categories of participants and applicants
- All required CSFP forms
- Reporting and record-keeping
- Training records
- Cost allocation records
- Site records
- Procurement records
- Single audit records

Costs reported by the CE must be reasonable, and TDA will verify documentation to support reported costs.

5220 Monitor Reviews by Texas Department of Agriculture and Contracting Entities

TDA and a CE conduct monitor reviews of sites to ensure program compliance. Monitor reviews coincide with eligibility certification and distributions to participants.

Sites must comply with the terms and conditions of the *Agreement Between Contracting Entity and Site* (Form H1501) as well as with CSFP requirements, such as the following:

- Receive, handle, and distribute USDA Foods according to requirements
- Adhere to nondiscrimination requirements
- Provide equal access to USDA Foods
- Evaluate the frequency of USDA Foods distribution
- Evaluate the quantity of USDA Foods included in USDA Foods packages

5221 Examination of Site Records. TDA and the CE also examine records during a monitor review. They check one or more *Participant Application(s)* (Form H1504) to ensure that the site complies with certification requirements. Reviewers also ensure that the site maintains receipts for USDA Foods.

5300 Findings and Corrective Action Plans

The following definitions pertain to the discussion below.

finding – The occurrence of program noncompliance.

NOTE: A finding on a site is a finding for the CE.

Corrective Action Plan – Specifies actions that will correct a finding. CE must write and submit to TDA for approval.

5310 Findings Letter

When a reviewer (whether TDA or a CE) finds program noncompliance, the reviewer will issue a findings letter that includes the following:

- Each finding
- The criteria¹ for each finding (if necessary)
- Recommendations for achieving corrective action
- Claims action to be pursued (if any)
- The date the Corrective Action Plan (CAP)² is due

¹ In this case, *criteria* means the regulations or guidance.

² See “Findings and Corrective Action Plans” in this handbook section for more information.

5320 Corrective Action Plan

The CAP that must include the following:

- The name and title of the person that will ensure compliance with the CAP
- The corrective action planned
- The anticipated completion date of each action

5321 Examples of Program Noncompliance. Such examples include, but are not limited to, the following:

- Failure to maintain adequate site or administrative records
- Failure to follow competitive bid procedures
- Failure to comply with civil rights laws and regulations
- Submittal of false information to TDA
- Noncompliance with food distribution requirements
- Failure to adjust USDA Food orders to reflect variations in the number of participants
- Claims for reimbursement for administrative costs that were not related to operations

TDA may perform a follow-up review to ensure that the CE has implemented the corrective action plan and that program noncompliance has not recurred.

5322 Incomplete CAP. If the CAP is incomplete or inadequately addresses program noncompliance, TDA may return the CAP to the CE for clarification. TDA may also amend or modify the CAP based on new information, changes in circumstances, and/or progress to date. Additionally, TDA may choose to extend time frames for good faith efforts to correct program noncompliance.

5330 Site

If TDA or the CE identifies program noncompliance at sites, the site must submit a CAP to the CE. The CAP outlines ways that the site corrects program noncompliance. The CE must provide TDA with a copy of the CAP.

If the CAP is incomplete or does not adequately address program violations, the CE may return the CAP to the site for clarification. The CE may also amend or modify the CAP based on new information, changes in circumstances, and/or progress to date. Additionally, the CE may also choose to extend time frames for good faith efforts to correct program violations. To ensure that the site has corrected the program violations, the CE must perform a follow-up review.

TDA may terminate the CE's *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) for the following reasons:

- The CE fails to ensure that the site corrects program violations
- The site fails to correct program violations *and* the CE fails to terminate its *Agreement Between Contracting Entity and Site* (Form H1501)

5400 Audits

5410 General Audit Policy

Non-federal CEs include states, local governments, federally recognized Indian Tribes, and nonprofit organizations. Such CEs that expend \$750,000 or more in federal awards during their fiscal year must obtain an audit for that year³. CEs subject to audit must be audited on a single (organization-wide) audit basis by independent auditors according to the 2 Code of Federal Regulations, Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

EXCEPTION: CEs who are subject to audit requirements may elect to obtain a program-specific audit if 100% of their federal financial assistance results from their participation in the CSFP.

The value of USDA Foods must be considered when determining federal awards. The CE must consider the following:

1. Federal awards received
 - o Directly, from one or more federal agencies
 - o Indirectly, via pass-through entities
2. Cash and non-cash awards
 - o USDA Foods are a non-cash federal award

The value of USDA Foods must be considered part of federal awards.

For audit purposes, expended USDA Foods include those distributed or used during the CEs fiscal year.

³ CEs that are exempt from the audit requirement based on federal awards remain subject to any audit requirements prescribed by state or local laws or regulations.

A method of determining the value of USDA Foods must be chosen for an audit. After a CE has selected a method of determining the value of USDA Foods, it must use that method consistently in all of its audit activities and must maintain a record of the means of valuing USDA Foods for audit purposes. Methods include:

- The cost per pound recently published in WBSCM
- The fair market value (FMV)
- The cost per pound posted annually by USDA
- The average cost per pound

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.

5420 Purpose of Audits

Audits are conducted to ensure the following:

- 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.
- Financial reports contain accurate information.

5430 Audit Scope and Frequency

CEs subject to the audit requirement must obtain the audits on a yearly basis unless they fall into one of three categories:

- A state, local government, or Indian tribe is permitted to undergo its audits biennially if its constitution or statute (in effect on January 1, 1987) specifies it to undergo audits less frequently than annually. This requirement must still be in effect for the biennial period under audit.
- A nonprofit organization that has obtained biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995 (30-month period). All consecutive audits obtained during this 30-month period must have been on a biennial basis. Any interruption in the biennial process during this 30-month period disqualifies the CE from the ability to obtain a biennial audit for fiscal years beginning after June 30, 1996.
- A nonprofit organization that meets all of the following qualifications:
 - o Started operating a federal program for the first time during the 30-month period stated above
 - o Had already been in existence and had been obtaining biennial Generally Accepted Accounting Principles (GAAP) audits before participating in a federal program
 - o Continued a biennial audit cycle when participating in the federal program

Audit(s) must be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) and must cover the entire operations of the CE.

5440 Compliance with Audit Requirements

CEs subject to the audit requirement must arrange for an audit to be conducted by an auditor who is a public accountant or a federal, state, local government, or Indian tribe audit organization, which meets the general standards specified in GAGAS. The term auditor does not include internal auditors of nonprofit organizations.

When seeking an auditor, federal procurement requirements⁴ must be followed and the CE must obtain a copy of the audit organization's peer review report.

As a condition of eligibility for participation in the CSFP, TDA requires that the CE submit the *Annual Audit* form or complete the Annual Audit screen in TX-UNPS during initial application and each year after.

Audits must be submitted within 30 days of receipt from the audit or nine months after the end of the audit period, whichever comes first. Based on the information on the *Annual Audit* form/screen, TDA will send a courtesy notification to the CEs of the due date for their audit based on nine months after the end of the audit period. However, failure to receive such notification does not relieve a CE of the responsibility to submit an audit if required. Additionally, this notification does not extend the submission date for those who receive the audit **prior** to nine months after the end of the audit period.

Audits must be submitted to the Federal Audit Clearinghouse at <https://harvester.census.gov/facweb/>

A copy must also be submitted to TDA on paper, CD, or email. Appropriate addresses follow.

— Texas Department of Agriculture
Attn: Business Operations — Audits
P.O. Box 12847
Austin, Texas 78711

— CommodityOperations@TexasAgriculture.gov

The subject line must include Audit – Organization name and CE ID#.

For 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.

⁴ For more information about procurement, see *CSFP Handbook*, Section 7000, *Procurement*.

The CE should review and accept the completed audit before submitting the audit to the Federal Audit Clearinghouse and TDA.

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

5450 Sanctions for Noncompliance

TDA may terminate the CE's *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502), if the:

- Audit is not submitted to the Federal Audit Clearinghouse by the specified due date.
- Audit is not submitted to TDA by the due date.
- The CE submits an audit that does not meet requirements. TDA will notify the CE in writing that the audit is unacceptable.

NOTE: The CE must submit an acceptable audit within 30 calendar days of the date of the notice.

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

The CE has the right to appeal any decision that adversely affects its participation in the program.

If the CE's *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502) is terminated for failure to comply with audit requirements, the CE must provide an acceptable audit for any outstanding audit year(s) in order to be eligible to reapply to participate in TDA's nutrition programs.

5460 Additional Audits

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

If serious deficiencies such as fraud or misuse of funds occur and corrective action would not be practical, TDA will immediately terminate the CE's *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502).

Section 6000

Civil Rights

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Section 6000

Civil Rights

All nutrition assistance programs and activities that receive Federal funding are protected and subject to civil rights oversight. CEs are responsible for ensuring that all qualifying persons have equal access to the CSFP by complying with the civil rights and nondiscrimination requirements of USDA. (7 CFR §247.37)

In the USDA nutrition programs administered by 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 (including gender identity and sexual orientation)
- 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 the 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.

6100 Title VI of the Civil Rights Act of 1964

6110 Public Notification

CEs must have a public notification system to inform applicants, participants, and potentially eligible persons of the CSFP availability, CSFP rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. CEs must make CSFP information available to the public upon request. CEs also must be able to provide informational materials related to the CSFP in languages other than English, if the need exists. Refer to Item 6130, *Limited English Proficiency* 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 CSFP. Specifically, when human likenesses are used in such materials, reasonable efforts must be made to depict an ethnic and racial balance.

6111 ...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 at <https://www.fns.usda.gov/cr/and-justice-all-posters>.

6112 Nondiscrimination Statement

The CE and site must provide the following nondiscrimination statement and complaint-filing procedures in all applications; and on all CSFP 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 (including gender identity and sexual orientation), 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, audiotope, 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/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.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.

This institution is an equal opportunity provider.

In Spanish, the nondiscrimination and compliant 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 (incluyendo identidad de género y orientación sexual), 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.fns.usda.gov/sites/default/files/resource-files/usda-program-discrimination-complaint-form-spanish.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; o
- (2) fax: (833) 256-1665 o (202) 690-7442; o
- (3) correo electrónico: program.intake@usda.gov

Esta entidad es un proveedor que brinda igualdad de oportunidades.

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

Exceptions to the requirements for the nondiscrimination statement follow:

- Sometimes, material is too small to permit the full nondiscrimination statement. In this case, the material must include, in 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 the CSFP when the size or configuration make it impractical.
- When advertising the CSFP through radio or television announcements, the entire nondiscrimination statement does not have to be read. Rather, a statement such as “The CSFP is an equal opportunity provider” is sufficient.
- The entire nondiscrimination statement does not have to be included on every page of a CE’s CSFP information website; at minimum the nondiscrimination statement or a link to the statement must be included on the CE’s home page.

NOTE: Whenever Congressional legislation specifies or sets restrictions on program eligibility, those provisions take precedence over certain protected bases. The CSFP regulations in 7 CFR Part 247 defines the purpose of the CSFP to provide benefits to low-income seniors 60 years of age and older. (7 CFR §247.9) Therefore, any reference to age in the nondiscrimination statement as it relates to the CSFP is subject to these qualifications.

6120 Data Collection and Maintenance

CEs must determine the number of actual beneficiaries by ethnic and racial category from participants applying for and/or participating in the CSFP on an annual basis. CEs must collect data using *Participant Application* (Form H1504) **or similar application form** for each participant at the time of certification or recertification.

Participants must be given the opportunity to self-identify ethnicity and race and be informed that their responses to questions about their ethnicity and race will not affect consideration of their application. If the participant chooses not to self-identify ethnicity and race, the CE must record the participant's ethnicity and race based on visual observation. Participants of multiple racial categories must be given the option to first indicate ethnicity followed by race. Adults of multiple racial categories may be categorized in more than one racial group.

Racial and ethnic categories include the following:

Ethnicity

- (1) *Hispanic or Latino*. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin” can be used in addition to “Hispanic or Latino.”
- (2) *Not Hispanic or Latino*.

Race

- (1) *American Indian or Alaskan Native*. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- (2) *Asian*. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- (3) *Black or African American*. A person having origins in any of the black racial group of Africa. Terms such as “Haitian” can be used in addition to “Black or African American.”
- (4) *Native Hawaiian or Other Pacific Islander*. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- (5) *White*. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

After collecting this data, a CE must take each of the following steps:

- Annually by July 1, report to TDA the data for the month of April electronically on FNS-191, *Racial/Ethnic Group Participation, Commodity Supplemental Food Program*.¹
- Maintain the original data by individual site with documentation of the sources and methods by which it was obtained
- Maintain the data and relevant documentation according to the record-keeping requirements described in Item 4900, *Program Documentation*
- Establish safeguards to protect the confidentiality of the data

¹ Contact the Program Specialist at CommodityOperations@TexasAgriculture.gov or 877-TEX-MEAL (877-839-6325) to obtain an FNS-191, *Racial/Ethnic Group Participation, Commodity Supplemental Food Program*.

6130 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 have an obligation to reduce language barriers that can prevent meaningful access by LEP persons to important benefits, programs, information, and services of the CSFP. CEs that fail to take reasonable steps may be discriminating on the basis of national origin. Reasonable steps to ensure meaningful access is contingent on a number of factors, including:

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

Elements that may be helpful in designing 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

6140 Compliance Reviews

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

TDA will determine whether a CE and its sites comply with civil rights requirements before it approves the 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.

6200 Section 504 of the Rehabilitation Act of 1973

6210 Program Accessibility

The CSFP, 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 are not required to make every part of existing sites physically accessible to disabled persons, but must ensure that programs at those sites are accessible. Sites must offer the most integrated setting possible to enable persons with disabilities to fully benefit from the CSFP. CEs can make programs accessible to persons with disabilities by:

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

CEs should develop transition plans to ensure CSFP accessibility if structural changes to buildings are necessary.

If CEs cannot provide services to a person with disabilities because a part of a site where services are provided is not accessible, they must:

- Inform the person with disabilities of alternate sites where they can receive services; and
- Pay all or part of any additional cost the person with disabilities incurs as a result of being transported to the alternate site. (There are some circumstances when CEs are not required to pay these costs. Contact your USDA Foods Specialist for additional information.)

6211 Accessibility Examples

Addressing inaccessibility need not be difficult. Below are examples of ways that CEs or sites can address accessibility issues.

- At a site that provides USDA Foods in a bag or package: A volunteer brings a food package to a participant with a disability.
 1. *The site is inaccessible to wheelchairs and a proxy is unable to pick up the participant's food package. A volunteer brings the participant's food package to the participant's car.*
 2. *The site is inaccessible to legally blind persons and a proxy is unable to pick up the food package. A volunteer brings the participant's package to the participant in an accessible area, such as at the site's door or on the sidewalk near the site.*
- At a site that offers a shopping option for USDA Foods: The site provides a volunteer to help a participant with a disability.
 1. *A volunteer accompanies a legally blind participant throughout the site, verbally naming the available foods.*
 2. *A site is inaccessible to wheelchairs. A volunteer with a shopping list meets a participant in a wheelchair accessible area. After the participant chooses the desired foods from the list, the volunteer "shops" for the chosen foods and brings them to the participant.*

6220 Public Notification

CEs must have a public notification system to inform applicants, participants and potential participants of the CSFP availability, CSFP 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. **CSFP 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 the CSFP contain the nondiscrimination statement located in Item 6112, *Nondiscrimination Statement*.

6230 Employment

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

6240 Nondiscrimination Statement (Assurances)

The statement of nondiscrimination is contained in the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502).

6250 Designation of Section 504 Coordinator

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

6260 Complaint and Grievance Procedures

If a CE employs 15 or more people, the CE must maintain procedures to process complaints and grievances. Procedures that are required by a program other than the CSFP 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. Choose I Need To . . . then File a Complaint.

6270 Self-Evaluation of Services

CEs must evaluate the quality and availability of its 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 the results of a self-evaluation study in accordance with CSFP record-keeping requirements. Refer to Item 4900, *Program Documentation*, for additional guidance.

6300 Americans with Disabilities Act

6310 Introduction

The Americans With Disabilities Act (ADA) became effective 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

6320 Services

When evaluating the services that a CE and its sites offer, the CE should consider the following questions:

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

6330 Employment

In accordance with the ADA, CEs:

- 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; and
- Must provide reasonable accommodations to persons with disabilities (for example, job restructuring and modification of equipment).

NOTE: CEs are not required to provide accommodations that impose an undue hardship on their business. CEs faced with such a request are encouraged to contact TDA for further assistance.

6400 Sites Located at Religious Organizations

Federal civil rights laws address explicitly religious activities as part of CSFP. See Item 4820, *Sites Located at Religious Organizations*.

6500 Complaints

CEs and 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. If a civil rights complaint is filed with a CE or sites, the CE must forward it to TDA immediately.² CEs are also required to provide the complainants with contact information for USDA for filing a civil rights complaint (see Item 6112, *Nondiscrimination Statement*) and explain that a complaint of violation of their civil rights may be made directly to USDA.

The CE may incorporate the CSFP grievance procedures into existing organization-wide compliant procedures rather than develop standalone grievance procedures for the CSFP.

² Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325). Alternatively, the CE or site may call 1-877-TEX-MEAL (877-839-6325) for submittal information.

6561 Right to File

Any person may file a complaint within 180 days of the alleged discriminatory action. The complainant and the CE (or site, if the complaint is filed against the site) are encouraged to resolve the issue 1) at the lowest possible level and 2) as expeditiously as possible.

6562 Anonymous Complaints

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

6563 Verbal Complaints

Complaints may be made verbally, and the person that receives the complaint must write the elements of the complaint. Every effort should be made to collect the following information:

- 1) Name, address, and phone number, or other ways to contact the complainant
- 2) The specific name and location of the CE or site
- 3) The nature of the incident or action that led to the discrimination complaint
- 4) The basis on which the complainant believes discrimination exists (race, color, national origin, age, disability, or sex)
- 5) The name, title, phone number, business address, and personal address of anyone that might have knowledge about the alleged discrimination
- 6) The date(s) that the alleged discrimination occurred; or if the discrimination is ongoing, its duration

6164 Complaint Form.

The [USDA Program Discrimination Complaint Form](http://www.ascr.usda.gov/complaint_filing_cust.html), (AD-3027), can be found online at: http://www.ascr.usda.gov/complaint_filing_cust.html.

6600 Training

A CE's administrative and site personnel must be trained in all aspects of civil rights before assuming any CSFP duty and every year thereafter.

Volunteers who regularly interact with CSFP applicants and participants or determine eligibility must receive full civil rights training on an annual basis. Volunteers who handle 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 with CSFP applicants and participants must receive, at a minimum, limited civil rights training (that is, 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 CSFP applicants and participants or handle personal information.

Volunteers who do not interact in any way with CSFP 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 CSFP applicants and participants or handle personal information.

To meet the civil rights training requirements, CEs may use the training developed by TDA located on the TDA website at <http://www.squaremeals.org>, select:

- F&N Resources,
- Training,
- Online Education and Self Study,
- Civil Rights Courses.

Section 7000

Financial Management

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Section 7000

Financial Management

7100 Financial Management

The CE must practice a financial management system that promotes program integrity; establishes internal controls; and provides safeguards that improve the management of the CSFP. Additionally, the CE must create and follow written procedures describing these aspects of the financial management system:

1. Method for determining whether a cost is allowable
2. Process for making payments
3. Procurement procedures
4. Records that clearly report all financial transactions

Financial management practices must include the following:

- Written procedures for determining if costs are allowable in accordance with 2 CFR 200.302 & 2 CFR 200 Subpart E.
- Internal controls that ensure that the CE:
 - Manages, complies, evaluates, and monitors compliance with federal statutes; federal regulations; and TDA rules, policies, and guidance.
 - Takes prompt action to correct noncompliance, including noncompliance identified in audit findings.
 - Protects all information, including personally-identifiable information

7120 Cost Principles

The CE's accounting practices must be consistent with cost principles discussed below to provide for adequate documentation and efficient and effective operation of the CSFP.

7121 Allowable Costs. Allowable costs must be reasonable and allocable.

reasonable – 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 purchase decision was made.

allocable – A cost is allocable to a particular program (or other cost objective) if the goods or services involved are chargeable or assignable to that program (or cost objective) based on the relative benefits received.

7122 Brief List of Allowable Cost Items. The short list below may be helpful for CEs.

Note that this list is not comprehensive.

- Nutrition education services provided to participants and used for training site staff members
- Transporting United States Department of Agriculture (USDA) Foods and administering the food distribution system
- Interpreters and translators for CSFP materials
- Outreach services
- Audits and fair hearings
- General administration, including, but not limited to, personnel, warehousing, and insurance
- Monitoring and reviewing CSFP 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)

7123 Detailed List of Allowable Cost Items. This list is not all inclusive. For more information, contact the Program Specialist.¹

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.
- 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 Specialist² within two working days of any emergency situation.

¹ Email CommodityOperations@TexasAgriculture.gov or call 1-877-TEX-MEAL (839-6325).

² Email CommodityOperations@TexasAgriculture.gov or call 1-877-TEX-MEAL (839-6325).

- 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 management of the CSFP. However, the CE may not claim the cost of maintaining central accounting records to meet all of the organization's requirements.

Advertising and public relations – 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 the CSFP
- The procurement of goods and services for the performance of the CSFP
- The disposal of scrap or surplus materials acquired in the performance of the CSFP except when the CE is reimbursed for disposal costs at a predetermined amount
- CSFP outreach and other specific purposes necessary to meet the requirements of the CSFP

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:

1. Costs specifically required by the CSFP
2. Costs necessary to the outreach effort for the CSFP, including costs of communicating with the public and press about specific activities or accomplishments that result from performance of the CSFP
3. 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 the CSFP.

Communications – Includes the costs of supplies and services such as telephone, telegrams, fax, license fees for electronic mail 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 not the same as 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 CSFP training is presented concurrent with the meal service

With prior approval from TDA, the travel and registration fees for attending meetings and conferences devoted solely to the CSFP are allowable costs.

With specific prior written approval from TDA, the prorated share of travel and registration fees when the CSFP 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

Equipment – To be classified as equipment, an item must cost at least \$5,000 per unit and have a useful life of at least one year. Instead of using depreciation, an organization, with specific prior written approval from TDA, can charge the CSFP for capital expenditures for special purpose equipment at the time the items are purchased. The CE must keep invoices, bills of sale, purchase orders, leases, contracts, and procurement documents to meet documentation requirements.

Equipment management. Equipment purchased in whole or in part with CSFP funds must be managed according to, at a minimum, the following requirements.

- A description of the equipment
- A serial number or other identification number
- The source of funding for the equipment (including the FAIN³)

³ Available at Squaremeals.org, Programs, Commodity Supplemental Food Program, CSFP CFDA and FAIN Numbers.

- The name of the person that holds the title
- The acquisition date
- The equipment's cost
- If not wholly used for CSFP, the percentage of CSFP funds used to acquire the equipment
- The equipment's location
- The equipment's use
- The equipment's condition
- The ultimate disposition data, if applicable, including the date of disposal and the sale price

Equipment inventory. At least once every two years, the CE must take a physical inventory of the equipment and reconcile the inventory against the equipment records.

Equipment safeguards. The CE must develop a control system to adequately safeguard equipment against loss, damage, or theft. Similarly, the CE must develop adequate maintenance procedures to keep the equipment in good condition. Additionally, the CE must investigate any loss, damage, or theft.

Equipment sales. If the CE is authorized or required to sell the equipment, proper sales procedures must be established to ensure the highest possible return.

Insurance – The CE may include insurance costs that are required for the administration of the CSFP.

Rental costs of real property and equipment – Allowable when considered in light of certain factors and limitations, which include

1. rental costs of comparable property, if any,
2. market conditions in the area,
3. available alternatives, and
4. 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 should 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 the CSFP. However, the CE may not claim the cost of maintaining a legal staff with general responsibilities.

Memberships, subscriptions, and professional activity – Membership costs in civic, business, technical, and professional organizations; and subscriptions to professional and technical periodicals are included in this category. Allowable costs include the following:

- Membership fees and annual dues for the CE's membership in business, technical, and professional organizations related to the CSFP
- Membership fees and annual dues for one individual membership per CE in business, technical, and professional organizations related to the CSFP when the organization will accept only individual but not organizational memberships
- Costs for the CE's subscription to periodicals related to the CSFP

Materials and supplies, including computing devices – Costs incurred for materials, supplies, and fabricated parts necessary to run CSFP 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 the CSFP. These items may be charged as direct costs. Specifically 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 the CSFP.

Materials federally donated that are used in performing the CSFP. These items will be used without charge.

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 the CSFP.

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 the CSFP, or to the prorated share when necessary.

Records – Costs for supplies, storage, and maintenance of records necessary for the administration of the CSFP.

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 as a result of operating the CSFP.

Training and education – The cost of training and education provided for CSFP employee development.

Travel – The expenses for transportation, lodging, subsistence, and related items incurred by employees while traveling on the CE's official business for CSFP.

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 in accordance with 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-CSFP activities.

Vehicle Expenses. When employees use their own vehicle or a CE's vehicle to conduct CSFP business, the reasonable cost is an allowable administrative cost. Each CE may develop its own travel form containing these elements:

1. The date of each trip
2. The driver's name
3. The mileage
4. The origin and destination of each trip
5. Parking costs
6. 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 the CSFP. The CE must maintain documentation to reflect the following:

- The traveler's participation is necessary to the CSFP.
- 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.

7124 Unallowable Costs. The CE's expenditures that are inapplicable to CSFP objectives are unallowable and include, but are not limited to, the following:

- Administrative costs not approved by TDA
- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fund raising
- Interest and other financial costs, such as insufficient funds/returned check charges as well as late payment fees
- Lobbying to obtain grants, contracts, cooperative agreements, or loans
- 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. Also included are disallowed costs in the current or prior program years.)
- Personal income taxes, corporate income taxes, and taxes resulting from non-CSFP operations

7200 Procurement

These definitions will be used in the discussions below.

procurement – The orderly process of acquiring, by lease or purchase, goods and services such as equipment, bookkeeping, and auditing.

ethics – Moral standards that guide decisions. CEs must use ethical practices in procurement to encourage full and open competition.

full and open competition – Everyone that wants to bid on a procurement has the same opportunity to compete.

Procurement must be conducted in a manner that complies with state and federal procurement requirements. These requirements enable the CE to purchase goods and services at the best available price and to avoid conflicts of interest when purchasing. Costs incurred through improper procurement are unallowable and may result in termination of the CE's participation in the program.

7210 Standards of Conduct

The CE must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by CSFP funds if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The employees, officers, and agents of the CE may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The CE may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value (e.g., cup of coffee). The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the CE.

- If the CE has a parent, affiliate, or subsidiary organization, 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 parent company, affiliate, or subsidiary organization, the CE is unable or appears to be unable to be impartial in conducting procurement actions involving a related organization.

7220 Full and Open Competition

Regardless of the dollar amount or the method of procurement used, each CE must ensure full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bid or requests for proposal must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Allowing noncompetitive pricing practices between firms or between affiliated companies
- Allowing noncompetitive contracts with consultants that are on retainer contracts
- Permitting organizational conflicts of interest
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement
- Allowing any arbitrary action in the procurement process

7230 Written Procurement Procedures

CEs must maintain written procurement procedures for the proper procurement of goods and services. Those procedures must include the following elements.

7231 Forecast and Schedule Purchases

CEs plan procurements by evaluating resources, projecting expenses, and determining needs prior to initiating a procurement process by assessing the following:

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

7232 Selection of the Procurement Method

Generally, the aggregate⁴ amount of the goods or services will determine the necessary procurement method. CEs must have in place any other factors and decision steps that will be used to determine the procurement method to be used for each procurement. Include steps to accomplish the following:

- Develop solicitations
The description and scope (specifications) must
 - o be in line with the product, or service to be procured,
 - o be clearly stated so that bidders will understand and can be responsive to the need, and
 - o identify all of the requirements that bidders must fulfill so that changes do not need to be made to a contract after it is awarded.
- Advertise
Content must be sufficient enough to identify the following:
 - o General nature of the goods or services to be procured
 - o Method of procurement to be used
 - o Ways a bidder can obtain the solicitation or more information
 - o The due date for responses to the solicitationMethods of advertisement must allow for full and open competition in outlets such as these:
 - o State, regional, or nation-wide newspapers
 - o Trade periodicals
 - o Internet sites
 - o Direct mailings (small purchase procurement method only)

⁴ *Aggregate* is the 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.

7233 Evaluate Proposals and Offers

CEs must determine if bids were received from responsible and responsive bidders.

- “Responsive” means bidder’s products or services meet the specifications.
- “Responsible” means a bidder can and will successfully fulfill the terms and conditions of the proposed procurement. CEs should consider factors such as these:
 - o Integrity
 - o Compliance with public policy
 - o Record of past performance
 - o Financial and technical resources

7234 Award and Manage the Contract

CEs management of the contract accomplishes the following:

- Legally ensures commitment
- Provides record of the deal
- Ensures contractor performs in accordance with the terms, conditions, and specifications of the contract by verifying
 - o the quantity and quality of the goods and services requested,
 - o the timely receipt of the goods and services, and
 - o the prices charged for the goods and services are the prices bid and within budget.

7235 Protest Procedures

CEs will specify dispute resolution measures for any action which diminishes full and open competition:

- Supply procedures to all potential bidders
 - o Include name and address of person who will handle protests
- Disclose information regarding all protests to TDA

7236 Other Provisions that Affect the Bidder

CEs should include any other factors, in both the solicitation and the resulting contract, that affect the bidder. Such provisions include, but are not limited to, the following situations:

1. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises
2. Emergency situations

7300 Procurement Methods

CEs may choose from two different types of procurement methods: informal and formal. The decision to use informal or formal is based on 1) the total estimated cost of the purchase and 2)

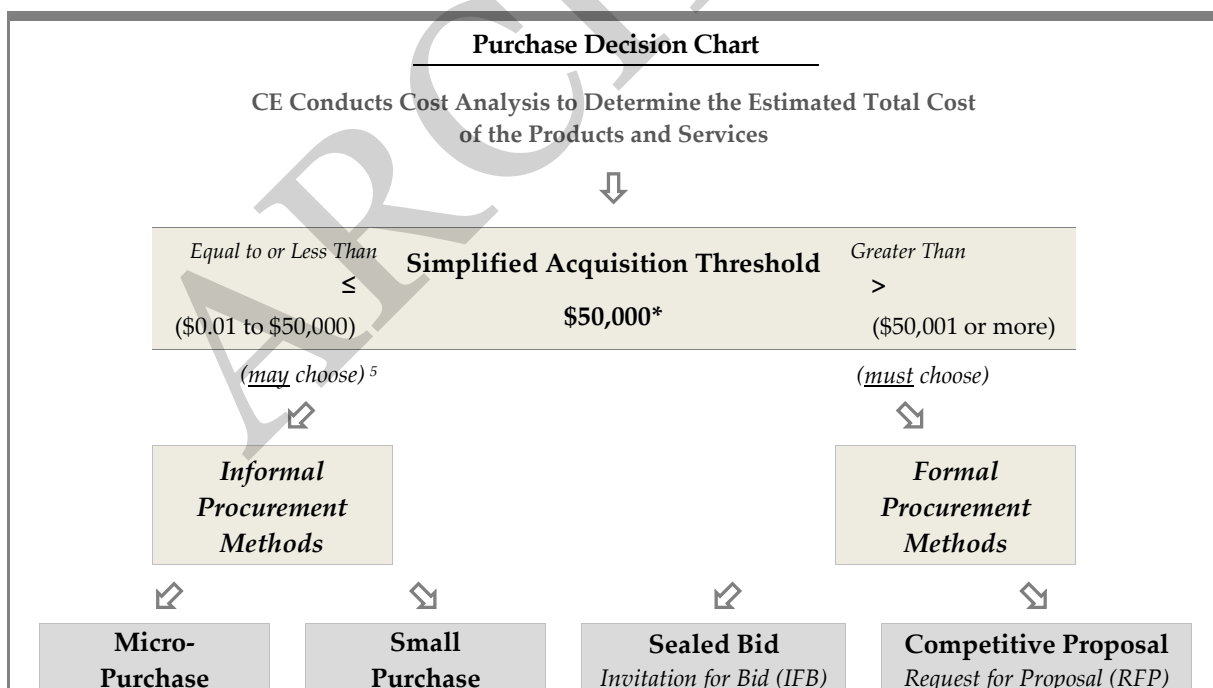
whether the purchase does or does not exceed the simplified acquisition threshold (also known as the small purchase threshold).

In the selection of the procurement method and actions related to the procurement, the CE must follow its written procurement procedure and must retain all records related to the procurement. Any costs incurred as a result of improper procurement processes are unallowable costs.

7301 Simplified Acquisition Threshold. The simplified acquisition threshold, also called *small purchase threshold*, is the highest total cost that can be procured using the informal procurement methods.

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

7302 Purchase Decision Chart. The chart below demonstrates the way that the CE makes a decision about which procurement method to use. If a CE has a more restrictive local threshold, that threshold amount should be substituted for the TDA threshold in the chart.



⁵ In order to get a better price, a CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold.

* Equal to or less than \$50,000 is the TDA simplified acquisition threshold. CEs might be subject to a lower simplified acquisition threshold based on local regulations.

7310 Informal Procurement Methods

When a purchase's total cost is equal to or less than the simplified acquisition threshold, the CE may choose from two informal procurement methods: micro-purchase and small purchase. Both methods are discussed below.

A CE may choose the small purchase method instead of the micro-purchase method if the amount of the purchase is equal to or less than the micro-purchase acquisition threshold.

7311 Micro-Purchase Method

A micro-purchase is a single purchase whose total aggregate cost is equal to or less than \$10,000. This method is intended to minimize the burden for purchases of very small amounts. This method is not, however, intended to circumvent TDA's small purchase threshold of \$50,000. If a CE breaks larger purchases into smaller amounts to qualify as a micro-purchase, then the costs are unallowable. TDA's form *Micro-Purchase Log* is a tool to help CEs capture and retain information for micro-purchases; the use of this form is optional.⁶

CEs must consider the following guidance when making a micro-purchase.

- *Aggregate* — The 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.
- *Competitive Purchasing* — Micro-purchases do not require the CE to solicit quotes as long as the price is reasonable.⁷
- *Cost Analysis* — When using the micro-purchase method, a formal cost analysis is not required. However, the CE must have a method to document that the cost of the products and/or services is reasonable — in other words, the CE must conduct a cost comparison. The examples below detail acceptable documentation:
 - o Newspaper advertisements from various suppliers
 - o Online advertisements from various suppliers

⁶ Obtain the form from [Squaremeals.org](https://www.squaremeals.org). Choose Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then input the form name into the appropriate search field.

⁷ For procurement, *reasonable* is defined as an amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

- o Documentation of phone quotes from various suppliers, including
 1. Supplier name
 2. Date(s) of contact
 3. Name of person that provides the information
 4. Information provided, such as product and price
- o If price is not the determining factor, other documentation that allows TDA to determine that the cost was reasonable:
 1. Maps showing the distance between suppliers, when distance is the factor
 2. Written procedures specifying that micro purchase must be used because space is the factor, such as refrigeration and storage space
- *Equitable Purchasing* — Purchases must be distributed equitably among all qualified suppliers. For instance, the CE cannot make all of its micro-purchases from one qualified supplier. In its written procedures, the CE must include a description of how it will use equitable distribution of micro-purchasing among qualified suppliers.

However, CEs that are located in rural areas may be limited in their ability to distribute purchases equitably, fairly, or equally among a number of qualified suppliers because it is not economically feasible to do so. For example, the cost and time of travel might not be practical. In these cases, the CE must document the reasons why it is not feasible for the CE to distribute purchases among a variety of suppliers. Documentation might include 1) a mileage chart listing the distance to the next closest store or 2) a printout of an online map demonstrating the driving distance.

- *Routine Purchasing* — Routine purchases must not be broken into smaller purchase amounts in order to meet the requirements for a micro-purchase. 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 products and/or services and why the use of another procurement method is not possible or reasonable.

7312 Small Purchase Method

A small purchase is a purchase whose total aggregate cost is equal to or less than \$50,000. TDA's form *Small Purchase Log* is a tool to help CEs capture and retain information for small purchases⁸; the use of this form is optional. CEs must consider the following guidance when making a small purchase:

⁸ Obtain the form from Squaremeals.org. Choose Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then input the form name into the appropriate search field.

- *Aggregate* — The aggregate total for a small purchase is the total cost for a single purchase *or* the total cost for grouped purchases made over an extended period of time (such as a product delivered once a week or twice a month). The total cost for a small purchase contract may be broken into multiple invoices that are paid when specified expectations are met. The aggregate applies to
 - 1) single items (for example, rent); and
 - 2) many items of the same general type of product (for example, office supplies).
- *Competitive Purchasing* — The CE must obtain price quotes from an adequate number of qualified sources (for example, three vendors). The CE must retain documentation demonstrating the price quotes.
 - o Quotes may be obtained orally or in writing.
 - o Responsive suppliers/vendors provide pricing information specific to the products and services to be purchased.
 - o Responsive suppliers/vendors are capable of providing the products and services described in the technical specifications.

When a CE uses the small purchase method, the CE must give the same technical specifications to all suppliers/vendors, and the CE must have and keep documentation showing this.

A CE may choose to issue an invitation for bid (IFB) or request for proposal (RFP) for a small purchase. In that case, the CE should develop a solicitation. For guidance, see “Formal Procurement Methods” in this handbook section.

- *Contract* — 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 “Solicitation” and “Contracts” in this handbook section.
- *Cost Analysis* — When using the small purchase method the CE must, at a minimum, conduct a price comparison (as is described in its written procurement procedures). The CE must retain documentation on cost comparisons. The examples below detail acceptable documentation:
 - o Newspaper advertisements from various suppliers/vendors
 - o Online advertisements from various suppliers/vendors
 - o Documentation of phone quotes from various suppliers/vendors, including
 1. Supplier/vendor name
 2. Date(s) of contact
 3. Name of person that provides the information
 4. Information provided, such as product and price

- *Routine Purchasing* — Routine purchases must not be broken into smaller purchase amounts in order 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 products 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 products or services, formal competitive bids may provide lower costs.

- *Solicitation* — The CE must give all possible suppliers/vendors the same solicitation information, and the CE must maintain documentation showing the solicitation information. In most cases, the documentation shows the technical specifications that the CE gave to supplier/vendors.

7320 Formal Procurement Methods

When a purchase's total cost is more than TDA's simplified acquisition threshold of \$50,000, the CE must use a formal procurement method: either a sealed bid or a competitive proposal. Both methods are discussed below.

7321 Sealed Bid

A sealed bid, also called an invitation for bid (IFB), is a competitive procurement method where bidders submit sealed bids. An IFB is ideal when the CE can accomplish the following:

- Completely and accurately describe the product or service that it wants to purchase
- Locate two or more responsible bidders that are willing to compete for business
- Award a firm, fixed-price contract
- Make an award mainly on the basis of price

An IFB contract is awarded in writing to the most responsible and responsive⁹ bidder whose price is most advantageous to the program.

The CE must follow the steps below when soliciting sealed bids:

1. Publicly announce (for example, in a newspaper) the IFB and allow sufficient response time prior to the date set for the opening of the bids.
2. Solicit bids from an adequate number of known suppliers/vendors.
3. Clearly describe the product(s) or service(s) to be purchased in the IFB.
4. Open the bids publicly at the time and place stated in the IFB.
5. Award the contract to the lowest responsive and responsible bidder that meets the requirements of the IFB.

⁹ Responsible is defined as *able to provide the product or service as described in the solicitation*. Responsive is defined as a *bid or response that addresses the technical specifications expressed in the solicitation*.

NOTE: If specified in the bidding document, consider factors such as discounts, transportation costs and life cycle costs in determining the lowest bid. Payment discounts may be used only if prior experience with the bidder indicates that these discounts are generally taken.

6. Document any and all reasons a bid is rejected.

The following guidance must be used when using the IFB method.

- *Aggregate* — The aggregate amount for an IFB is the total cost for a single contract (or a single renewed contract). The total cost for IFB contracts is typically broken into multiple invoices which are paid when specified expectations are met.
- *Award* — The award for an IFB will be made in writing to the lowest responsible and responsive bidder. A CE may award a contract to a supplier/vendor that is not the lowest bidder if the CE has sound documented business reasons for doing so and this documentation is submitted to, and the contract is approved by TDA prior to the award.¹⁰
- *Competitive Purchasing* — Bids must be solicited from an adequate number of known suppliers/vendors: Two or more responsible¹¹ bidders respond to the solicitation.
- *Contract* — An IFB will result in a firm fixed-price contract award.
- *Cost Analysis* — A formal cost analysis or price comparison, as described in the CEs written procurement procedures, is required.
- *Evaluation of the Bids* — After the sealed bids are opened, the CE must use the rubric or scoring tool that was provided in the solicitation to determine whether a bidder is both responsible and responsive.¹²
- *Opening Sealed Bids* — State and federal regulations mandate that the bids be opened publicly so that bidders and other interested parties may attend. The CE must provide a description of where and when the sealed bids will be opened.

When the technical specifications for the solicitation are complicated, the CE might be unable to quickly determine the most responsible and responsive bid. The CE may choose to announce the responsible and responsive bids at the bid opening; then, at a later date, the CE announces the actual award. In

¹⁰ Submit to CommodityOperations@TexasAgriculture.gov or CE.ProcurementReviews.BOps@TexasAgriculture.gov.

¹¹ Able to provide the product or service as described in the solicitation.

¹² The bid that addresses the technical specifications expressed in the solicitation for product or service.

these cases, the solicitation must clearly describe this process, including the time and place when the contract award will be announced.

- *Public Advertising* — The invitation for bids must be publicly advertised with sufficient response time to allow potential bidders to respond.¹³ The IFB must be publically advertised in such a way as to ensure full and open competition.

For example: Publicizing a solicitation in a regional newspaper might be insufficient notification if the circulation of the paper is limited geographically. Potential bidders often check major newspapers for notification on solicitations but would not check a regional paper.

- *Rejecting a Bid* — Any or all bids may be rejected if there is a sound documented reason. The CE must retain the documentation.
- *Securing Sealed Bids* — As each sealed bid arrives, the bid should be date stamped and stored in a secure place until the time of bid opening.
For example: Locked file cabinet, locked metal box, or any other tamper-proof location.
- *Solicitation* — The CE must provide technical specifications for the product or service to be purchased, the method for submitting a bid, the method and criteria for evaluating the bid, contractual statements required by law, and the method for submitting a protest for the bid award.¹⁴ The CE must maintain documentation that demonstrates the CE's actions to release the IFB to the public as well as all communication that occurs after the bid is released.

NOTE: If the CE answers a question from a bidder, the CE must share this information with all potential bidders. CEs commonly post this information on their websites.

7322 Competitive Proposal

The competitive proposal is also known as a request for proposal (RFP). The CE should use an RFP for purchases of more than \$50,000 when a sealed bid is inappropriate.

For example: A CE wants to purchase accounting services that will cost more than \$50,000 per year. Because several factors are of equal or greater importance than price, an RFP is ideal.

Under the RFP, a contract is awarded to the most responsible and responsive¹⁵ proposal considering price and other factors. With an RFP, each CE must follow these steps:

¹³ See the *Solicitation* subsection in this section for additional information on this topic.

¹⁴ See the *Solicitation* subsection in this section for additional information on this topic.

¹⁵ Responsible is defined as *able to provide the product or service as described in the solicitation*. Responsive is defined as *a bid or response that addresses the technical specifications expressed in the solicitation*.

- Maintain a written procedure for evaluating proposals, for determining with whom the CE will negotiate, and for selecting the successful proposal
- Publicize the RFP
- Identify all evaluation factors and their relative importance in the RFP
- Solicit proposals from an adequate number of qualified sources
- As far as practical, honor all requests to compete
- Award contracts to the most responsive and responsible offeror whose offer is most advantageous to the CSFP
- Promptly notify unsuccessful offerors

The following guidance must be used when using the RFP method.

- *Aggregate* — The aggregate for an RFP is the total cost for a single contract (or a single renewed contract). The total cost for an RFP contract is typically broken into multiple invoices which are paid when specified expectations are met.
- *Award* — An RFP award will be made in writing to the most responsible and responsive proposal.
- *Competitive Purchasing* — Proposals must be solicited from an adequate number of known suppliers/vendors. For there to be competition, there must be two or more responsible and responsive offerors that respond to the solicitation.
- *Contract* — An RFP may be used for a firm fixed-price contract or a cost reimbursable contract.
- *Cost Analysis* — When using the competitive proposal method, a formal cost analysis or price comparison is required as is described in the CE's written procurement procedure.
- *Evaluation of the Proposals* — The CE must use the rubric or scoring tool provided in the solicitation to determine whether a proposal is both responsible and responsive.
- *Public Advertising* — The RFP must be publicly advertised with sufficient response time to allow potential offerors to respond. The RFP must be publically advertised in such a way as to ensure full and open competition.

For example: Publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. Potential bidders often check major newspapers for notification on solicitations but would not check a regional paper.

- *Rejecting a Proposal* — Any or all proposals may be rejected if there is a sound documented reason. The CE must retain the documentation.

- *Solicitation* — The CE must provide technical specifications on the product or service to be purchased, the method for submitting a proposal, the criteria for evaluating the proposal, all contractual statements required by law, and the method for submitting a protest for the bid award.¹⁶ The CE must maintain documentation that demonstrates the CE's actions to release the RFP to the public as well as all communication that occurs after the proposal is released.

NOTE: If the CE answers individual offeror questions about the solicitation, the CE must have a method to share all answers with all potential offerors. CEs commonly post this information on their websites.

7400 Noncompetitive Method

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

1. Inadequate Competition
2. Sole Source
3. Public Emergency or Unexpected Emergency Situation

7410 Inadequate Competition

After the CE actively and appropriately attempts to solicit offers from a number of sources, it's possible that competition is deemed inadequate — that is, too few offers met the solicitation specifications and technical requirements. This could include a CE receiving only one responsible and responsive offer.

For example: A CE is so remotely located that there are a very 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 proposal has been publicized.

After engaging in competitive purchasing procedures, the CE does **not** need TDA approval¹⁷ to award a noncompetitive bid when there are a limited number of offers, so long as documentation is retained by the CE demonstrating that the CE did not limit competition. Documentation would include, but is not limited to, 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 the CE's findings

¹⁶ See the *Solicitation* subsection in this section for additional information on this topic.

¹⁷ However, sole source procurement requires TDA approval. See "Sole Source" for more information.

7420 Sole Source

The product and/or service is available from only a single (sole) source distributor, supplier, or manufacturer. For the sole source method to be used there must be only one possible source for the product and/or service. Sole source noncompetitive procurement requires TDA approval.

TDA must approve all sole source procurement transactions before the award of the contract. To request approval to use a sole source contract, the CE must submit a request to TDA in writing (paper, fax, or email). In its written request, the CE must include the following information:

1. Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is sole source
 - The CE's review may include questioning other vendors of similar products/services to determine if those vendors can meet the precise needs of the CE. If not, the CE must provide written justification to TDA to show why a particular vendor would not qualify as a source.
2. 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 parts 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 are more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement methods 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 must address this as appropriate to ensure full and open competition.

TDA will provide written notification of approval or disapproval.

7430 Public Emergency or Unexpected Emergency Situation

A public emergency (exigency) or unexpected emergency situation¹⁸ cannot tolerate the delay that results from the additional time required for a competitive solicitation for the product and/or service. Emergency noncompetitive procurement requires TDA approval.

To request approval to use a noncompetitive method during an emergency, the CE must submit a request to TDA in writing (paper, fax, or email). In cases of extreme emergency a CE may call TDA directly to alert TDA about the situation, raising TDA's awareness of the need for an expedited response. However, the request must still be submitted in writing. In its written request, the CE must include the following information:

1. Explanation of the circumstances that require an emergency purchase
2. Detailed description of the products and/or services to be procured
3. Supplier, distributor, or manufacturer from whom the product and/or services will be procured
4. Period of time the CE plans to use the noncompetitive method for the emergency

TDA will provide written notification of approval or disapproval.

7440 Submittal to TDA

Requests for TDA's review and approval of sole source or emergency procurement processes may be submitted in writing to TDA as follows:

Email to: CE.ProcurementReviews.Bops@TexasAgriculture.gov
Subject: CSFP Noncompetitive Procurement Request (CE name)

Fax to: 888-203-6593
ATTN: Procurement Specialist
Subject: CSFP Noncompetitive Procurement Request (CE name)

Mail to: Texas Department of Agriculture
Food and Nutrition
ATTN: Procurement Specialist
P.O. Box 12847
Austin, Texas 78711

Overnight to: Texas Department of Agriculture

¹⁸ An unexpected emergency situation might include the failure of the refrigeration system causing products on hand to spoil; a supplier cancelling a contracted delivery without adequate notice; or a presidentially declared disaster.

Food and Nutrition
ATTN: Procurement Specialist
1700 North Congress Avenue
Austin, Texas 78701

7500 Bonding Requirements

A bond is required for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. For all other acquisitions, each CE must evaluate the products or services to be procured and determine if a bond is needed to safeguard any possible loss of funds. If the CE determines a bond is necessary, the bonding requirements may be met through use of a bid bond, certified check, or other negotiable instrument accompanying an offer as assurance that the offeror will, upon acceptance of the proposal or bid, execute such contractual documents as required within the time specified. The CE must describe the bonding requirements in the solicitation and the bonding requirements must be included in the final contract.

7600 Solicitation

A solicitation¹⁹ is prepared by the CE to describe the product or service the CE wants to acquire. The solicitation must clearly define the product or service needed in order for the offerors to properly respond to the solicitation.

NOTE: Although every aspect of the procurement process is important, if the solicitation is poorly prepared, the bids or proposals submitted will match the poor quality of the solicitation.

A solicitation must include the following elements:

- Technical specifications of the service or product to be purchased
- The method for submitting a bid or proposal
- The method and criteria for the CE's evaluation of the bid or proposal
- Legally required contractual statements
- The method to submit a protest

7700 Contracts

A CE must ensure that all contracts are the result of proper procurement procedures. All contracts — regardless of the procurement method — must be awarded to a responsible and responsive contractor whose bid or proposal is the most advantageous to the program.

¹⁹ Micro-purchases do not require a solicitation.

The CE carries the responsibility to ensure that the contract requirements reflect those found in the solicitation and that all of the terms of the contract are being met.

7710 Awarding the Contract

The CE must award the contract to the offeror that is most responsible and responsive to the solicitation based on the most cost effective use of federal funds. CEs must retain documentation demonstrating why the offeror was awarded the contract.

In the evaluation process, the CE must not consider nonresponsive or overly responsive features — the CE can include only responsive features in its evaluation. An over-responsive feature is one that is not requested in the solicitation.

7711 Primary Consideration. No matter the type of contract, cost must be the primary consideration in awarding the contract. In other words, for all contracts, the contract must be awarded to the bid or proposal that meets all of the terms and conditions described in the solicitation with cost as the primary consideration. Primary consideration means giving the cost criteria the greatest weight among all criteria.

For example: A CE has five criteria in the solicitation evaluation. The maximum possible points are given according to the following distribution:

Criteria	Possible Points
<u>Cost</u>	<u>35</u>
Financial stability, business practices	5
Reporting systems	10
Product specifications	30
Delivery schedule	20

Cost is given the highest number of points among all of the criteria.

7720 Contract Negotiation for an RFP

When considering responses to an RFP, the CE might find that several vendors are responsive to the solicitation but have very different approaches. In this case, the CE may conduct negotiations with the vendors of the top ranked proposal(s) to ask for clarification about the responsive features. For the purposes of proper procurement, *negotiate* means that the CE may seek clarification or may obtain equivalent elements — not negotiate equal specifications and/or technical requirements. These negotiations are not intended to give one vendor an advantage over another; instead, the negotiations are intended to make sure the CE has a clear understanding of what each vendor is offering.

When negotiating, the CE must not provide additional information other than what was in the original solicitation. Based on the clarification provided by the vendor, the CE may either award the contract or ask for a rebid. Asking for a rebid is often the best action, particularly when the

vendor's clarification demonstrates that the technical specifications in the solicitation were not clear.

For example: The CE may ask each vendor to further explain how it will address one of the technical specifications or to further describe a product included in the proposal. The CE must not say, "Contractor A is also offering to provide this special product: Can you?"

After all vendors have provided clarification, the CE may also ask all or the top vendors to resubmit a best price.²⁰ If the CE chooses to make this request, the CE cannot change the technical specifications provided in the solicitation, nor can the CE change its rubric or scoring tool used for evaluating proposals. The vendor is also not required to change its proposal. Although the request for the best price allows the CE the possibility of obtaining a more competitive price, the request is never intended to be a give-and-take negotiation.

At the end of the negotiation, the CE will award the contract to the proposal from the most responsible and responsive vendor.

7730 Contract for an IFB

For an IFB to be awarded a contract, the following conditions must be met.

- Two or more responsible bidders are willing and able to compete effectively for the business.
- When specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
- If the IFB required a separate presentation of a bid bond, coversheet, or attachment for the bidders to use to demonstrate compliance with the invitation for bid responsiveness criteria, these documents may be pre-screened to determine if the bid is responsive.
- All bids must be publicly opened at the time and place prescribed in the IFB solicitation.
- A firm, fixed-price contract will be awarded in writing to the lowest responsible and responsive bidder.
- Any or all bids may be rejected if there is a sound, documented reason. CEs must retain the document.

7740 Elements of a Contract

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

7741 General Contract Requirements

- Contract duration

²⁰ When a bidder submits a *best price*, the response may be a lower price or the same price.

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

7742 Contract Management

- Contracts for more than \$50,000 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 in excess of \$10,000 must address termination for cause and for convenience and include the manner by which it will be effected and the basis for settlement.
- Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes.
- Contractor recordkeeping requirements.
- Procedures for contract modification.

7743 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 contract modification.
- Sanctions for noncompliance.

7744 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.

7745 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)

7750 Other Federal Contract Requirements

CEs must adhere to requirements from the following legislative acts:

Clean Air and Water Act and Federal Water Pollution Control Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1368), as amended for contracts exceeding \$150,000²¹

Equal Employment Opportunity

41 CFR, Chapter 60. Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for construction contracts using federal funds

Copeland Anti-Kickback Act

For construction or repair (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3)

Davis-Bacon Act

40 U.S.C. 3141-3148 as supplemented by Department of Labor regulations (29 CFR Part 5) for construction contracts in excess of \$2000

Contract Work Hours and Safety Standards Act

40 U.S.C. 3701-3708. Where applicable, all contracts awarded by the CE in excess of \$100,000 that involve the employment of mechanics and laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5)

Rights to Inventions Made Under a Contract or Agreement

Pertaining to patent rights, copyright and rights in data

Small and Minority Businesses, Women's Business Enterprise, and Labor Surplus Area Firms

Necessary affirmative steps to procure from minority firms, women's business enterprises, and labor surplus area firms whenever possible²²

7760 Protest

An interested party²³ may protest any of the following situations:

²¹ See the *Solicitation* subsection in this section for additional information on this topic.

²² See the *Solicitation* subsection in this section for additional information on this topic.

²³ An *interested party* is defined as *any entity or person who may be affected by a situation, or any entity or person who has a real or direct interest in action being proposed or taken.*

- Solicitation or other request for offers for a contract for the procurement of property or services
- Cancellation of such a solicitation or other request
- Award or proposed award of a contract
- Termination of a contract, if the protest alleges that the termination was based on improprieties in the management of the contract.

CEs must have procedures in place to address and resolve protests or disputes relating to procurements. Further, CEs must, in all instances, disclose information regarding any protest or dispute to TDA and USDA.

7800 Record Retention

CEs must keep records for three years. Actions such as bid protest, litigation, and audits may require that records be kept longer. In such cases, CEs must retain the records until the completion of the action and resolution of all issues arising from it. Records must be accessible to USDA or TDA reviewers.

7810 Procurement Documentation

CEs must retain procurement documents for each product or service procured. A list of documents is below.

- A written rationale for the method of procurement
- A copy of the IFB or RFP
- The selection of contract type
- The bidding and negotiation history
- The basis for contractor selection
- Approval from TDA for noncompetitive proposals
- The basis for award cost or price
- The terms and conditions of the contract
- Any changes to the contract
- Billing and payment records
- A history of any contractor claims
- A history of any contractor breaches

Procurement records generated during the performance of the contract award must demonstrate compliance with procurement requirements. If such records fail to demonstrate compliance, the following penalties may occur:

- Disallowance of costs
- Termination of contract
- Other actions TDA deems appropriate

7820 Contract Documentation

Contract documentation must be retained for three years. When a contract is continued or renewed annually, the three-year record retention period begins when the final contract renewal period has expired or when the final payment is recorded, whichever occurs first. In other words, the retention period does not begin on the contract execution date.

7900 Additional Guidance

7910 Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

CEs are encouraged, whenever possible, to attempt to procure goods and services from small and minority businesses, women's business enterprises, and labor surplus area firms.

CEs must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible. Affirmative steps must include:

- Placing 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 sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- Using the services of the
 - o Small Business Administration
 - o Minority Business Development Agency of the Department of Commerce
- Procuring services from labor surplus area firms whenever possible
- Requiring the prime contractor, if subcontracts are to be let, to take these affirmative steps when subcontracting

7920 Compensation for Purchased Services

If a CE agrees or contracts with a consultant or contractor for the purchase of a service, the CE will compensate the consultant or contractor 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 contractor or consultant cannot require additional fees from the CE.

For example: A contractor 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 contractor or consultant charges sales tax on the service provided, they must extract the tax from the compensation (that is, set percentage) that is stated in the contract or agreement.

7930 Disputes

It is the CE's responsibility to obtain legal counsel for the resolution of any disputes arising from participation in a third-party arrangement outside of the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502).

ARCHIVE

Section 8000

Denials, Terminations, and Appeals

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Section 8000

Denials, Terminations, and Appeals

8100 Denial

Denial occurs when TDA determines that the CE's application¹ does not meet, at a minimum, the following application criteria:

1. The ability of the CE to operate the program in accordance with Federal and State requirements
2. The necessity for the program in the projected service area of the CE
3. The resources available (caseload and funds) for initiating a program in the service area
4. For nonprofit agencies: tax exempt status, with appropriate documentation

If the application is denied, TDA must provide 1) a written explanation for the denial and 2) notification of the CE's right to appeal the decision.

8200 Termination

Both TDA and the CE must provide at least 30 days' written notice of termination of CSFP participation.

Termination by TDA. TDA may terminate the CE's participation if the CE does not comply with the requirements of TDA policy as well as state and federal regulations. TDA termination notice must include at least the following characteristics:

1. Notify the CE in writing of the termination
2. Name the reasons for the action
3. Specify the effective date
4. Provide the CE with the opportunity to appeal²

¹ See *CSFP Handbook* Section 2000 for details about the CSFP application.

² See "Appeals" in this handbook section for more information.

Termination by the CE. The CE may terminate participation in the CSFP by written notification to TDA. The notification must give the reasons and effective date of the termination.

Termination by mutual agreement. Participation may be terminated if both TDA and the CE agree that the termination would be in the best interest of the CSFP. The two parties must agree upon the conditions of the termination, including, but not limited to, the effective date.

NOTE: Termination by mutual agreement is not an adverse action; therefore, a CE cannot appeal this determination.

8300 Appeal

The adverse action must be postponed until the hearing is complete. The following definitions are pertinent to the discussion below.

adverse action – A decision, action, or inaction that negatively affects participation in CSFP. For a CE or site, adverse action may include, but is not limited to, the following:

- Agreement termination or suspension before the stated expiration date
- Denial of payment or rejection of a statement of costs, in whole or in part
- Demands for settlement or repayment of funds

Administrative Review Official (ARO) – An impartial person that presides over the hearing of an adverse action. The ARO is 1) appointed by TDA, 2) familiar with CSFP requirements, and 3) not involved in the action that is being appealed. The ARO makes a final determination in the case.

The CE's appeal must be received by TDA within 15 days of receiving notification of an adverse action. The appeal must meet the following criteria:

1. Be in writing
2. State the basis for the appeal
3. Include a legible copy of TDA's adverse action letter
4. Request for a hearing, if the CE wants a hearing
 - The appeal must include a request for the CE (or a representative) to attend the hearing in person if the CE wants to attend.
 - The CE waives the right to a hearing when the written appeal does not include a request for a hearing. Rather, the ARO will conduct the hearing by reviewing the documents in the record.

NOTE: There are occasions when a CE is unable to timely request a hearing. In such a case, the ARO might determine that the failure to make a timely request

was due to circumstances beyond the CE's control. Otherwise, the ARO shall deny a request for a hearing if the request is filed after TDA receives the appeal.

8310 Submittal to TDA

The CE may submit documentation to be considered at the hearing. The CE must submit documentation either 1) with the written appeal or 2) separately, within 30 days of the receipt of adverse action. The written appeal and hearing documentation, if any, must be submitted to TDA by the following methods.

Submittal of Appeal and Documentation to TDA	
<i>Mail</i>	Food and Nutrition Appeals Texas Department of Agriculture Legal Division Attn: Docket Clerk PO BOX 12847 Austin TX 78711
<i>Fax</i>	(800) 909-8530
<i>Hand-delivery, Overnight Delivery Service, and Special delivery service</i>	Texas Department of Agriculture Legal Division 1700 North Congress, 11 th Floor Austin TX 78701

CEs that wish to confirm receipt of the appeal request may contact the Legal Division at 512-463-4075.

8320 Hearing. The hearing³ shall be conducted by the ARO, who must make a decision that is based solely on the evidence presented at the hearing, as well as on CSFP legislation and regulations. The ARO's decision must be made within 60 days from the date of the CE's appeal, and the decision must be provided in writing to the CE.

³ The CSFP hearing follows TDA's typical hearing procedures, which are found in the Texas Administrative Code, Title 4, Part 1, Chapter 26, Subchapter E.

Section 9000

Terms, Definitions, and Acronyms

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Section 9000

Terms, Definitions, and Acronyms

Terms and Definitions

administrative costs – Costs that are necessary to ensure the efficient and effective administration of the program, in accordance with 2 CFR Part 200, Subpart E and USDA implementing regulations 2 CFR Part 400 and Part 415, which set out the principles for determining whether specific costs are allowable.

administrative review official (ARO) – An impartial person that presides over the fair hearing. The ARO is 1) appointed by TDA, 2) familiar with CSFP requirements, and 3) not involved in the action that is being appealed. The ARO makes a final determination in the case.

adverse action – A decision, action, or inaction that negatively affects participation in CSFP.

For a CE or site, adverse action may include the following:

- Agreement termination or suspension before the stated expiration date
- Denial of payment or rejection of a statement of costs, in whole or in part
- Demands for settlement or repayment of funds
- A claim against a CE to repay the value of USDA Foods received as a result of fraud

For applicants and participants, adverse action may include the following:

- Denial of CSFP benefits
- Discontinuance of CSFP benefits
- Disqualification from the CSFP
- A claim to repay the value of USDA Foods received as a result of fraud
- Claims of not being provided a fair share of USDA Foods

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.

appeal – A request for the review of an adverse action through a fair hearing.

applicant – Any person who applies to receive CSFP benefits. Applicants include CSFP participants applying for recertification.

boarder – A person who pays to live and have daily meals at another person's house.

caseload – The monthly average number of persons that a contracting entity is authorized by TDA to serve over a specified period of time.

certification – The use of criteria and procedures to assess and document each applicant's eligibility for the CSFP.

certification site – A site that certifies applicant eligibility.

claim – An actual participation report submitted for the purpose of receiving financial assistance with administrative costs associated with a CSFP operation.

Food and Nutrition program specialist – A TDA employee who is responsible for approving and denying CSFP applications, monitoring program operations of CEs, providing technical assistance, and resolving disputes.

compliance review – The review TDA conducts of its CEs.

contracting entity (CE) – Any organization that has a contract with TDA. A food bank is an example of a CE.

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 TDA and the CE or between the CE and the site.
2. Any procurement contract for goods or services at or above the small-purchase threshold of \$50,000.
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 TDA or a federal funding source, or
 - researchers.

Also see “debarment.”

current income – Money received by the applicant during the month previous to the month of application for USDA Foods assistance.

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*.

direct shipment – A truckload that contains one type of USDA Food delivered directly by a USDA vendor to single or multiple destinations.

discontinuance – Cessation of administering CSFP, which can occur for reasons including, but not limited to, the following:

- A participant becomes ineligible during the certification period
- Consecutive missed distributions

NOTE: If CEs choose to use the CSFP Missed Distribution Poster, it must be hung near the “And Justice for All” poster.

- Insufficient number of caseload slots
- Fraud

distribution site – A site that distributes USDA Foods in agreement with a contracting entity.

economic unit – A group of related or unrelated people who share housing and all other significant income and expenses.

electronic receipting – The entering of shipment receipts into an online management system such as TX-UNPS or WBSCM.

elderly person – A person 60 years of age or older.

fair hearing – An opportunity that allows an applicant, participant, or contracting entity to present its case to an administrative review official.

fiscal year – A period from October 1 through the following September 30.

food bank – A public or charitable institution that maintains an established operation involving the food, USDA Foods, or products made from USDA Foods. A food bank provides these foods to food pantries, soup kitchens, hunger relief centers, or other feeding centers that provide meals or food to needy persons on a regular basis as an integral part of their normal activities.

homebound elderly persons – Persons who are, in the judgment of a contracting entity, unable to obtain monthly food packages without assistance provided by or through the contracting entity.

household – Any of the following individuals or groups of individuals, exclusive of boarders or residents of an institution: (1) An individual living alone; (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others; (3) A group of individuals living together who customarily purchase and prepare meals in common for home consumption; and (4) Other individuals or groups of individuals, as provided in FNS regulations specific to particular food assistance programs.

micro-purchase – A single purchase whose total aggregate cost is equal to or less than \$3,500. Whether the purchase occurs weekly, monthly, or annually, the total aggregate cost may consist of 1) one product and/or service or 2) multiple products and/or services.

multi-food shipment – A truckload that consists of various foods of similar storage type delivered by a USDA-contracted warehouse to single or multiple CSFP CE's.

monitor review – The review a CE or TDA conducts of a site.

nonprofit organization – A private agency or organization with tax -exempt status under the Internal Revenue Code.

participants – Elderly persons who receive supplemental foods under CSFP.

Previously, pregnant women, breastfeeding women, postpartum women, infants, and children could be participants of CSFP. However, as of February 7, 2014, these categories are no longer eligible for CSFP. CEs will refer any women, infants, or children seeking to apply for CSFP benefits to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Supplemental Nutrition Assistance Program (SNAP), and other nutrition assistance programs for which they may be eligible.

perpetual inventory – An ongoing accounting system that requires daily entries to document the amounts of food added to or removed from storage.

physical inventory – An annual 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.

program – The Commodity Supplemental Food Program (CSFP)

proxy – A person authorized to act for another person.

site – Refers to *certification site*, *storage site*, or *distribution site*; and to all of these sites together. Each site enters into an agreement with a CE to certify participants for the CSFP or to receive, handle, distribute, or store USDA Foods.

Special Supplemental Nutrition Program for Women, Infants, and Children – WIC Program

subdistributing agency – A public agency or private nonprofit organization that enters into an agreement with a CE to administer the CSFP at the local level. A subdistributing agency determines the eligibility of applicants, distributes supplemental foods, and provides nutrition education to low-income persons, either directly or through another agency with which it has entered into a written agreement.

storage site – A site where USDA Foods are stored for later distribution to CSFP participants.

supplemental foods – Foods donated by the U.S. Department of Agriculture for use by eligible persons in low-income groups who are vulnerable to malnutrition.

Texas Commodity Assistance Program (TEXCAP) – The former name in Texas for TEFAP.

Texas Unified Nutrition Programs System (TX-UNPS) – The web-based application, ordering, and claims processing system for all food and nutrition programs managed by TDA.

wait list – The wait list contains eligible, certified applicants who are waiting for a caseload slot. When a caseload slot becomes available, CEs must take wait-listed applicants in the order they applied. The wait list must include at least

1. the applicant's name,
2. address or telephone number, and
3. date the applicant is placed on the wait list.

Web-Based Supply Chain Management System (WBSCM) – Electronic system that USDA maintains for tracking USDA Food shipments and receipts.

WIC Program – The Special Supplemental Nutrition Program for Women, Infants, and Children.

Acronyms

ADA – Americans with Disabilities Act

ARO – administrative review official

CACFP – Child and Adult Care Food Program

CAP – corrective action plan

CE – contracting entity

CFR – Code of Federal Regulations

CSFP – Commodity Supplemental Food Program

FDP – Food Distribution Program

F&N – Food and Nutrition Division of the Texas Department of Agriculture

FND – former acronym for F&N

FNS – Food and Nutrition Service of the U.S. Department of Agriculture

IFB – invitation for bid

IRS – U.S. Internal Revenue Service

NSLP – National School Lunch Program

RFP – request for proposal

SBP – School Breakfast Program

SFMNP – Senior Farmers' Market Nutrition Program

SFSP – Summer Food Service Program

SMP – Special Milk Program

SNAP – Supplemental Nutrition Assistance Program

SSI – Supplemental Security Income

TANF – Temporary Assistance for Needy Families

TDA – Texas Department of Agriculture

TEFAP – The Emergency Food Assistance Program (formerly known in Texas as the Texas Commodity Assistance Program)

TEXCAP – Texas Commodity Assistance Program

TX-UNPS – Texas Unified Nutrition Programs System

USDA – U.S. Department of Agriculture

WBSCM – Web-Based Supply Chain Management System

WIC – Special Supplemental Nutrition Program for Women, Infants, and Children

Section 10000

Email Notification and *CSFP Handbook Online*

ARCHIVE

Section 10000

Email Notification and *CSFP Handbook Online*

Email Notification

The Texas Department of Agriculture (TDA) emails notification when this handbook is revised. The email notification includes a revision notice that explains the changes. TDA emails the notification to the authorized representative¹ of each contracting entity.

CSFP Handbook Online

The *Commodity Supplemental Food Program Handbook* is available online at <http://www.squaremeals.org/Programs/CommoditySupplementalFoodProgram/CSFPPolicyandHandbook.aspx>. Users may view and print the handbook and revision notice(s).

¹ The contracting entity provides the email address of its authorized representative in TX-UNPS.

Section 11000

Resources

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Section 11000 Resources

Presidentially Declared Disasters and Situations of Distress

CEs may consult the following resources for information during a disaster or situation of distress.

- Food Assistance for Disaster Relief at www.Squaremeals.org. Go to Programs then Food Assistance for Disaster Relief.
- *Food Distribution Disaster Manual* at <https://www.fns.usda.gov/disaster/disaster-assistance>
- *CSFP Handbook*, Section 12000, “Questions and Answers about Disaster Policies and Procedures”

Shipment and Receipt of USDA Foods

FNS Instruction 709-5 (Rev 2), *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 in the quantities ordered, and in ensuring the proper disposition and replacement of USDA Foods when circumstances warrant.

FNS Instruction 709-5 (Rev 2) is available at http://www.fns.usda.gov/fdd/forms/fns_instructions.htm. Please note: This is a revision of the previous version.

USDA Foods Complaints

If there is a problem, such as undesirable condition or poor quality with a USDA Food, complete and submit *USDA Foods Complaint* form. When possible, please include a picture that illustrates the complaint. The form and instructions are available at <http://www.squaremeals.org/INeedTo/FileaComplaint.aspx>

TDA notifies the CE that its complaint is received.

If necessary, TDA will submit the complaint to USDA for further investigation and will contact the CE if additional information is needed. As USDA’s investigation proceeds, USDA makes information available to TDA, and TDA will provide the CE with status updates.

USDA does not make information available to TDA under some circumstances, such as when the complaint is for informational purposes only. In those instances, USDA uses food complaints for information and trend analysis.

Helpful 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.

Texas Department of Agriculture Website

TDA's website for CSFP information is continuously upgraded and improved. This valuable resource should be a "favorite" site for all CEs. The site offers the complete text of program handbooks, the most recent program news, answers to program questions, funding opportunities, links to other informative websites and much more. To access the website, go to <http://www.squaremeals.org/>.

Food Assistance for Disaster Relief

The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) coordinates with state, local and voluntary organizations to accomplish the following goals:

- Provide food for shelters and other mass feeding sites
- Distribute food packages directly to households in need in limited situations
- Issue Disaster Supplemental Nutrition Assistance Program (D-SNAP) benefits

To learn more, visit the Food Assistance for Disaster Relief FNS Disaster Assistance website at www.fns.usda.gov/disaster/disaster-assistance.

Temperature Requirements

The tables below are based on current research findings, and are a general guide for storing various types of foods. As used in these tables, "satisfactory" means the type of storage is acceptable. "Preferred" means this type of storage maintains quality of the product for a longer period of time. "Required" means that this type of storage is essential – there is no alternative for it. Although 36° to 45°F is acceptable for refrigerated storage, 36° to 40°F is presently considered the ideal temperature range.

General Temperature Guide for Storing Foods

Food	Dry Storage (50°-70°F)	Refrigerated Storage (36°-40°F)	Freezer Storage (0°F or below)
Dairy Products			
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)	.....
Eggs			
Shell.....	.....	Required.....	.....
Dried.....	.....	Required.....	.....
Frozen.....	.....	.....	Required.....
Meat and Meat Products			
Frozen meats, such as ground beef; hams and shoulders; pork loins; turkeys; etc.....	.....	.....	Required.....
Cured hams and shoulders; bacon; etc.....	.....	Required....	.....
Canned hams.....	.....	Required.....	.....
Other canned meats, such as beef/gravy; pork luncheon meat; pork/gravy; etc.....	Satisfactory.	Preferred.....	.....

Food	Dry Storage (50°-70°F)	Refrigerated Storage (36°-40°F)	Freezer Storage (0°F or below)
Canned Fruits Orange juice..... Other canned fruits, such as apples and applesauce; apricots; blackberries; cherries; cranberry sauce; figs; grapefruit sections; grapefruit juice; peaches; purple plums (prunes); etc.....	..... .....	Required..... Preferred.....	..... .....
Fresh Vegetables Onions..... Potatoes , Irish.... Potatoes, Sweet ... Other fresh vegetables, such as green beans; beets; cabbage; carrots; spinach; etc.....	Satisfactory. Satisfactory Required (maximum 55°F)	Preferred..... Preferred (minimum 40°F) Required...	..... ..... ..... .....
Fresh Fruits Apples; peaches; pears; purple plums; etc...	.....	Required.....	.....
Dried Vegetables Beans, high moisture..... Beans, low moisture.....	Satisfactory for 60 days Satisfactory	Required over 60 days Preferred.....	..... .....
Dried Fruits Apples; apricots; peaches..... Figs; prunes; raisins; etc.....	Satisfactory for 2 weeks Satisfactory	Required over 60 days Preferred.....	..... .....

Food	Dry Storage (50°-70°F)	Refrigerated Storage (36°-40°F)	Freezer Storage (0°F or below)
Cereal Products			
Regular cornmeal; whole wheat flour.....	Satisfactory for 60 days	Required over 60 days	.....
Degermed cornmeal; all-purpose and bread flour; rice; etc.....	Satisfactory	Preferred.....	.....
Miscellaneous			
Honey.....	Satisfactory	.....	.....
Nuts.....	.....	Required.....	.....
Peanut Butter.....	Satisfactory	Preferred.....	.....

USDA Foods Fact Sheets

CEs can find more information on USDA Food Fact Sheets¹ at <http://www.whatscooking.fns.usda.gov/fdd/household-material-fact-sheets>.

USDA Foods Available

For a list of available USDA Foods that might be available through CSFP, go to <http://www.fns.usda.gov>. Click on “Programs” then choose “Commodity Supplemental Foods Program” “Foods Available List.”

¹ Also referred to as “Household USDA Foods Fact Sheet”

Section 12000

Frequently Asked Questions

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ARCHIVE

Frequently Asked Questions

Questions and Answers about Disaster Policies and Procedures

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 United States Department of Agriculture Food Distribution Division disaster and emergency policies and procedures, may be found online at www.fns.usda.gov/disaster/disaster-assistance. See also *CSFP Handbook*, Section 4000, “Managing the Program.”

Q 1. Will the Food and Nutrition Service (FNS) automatically replace foods used for disaster or emergency assistance?

A 1. FNS will replace all U.S. Department of Agriculture (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 Program¹ within presidentially-declared disaster or emergency areas. Texas must submit a request for replacement within 30 days of the end of the disaster, although interim requests for replacement may be made.

FNS has neither the authority nor the resources to replace non-USDA Foods used for disaster or emergency feeding. With the exception of intra-state transportation costs (see below), FNS has neither the authority nor the resources to reimburse organizations for other costs. All requests for such reimbursement should be directed to the Texas Division of Emergency Management (website: <http://www.txdps.state.tx.us/dem/>) for possible reimbursement, either directly or through submission to the Federal Emergency Management Agency (FEMA), which has the primary responsibility for providing disaster assistance.

¹ For more information, see *CSFP Handbook*, Section 4000, “Managing the Program.”

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?

A 2. 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 agencies² 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/fdd/policy/all.

Q 3. Are disaster or emergency evacuees who are boarders or residents of institutions eligible for CSFP benefits?

A 3. No. Consistent with federal regulations at 7 CFR 250.2 (see definition of *household*), boarders or residents of institutions are not eligible to receive CSFP benefits. Should these individuals' circumstances change so they are no longer considered boarders or residents of institutions, they are encouraged to apply for CSFP benefits where available.

Q 4. May CSFP participants who have evacuated their homes and are temporarily living in areas not normally served by CSFP continue to pick up benefits from the agency in the service area they evacuated?

A 4. Yes. During a presidentially-declared disaster or emergency, evacuees may be temporarily housed at a location where CSFP service is not normally available. In such circumstances, CSFP 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 CSFP 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 CSFP residency requirements for the duration of the presidential declaration or until the evacuee establishes a permanent residence outside the original service area. CSFP participants must continue to meet all other CSFP eligibility requirements to continue to receive benefits.

² 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 *CSFP Handbook*, section 4000, "Insurance."

Evacuees must provide the agency with their temporary address and date of evacuation. The agency 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. However, certification periods may not exceed the maximum timeframes specified in CSFP regulations.

Q 5. Will agencies be required to set up distribution sites outside their normal service areas in order to serve CSFP participants who have evacuated to temporary housing?

A 5. Agencies are not required to establish temporary distribution sites (that is, tailgate distribution sites) in areas where displaced CSFP participants have relocated, if CSFP 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 CSFP 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 CSFP when they are housed with a host family?

A 6. 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 CSFP. For the duration of the presidential declaration, agencies must give the evacuees the option to be considered a separate household from the host family for the purpose of determining eligibility for CSFP.

Eligible evacuees may pursue **one** of the following three options for CSFP participation:

1. Pick up benefits from the service area they evacuated, but only if the individual or family participated in CSFP prior to 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 CSFP 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 CSFP benefits as a separate household in the service area where they are temporarily living with the host family. The household must end CSFP participation in the evacuated area by notifying the appropriate agency prior to applying for CSFP benefits in the service area where the host family resides.

3. Apply for CSFP 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 CSFP eligibility standards in effect for the agency serving the host family's place of residence. If the evacuee household participated in CSFP prior to evacuation, it must end program participation in the evacuated area by notifying the appropriate agency prior to applying for CSFP participation with the host family.

Q 7. In addition to the flexibility provided with regard to evacuee residency requirements during a presidentially-declared disaster or emergency, will FNS waive or modify other eligibility requirements for CSFP?

A 7. FNS does not have the authority to waive or to modify other CSFP eligibility requirements. Under CSFP legislation and regulations, the applicant must meet the CSFP categorical and income requirements to receive CSFP foods.

Q 8. Are disaster or emergency evacuees eligible for CSFP benefits after the presidential declaration or temporary housing status ends?

A 8. 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 CSFP and meet all other applicable criteria to remain eligible for CSFP. 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 CSFP, they would no longer be eligible to participate in CSFP. 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).

Q 9. Will FNS provide additional CSFP caseload to states where disaster or emergency evacuees relocate, to provide continuing assistance to those evacuees that were participating in CSFP in the state where they resided before the disaster?

A 9. FNS does not have the authority to increase the total caseload that may be served by CSFP, nor can FNS authorize CSFP states to exceed assigned caseload in order to provide service to disaster or emergency evacuees. This is due to the limited resources available to CSFP. However, FNS encourages CSFP states in areas to which disaster or emergency evacuees are relocated to use their entire caseloads to provide continuing service to current participants, and, to the extent possible, to provide assistance to evacuees that are in need of assistance.

It is possible that CSFP agencies in areas where evacuees have relocated may be fully serving caseload, and may not have open slots to serve relocated evacuees. In such circumstances, agencies should encourage disaster or emergency evacuees to apply for other FNS programs, such as SNAP and TEFAP.

Q 10. Will FNS waive the eligibility requirements for organizations that wish to distribute regular CSFP benefits to evacuees?

A 10. 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 CSFP requirements would be unnecessary and would compromise CSFP integrity. CSFP has well-established distribution networks in most areas in which CSFP operates. Therefore, FNS does not believe that it is in the best interest of CSFP or individuals requiring assistance for FNS to waive the current eligibility requirements for organizations that wish to participate in CSFP.

Q 11. How can my agency determine and monitor the duration of a presidential declaration?

A 11. 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.

Guidance for Households: Food Safety Best Practices for Households

For safety resources go to the USDA website at <https://www.fns.usda.gov/food-safety/food-safety-resources>.