



## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 247, 250, 251, 253, and 254

[FNS-2023-0026]

RIN 0584-AE92

### Food Distribution Programs: Improving Access and Parity

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule considers public comments submitted in response to the proposed rule revising the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and USDA Foods disaster response regulations. This final rule makes access and parity improvements in USDA's food distribution programs to support access for eligible populations and streamline requirements for program operators.

**DATES:** *Effective date:* This rule is effective [insert date 60 days after date of publication in the Federal Register].

*Implementation dates:* See section 2 of the SUPPLEMENTARY INFORMATION.

This rulemaking consists of multiple provisions. Implementation for each provision is referenced in the SUPPLEMENTARY INFORMATION section of this final rule and detailed in the section-by-section analysis.

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## **SUPPLEMENTARY INFORMATION:**

### **Section 1. Background and Discussion of the Final Rule**

The U.S. Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) works to increase food security and reduce hunger through the administration of 16 Federal nutrition assistance programs. Through the provision of food and administrative funding, USDA FNS food distribution programs assist the emergency feeding network—made up of thousands of food banks, food pantries, Tribal governments, and other community partners—in feeding those in need.

In a proposed rule published in the Federal Register on August 14, 2023 (88 FR 54908) (described hereafter as “the proposed rule”), FNS proposed to amend food distribution regulations at 7 CFR parts 247, 250, 251, 253, and 254 to make access and parity improvements within the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and USDA Foods disaster response. Based on comments received in response to the proposed rule, USDA is finalizing regulatory changes with the following overall aims:

- Increasing access to food distribution programs so eligible individuals can more easily receive the nutrition resources they need, and program operators can more easily provide those resources;
- Increasing parity between FDPIR and the Supplemental Nutrition Assistance Program (SNAP);
- Modernizing program operations by updating some outdated terminology and processes;
- Updating regulations to be consistent with current program operations and building in flexibility for future changes; and

- Incorporating lessons learned from implementing these critical programs during the COVID-19 pandemic.

## **Section II. Public Comments and USDA Response**

During the 60-day comment period on the proposed rule (August 14 - October 13, 2023), USDA received a total of 155 comments. The Department appreciates the comments provided and carefully considered these in the development of this final rule. All comments were considered without regard to whether they were provided by a single commenter or repeated by many. Importance was given to the substance or content of the comment, rather than the number of times a comment was submitted. Of the 155 comments, 11 were duplicate or non-germane submissions, resulting in 144 relevant comments. All comments are posted online at (*see docket FNS–2023–0026, Food Distribution Programs: Improving Access and Parity*). Relevant comments were submitted by State and local agencies, Indian Tribal Organizations (ITOs), advocacy organizations, nongovernmental organizations, and other interested parties, including food banks, professional and trade associations, the research community, and individual commenters and members of the public. Comments that did not refer to the changes in the proposed rule were considered outside of scope and are not addressed as part of this final rule.

Overall, five comments fully supported the proposed rule generally and one comment opposed it. The remaining comments were either mixed or only referenced and supported specific provisions. Additional detail on the comments received for provisions in the proposed rule are below.

### **A. Commodity Supplemental Food Program**

#### **I. Technical Updates to the Entire Part 247**

This final rule codifies technical updates to 7 CFR part 247 as proposed. The Department is replacing the term “elderly” with “participants” because, under the Agricultural Act of 2014 (Pub. L. 113–79), as of February 2020, CSFP is limited to participation by senior adults aged 60 years and above. In § 247.2, the Department is removing reference to women, infants, and children receiving CSFP benefits as they are no longer a part of the program. Additionally, the Department is replacing the outdated term “commodities” with “USDA Foods” to better reflect current terminology and align with the newly proposed definition of USDA Foods in 7 CFR 247.1 (See II. Updates to Definitions). This technical update does not change any current requirements and is simply a change in terminology.

### **Public Comments and USDA Response**

The Department received 21 comments that were all supportive of the technical updates to 7 CFR part 247. Commenters supporting the changes included: 4 State agencies, 7 advocacy groups, 5 program operators, and 5 individuals. One commenter discussed that updating the term “elderly” to “participants” would align with the use of person-centered language. Commenters in support of updating the term “commodities” to “USDA Foods” discussed how the technical updates will reduce confusion at the local agency level when identifying foods procured through USDA.

One State agency commenter requested clarification or technical guidance on which foods are solely eligible for CSFP versus other USDA Foods programs. The commenter stated that all of the foods in each program would be considered USDA Foods after this update is finalized. Per § 250.12(b), distributing agencies must ensure that USDA Foods at all storage facilities (including subdistributing agencies) are stored in a manner that permits them to be distinguished from other foods, and must ensure that a separate inventory record of USDA Foods is maintained. Thus, State agencies must store USDA

Foods provided for CSFP separately from USDA Foods provided for any other program (e.g., TEFAP) and must use those foods solely for the operation of CSFP.

## **II. Updates to Definitions (§ 247.1)**

This final rule codifies the updated definitions in § 247.1 as proposed. The Department is adding a new definition for the term “USDA Foods” to replace the outdated definition of “commodities” and align 7 CFR part 247 with current terminology. The Department is deleting the definition of “elderly persons” since § 247.9(a) specifies CSFP-eligible individuals must be at least 60 years of age and because the term “elderly persons” is being replaced throughout the part. Finally, the Department is updating the definition of “proxy” to exclude a “participant's adult parent” because children are no longer eligible to participate in CSFP under the Agricultural Act of 2014 (Pub. L. 113–79).

### **Public Comments and USDA Response**

The Department received 21 comments that were all supportive of updating the definitions in § 247.1. Commenters supporting the change included: 4 State agencies, 7 advocacy groups, 5 program operators, and 5 individuals. The update to the definitions in § 247.1 reflects the technical updates discussed above (See I. Technical Updates to the Entire Part 247). Commenters noted these updates reflect current practices in the program and the change to the term “USDA Foods” provides clarity and consistency with other USDA programs while potentially reducing confusion at the local agency level when identifying USDA Foods. The Department concurs with commenters who stated that the proposed changes to § 247.1 will update the program to use current terminology and provide clarity and consistency with other USDA food distribution programs.

One commenter suggested expanding the definition of “proxy” to allow for proxies during certification and remove an access barrier to the program. The Department is not

expanding the definition of “proxy” for certification periods as State agencies may already permit the use of proxies during certification and recertification.

### **III. Public Posting of Availability of USDA Foods (§ 247.5)**

This final rule codifies the proposed provision at § 247.5(b)(16) with modification to require that State agencies make available a list of CSFP local agencies, excluding agencies operating under an agreement with a local agency, on a publicly available internet web page. The State agency must post the name, address, and telephone number for each local agency. The list must be updated, at a minimum, on an annual basis. This is a revision from the proposed provision, which would have required State agencies to make publicly available a list of all CSFP distribution sites, including both local agencies and agencies operating under an agreement with a local agency. State agencies must implement this provision by [insert date 12 months after the date of publication of the final rule in the Federal Register], a revision from the proposed 60-day implementation timeline which acknowledges the need for additional time to implement the new requirement.

#### **Public Comments and USDA Response**

The Department received 33 comments, 23 of which were supportive of the proposed changes and 10 that were unsupportive. Commenters supporting the proposed change included: 4 State agencies, 6 advocacy groups, 8 program operators and 2 individuals. Unsupportive comments were received from: 5 State agencies, 1 advocacy group, 4 program operators and 1 individual.

Many commenters in support of the proposal discussed how this change would help potential applicants find food assistance during non-work hours and based on residency. Other commenters in support of the proposal pointed out that many State agencies currently list distribution sites on their public website and so this change would reflect

current practice for many State agencies while increasing awareness of the program.

Several commenters stated that to be effective, it is vital to keep distribution site information up-to-date and accurate.

However, several commenters raised concerns with the feasibility and practicality of this proposed requirement and offered alternative approaches. Some commenters pointed out that for some State agencies, posting every distribution site on a State agency's website might not be a practical requirement, since distribution sites change periodically, causing the list to potentially be outdated quickly. Others pointed out that distribution sites may not have caseload available for potential applicants and may not have the capability to answer phone calls or handle on site arrivals as a result of posting this information publicly. Some commenters proposed alternative approaches, including allowing State agencies to refer potential applicants directly to local agencies instead of maintaining the list of distribution sites at the State level. Others suggested requiring only posting of permanent site locations, a single lead agency, or one point of contact. One commenter suggested offering technology grants to support infrastructure updates, phasing in the requirement over time, aligning State Plan requirements with public information requirements, and for FNS to consider allowing State agencies to link to local agency websites that might be in a better position to provide current and updated information. Another commenter suggested the Department use language that State agencies "ensure" sites are posted without dictating the State agency maintain ownership of the website.

Public posting of CSFP distribution sites is intended to promote program access and help potential CSFP participants find their closest distribution sites. However, public comments noted the proposed provision could cause confusion if the list of CSFP distribution sites becomes outdated or inaccurate. The Department acknowledges that for State agencies with many small distribution sites, the requirement to post all CSFP

distribution sites may not be beneficial as the list could become outdated as distribution sites open and close. As such, the Department modifies this proposed provision to require State agencies to make a list of CSFP local agencies publicly available. This revision reduces the administrative burden on State agencies to post information on all distribution sites while helping potential CSFP applicants locate local agencies, that may then direct potential applicants to distribution sites and ultimately increase program access.

State agencies are still encouraged, but not required, to post more frequent updates as they are needed and include additional information, such as operating hours, links to local agency websites, and information on distribution sites. State agencies are also encouraged, but not required, to develop tools to aid eligible individuals in accessing the program (*e.g.*, a searchable tool by ZIP code). State agencies are encouraged to share any online resources they create with other organizations that serve CSFP-eligible individuals.

#### **IV. State Plan Requirement (§§ 247.6(a) and 247.5(b)(17))**

This final rule codifies the requirement that State agencies make publicly available the State Plan that is currently in use by the State agency on an internet web page as proposed. This modernizes the current requirement at 7 CFR 247.6(a) that State agencies must keep a copy of the State Plan on file at the State agency for public inspection. This final rule also codifies as proposed a related provision at § 247.5(b)(17), which requires State agencies to make publicly available the State Plan that is currently in use by the State agency on an internet web page. State agencies must implement this provision no later than 12 months after the date of publication of the final rule in the Federal Register.

#### **Public Comments and USDA Response**

The Department received 19 comments, 16 of which were supportive of the proposed changes and 3 that were unsupportive. Commenters supporting the proposed change

included: 2 State agencies, 3 advocacy groups, 2 food bank associations, 8 program operators and 1 individual. Unsupportive commenters included: 1 State agency, 1 advocacy group, and 1 individual. Commenters supporting the proposed change expressed the new requirement would increase program transparency and increase awareness of the program. Unsupportive commenters had concerns the proposed change would create an undue administrative burden, and one suggested USDA post State Plans on its own website.

The Department recognizes there is an administrative burden associated with posting the State Plan on a publicly available internet webpage. However, the Department estimates this burden will be modest and believes this is outweighed by the benefits of increasing transparency and awareness of the program and modernizing the current requirement that the State Plan be available for public inspection. A number of State agencies already post their State Plan on a publicly available website. However, for the State agencies posting their State Plan for the first time, FNS will provide guidance on the timing of when State Plans need to be posted to a website, giving direction and time to State agencies to comply with this change by the implementation date of 12 months after the date of publication of this final rule.

## **V. Eligibility Requirements (§ 247.9)**

This final rule codifies the increase to the CSFP maximum income eligibility guidelines to 150 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS) at § 247.9(a) as proposed. This is an increase from the prior limit of 130 percent of the U.S. Federal Poverty Guidelines.

In addition to the proposed change to increase CSFP's maximum income eligibility guidelines to 150 percent of the U.S. Federal Poverty Guidelines without the addition of a

medical deduction, the Department specifically requested public comments on an alternate level of 185 percent of the U.S. Federal Poverty Guidelines.

### **Public Comments and USDA Response**

The Department received 88 comments on this provision, all of which were in support of raising CSFP income eligibility guidelines. Of these commenters, 19 supported raising the income guidelines without specifying a new threshold, including 2 State agencies, 4 program operators, 1 advocacy group, and 2 individuals. An additional 3 commenters supported raising the guidelines to 150 percent, including 1 State agency, 1 food bank association, and 1 program operator. The remaining 66 commenters supported raising the income guidelines to 185 percent, including 9 State agencies, 3 food bank associations, 10 advocacy groups, 1 member of industry, 22 program operators, and 21 individuals. Many commenters discussed how an increase in the CSFP income eligibility limit would better serve residents in higher cost of living areas, those who have high medical expense costs, as well as participants living in remote, geographically isolated Tribal jurisdictions. Other supporters mentioned how nationwide inflation increases particularly affect CSFP's target population, given that older individuals more often have fixed incomes compared to younger individuals.

Specific to the 185 percent limit, commenters discussed how it would align the program with the Senior Farmers' Market Nutrition Program (SFMNP) and reduce confusion for participants of both programs. Commenters also mentioned how a 185 percent limit would align the program with other FNS food distribution programs. The Department agrees the proposed increase to 150 percent will help serve participants in higher cost of living or remote areas, those with higher medical expenses, and participants experiencing higher living costs due to increased inflation nationwide. While the Department appreciates feedback on the alternative level of 185 percent, the Department's priority is to provide CSFP benefits to seniors who are most in need. As a

discretionary program that does not operate Statewide in most jurisdictions, the Department believes the income eligibility limit of 150 percent of the U.S. Federal Poverty Guidelines best achieves this goal.

## **VI. Changes to Identification Check at Distribution and Flexibility for Identification Verification (§§ 247.10(b) and 247.6(c))**

This final rule codifies the changes to identification checks at distribution at §§ 247.10(b) and 247.6(c), as proposed, increasing flexibility for State agencies in verifying participant identity. At § 247.10(b), the Department finalizes an update to the current requirement that each participant, or their proxy, present some form of identification before receiving USDA Foods, to instead require local agencies have a process in place, in accordance with State agency requirements, to verify the identity of a participant or their proxy before distributing USDA Foods. The Department also finalizes the associated change to § 247.6(c) as proposed to require State Plans have a description of the process in place to verify the identity of participants before receipt of USDA Foods.

### **Public Comments and USDA Response**

The Department received 58 comments relating to these provisions, all of which were supportive of the proposed change to grant more flexibility when checking the identity of CSFP participants, or their proxies, during the time of delivery of the CSFP food package. Commenters supporting the change included: 10 State agencies, 11 advocacy groups and food bank associations, 1 member of industry, 23 program operators and 13 individuals. Many supportive commenters discussed how the proposed change would modernize and streamline the current requirement and increase program access to individuals with disabilities, mobility issues, language barriers, and individuals that do not have identification. Other supportive commenters mentioned how service would be

streamlined under the proposed change and how the change would lower the burden of delivering food packages and allow for greater use of technology. The Department agrees this change modernizes the identification requirement and streamlines program access for participants with disabilities, mobility issues, language barriers, and those without identification. This change allows local agencies and participants more flexibility in verifying participant identity and supports State and local agencies in modernizing the program's delivery methods, for example through innovative partnerships with third-party entities that deliver food packages directly to participants' homes. These entities now have greater flexibility when verifying participants' identity in line with the State's requirements.

Some commenters who supported the proposed provision also expressed a desire to remove identification verification completely from the program. Others requested examples of alternate materials that would satisfy this requirement and minimum thresholds for identity verification. State agencies have the flexibility to set their own parameters to verify the identity of participants or their proxies prior to distribution of food packages provided the method is in line with regulatory requirements, including that USDA Foods are only distributed to CSFP participants. FNS will provide additional guidance, including examples of how to meet this requirement, as part of the implementation of this final rule.

## **VII. Request for Comment: Federal and State Programs Conferring Eligibility for CSFP**

This final rule codifies a new provision at § 247.9(b)(1) and (2) to give State agencies the option to allow CSFP participants to demonstrate eligibility for CSFP via participation in specific Federal programs or a State program with income limits at or under the CSFP threshold.

State agencies may accept participation in the following Federal programs as demonstrating eligibility for CSFP: the Supplemental Nutrition Assistance Program (SNAP), the Food Distribution Program on Indian Reservations (FDPIR), Supplemental Security Income (SSI), the Low Income Subsidy Program (LIS), also known as Extra Help, and available under the Medicare Part D prescription drug program, and the Medicare Savings Program(s) (MSP).

This final rule also allows State agencies to identify and accept participation in State level programs that have maximum income eligibility guidelines at or below the State's maximum CSFP guidelines as demonstrating eligibility for CSFP.

The Department sought feedback from CSFP State agencies, including ITOs, and the program community on this proposal through the proposed rule, and specifically on the following questions:

1. Are there other Federal programs that you would like USDA to consider as options to demonstrate eligibility for CSFP?
2. Should USDA consider an option for State agencies to have the flexibility to include State means-tested programs to demonstrate eligibility for CSFP?

### **Public Comments and USDA Response**

The Department received 17 comments that were all in support of considering participation in various programs at the Federal and State level as demonstrating eligibility for CSFP. Commenters supporting the change included: 5 State agencies, 4 advocacy groups, 5 program operators, and 3 individuals. Commenters in support of this provision suggested that participation in the following Federal programs should demonstrate eligibility for CSFP: SNAP, SSI, FDPIR, the Low Income Home Energy Assistance Program (LIHEAP), the Senior Farmers' Market Nutrition Program (SFMNP), the Housing Choice Voucher Program Section 8, Medicaid, the Children's

Health Insurance Program (CHIP), Medicare, and the Supplemental Nutrition Program for Women, Infants, and Children (WIC).

One commenter suggested including programs with income limits above CSFP but did not suggest a limitation. Many commenters generally supported demonstrating eligibility for CSFP through participation in State-level programs with income limits at or below CSFP, and one commenter suggested the Michigan Housing Authority residence and utility assistance programs in their State.

Given that the Department received fully supportive comments on this change, the Department codifies in this final rule a provision to give State agencies the option to allow participation in specific Federal programs and State level programs with income eligibility standards at or below the CSFP requirements to demonstrate eligibility for the program. This provision reduces the administrative burden on local agencies and participants and will not impose any program changes to State agencies which do not elect to implement this provision. Through the comment period and subsequent analysis, the Department identified programs outside of those listed in the request for comments in the proposed rule, such as LIS and MSP, and included those as additional Federal programs allowed to demonstrate CSFP income eligibility.

## **VIII. Referral Materials for the Senior Farmers' Market Nutrition Program**

### **(§ 247.14)**

This final rule codifies a new provision at § 247.14(a)(4) as proposed to require that local agencies, where applicable, share written information and referrals to the Senior Farmers' Market Nutrition Program (SFMNP) with CSFP applicants. Section 247.14(a) currently requires that local agencies, as appropriate, provide applicants with written information and make referrals on various programs, including SNAP. CSFP and SFMNP work in tandem to serve the low-income senior population and the benefits

provided by each program help meet the needs of seniors at nutritional risk. State agencies and other affected parties must implement this provision no later than 12 months after the date of publication of the final rule in the Federal Register.

### **Public Comments and USDA Response**

The Department received 29 comments for this provision, 25 of which were in support and 4 that were unresponsive. Commenters supporting the proposed provision included: 8 State agencies, 9 advocacy groups and food bank associations, 5 program operators, and 3 individuals. Unresponsive commenters included: 1 State agency and 1 local agency, 1 individual, and 1 advocacy group. Supportive commenters discussed how CSFP participants who gain access to SFMNP could receive access to fresh produce that is not currently offered in CSFP. The Department concurs with commenters who stated that providing SFMNP referral materials to CSFP participants can help participants access SFMNP and potentially increase their consumption of fresh produce.

Three commenters representing Indian Tribal Organizations requested FNS provide periodic updates on other CSFP or SFMNP program operators in their areas. The Department recognizes this information is important to support referrals and maintains publicly available contact information for CSFP and SFMNP State agency operators to facilitate connection between these programs.

One commenter requested that SFMNP have dedicated caseload for CSFP participants to ensure access to the program, a change that would be outside the scope of this rulemaking.

Other commenters requested a clarification on what “written” means in this provision, as many States operate in web-based communications and because printing materials may exhaust the limited budgets of implementing agencies. One unresponsive commenter of this provision mentioned how, with labor shortages and other challenges, the benefit of this provision would not outweigh the cost of implementing it and how other program

activities may be negatively impacted. Another commenter supported sharing information about SFMNP, but did not support formal referrals to other programs, due to it being an undue burden on local agencies. Another commenter mentioned how they do not support the provision as written because printing may not be available everywhere. The Department acknowledges that some State and local agencies have limited budgets and clarifies that for purposes of this provision, and in alignment with current CSFP policy, written materials can include electronic communications. In addition, this provision includes the language “where applicable” to ensure that SFMNP referrals do not need to occur in areas in which the program is not offered and in other instances when referrals are not applicable.

#### **IX. Nondiscrimination Statement Update (§ 247.37)**

The Department proposed an update to the nondiscrimination statement language at § 247.37 to state that CSFP must be operated in accordance with the most up-to-date USDA nondiscrimination statement. Because the nondiscrimination statement is applicable to multiple USDA programs, the Department has reconsidered its approach. The Department will not finalize the proposed provision in this rulemaking. The Department will instead consider options to address this in future rulemaking.

#### **Public Comments and USDA Response**

The Department received 4 comments on this proposed provision, all of which were in support of the proposed change, including 1 State agency, 2 advocacy groups, and 1 individual. Commenters highlighted how this proposed change would retain important nondiscrimination language while also ensuring that the most current USDA statement consistently remains official policy. The Department appreciates support for the proposed changes and will consider this feedback in future rulemaking addressing the nondiscrimination statement, with the goal of consistency across USDA programs.

## **B. USDA Foods in Disasters and Situations of Distress**

### **I. Technical Updates to §§ 250.69 and 250.70**

This final rule codifies the technical updates to §§ 250.69 and 250.70 as proposed, replacing the outdated terms “commodities,” “food commodities,” “donated commodities,” and “donated foods,” with “USDA Foods” to further align with the definition of “USDA Foods” in 7 CFR part 250. Technical updates also include reorganization for clarity.

#### **Public Comments and USDA Response**

The Department received 10 comments that were all supportive of the proposed change. Commenters included: 4 State agencies, 3 advocacy groups, and 3 individuals. The Department concurs with the commenters that noted the terms being replaced are no longer a part of the program and are outdated, as well as the commenter noting the technical changes will mitigate and reduce confusion at the recipient agency level.

### **II. Removal of Prohibition on Simultaneous Provision of USDA [Donated] Foods and D-SNAP during a Disaster (§§ 250.69(c)(2) and 250.70(d))**

This final rule codifies the changes to §§ 250.69(c)(2) and 250.70(d) as proposed to remove the prohibition on the simultaneous distribution of USDA Foods and Disaster Supplemental Nutrition Assistance Program (D-SNAP) benefits to households during a disaster and situations of distress. The Department recognizes that immediate implementation of this provision may benefit State distributing agencies and recipients of USDA assistance during disasters. Because the removal of the dual participation prohibition removes a restriction, the Department is using the authority at 5 U.S.C. 553(d)(1) to make this provision effective immediately upon the date of publication of this final rule.

## **Public Comments and USDA Response**

The Department received 24 comments that were all supportive of the proposed change. Commenters included: 6 State agencies, 10 advocacy groups, 1 food bank association, 3 local agencies, and 4 individuals. Many commenters noted that this change would allow disaster assistance to run more seamlessly and be more streamlined while also acknowledging that a person's ability to access grocery stores or food distributions varies depending on the type of emergency. The Department concurs with commenters that this change allows for more efficient disaster assistance and for expedited distribution of foods during times of high need.

### **III. Clarification of Requirements for Distribution of USDA Foods During a Disaster and Situations of Distress (§§ 250.69 and 250.70)**

This rule codifies the clarification of requirements for the distribution of USDA Foods during a disaster at § 250.69 and during situations of distress at § 250.70 as proposed. The reorganization of §§ 250.69 and 250.70 clarifies which requirements in the section apply to approval of disaster organizations serving congregate meals and which requirements apply to disaster organizations providing USDA Foods for household consumption, as follows:

- Congregate meals language from § 250.69(c) and the entirety of § 250.69(e) will be consolidated at § 250.69(a);
- Household distribution language from § 250.69(c) and the entirety of § 250.69(d) will be consolidated at § 250.69(b); and
- Section 250.69(f) through (h), which apply to both methods of distribution, are redesignated to § 250.69(d) *Reporting and recordkeeping requirements*,

§ 250.69(e) *Replacement of USDA Foods*, and § 250.69(f) *Reimbursement of transportation costs*, respectively.

- Language from § 250.70(c) and the entirety of § 250.70(e) will be consolidated into a single provision at § 250.70(a) to clarify the use of USDA Foods in congregate meals.
- All language relevant to distribution to households, including language from § 250.70(c) and the entirety of § 250.70(d), will be consolidated into a single provision at § 250.70(b) to clarify the use of USDA Foods for distribution to households.
- Section 250.70(f) *Reporting and recordkeeping requirements*, § 250.70(g) *Replacement of donated foods*, and § 250.70(h) *Reimbursement of transportation costs*, which apply to both methods of distribution, will remain separate and will be redesignated to § 250.70(d) *Reporting and recordkeeping requirements*, Section 250.70(e) *Replacement of donated foods*, and § 250.70(f) *Reimbursement of transportation costs*, respectively.

#### **Public Comments and USDA Response**

The Department received 10 comments that were all supportive of the proposed change. Commenters included: 3 State agencies, 4 advocacy groups, and 3 individuals. Commenters generally supported this provision along with the other technical changes proposed to §§ 250.69 and 250.70 as these changes make it easier to understand the regulations and provide disaster assistance.

#### **IV. Limitation on Impacts to Other Programs (§§ 250.69(c) and 250.70(c))**

This final rule codifies the provisions at §§ 250.69(c) and 250.70(c) as proposed to ensure the operation of congregate meals service and/or disaster household distribution, including in situations of distress, is not administered in lieu of regular program

operations, nor does it negatively impact the distribution of USDA Foods through other programs within a distributing agency's jurisdiction. USDA Foods for disaster response activities are typically drawn from local USDA Foods inventories that support permanent programs such as TEFAP. This provision ensures that distributing agencies consider the operation of other USDA Foods programs when making decisions about using USDA Foods for disaster response activities.

### **Public Comments and USDA Response**

The Department received 10 comments, 3 of which were supportive (1 State agency and 2 advocacy groups), 1 unresponsive (advocacy group), and 6 that requested additional clarification (2 State agencies, 3 local agencies, and 1 food bank association). The commenters requesting clarification stated that the proposed provision was written ambiguously and requested that FNS define what would qualify as an "ongoing negative impact" and what is considered a "limitation on impacts to other programs." Commenters mentioned how, without thresholds as to what a negative impact is, distributing agencies will be unable to enforce the provision. The Department clarifies that to ensure the operation of congregate meals service and/or disaster household distribution in situations of distress or during disasters is not administered in lieu of regular program operations, distributing agencies should only administer a USDA Foods in disaster response if USDA Food inventory levels of other programs, such as FDPIR and TEFAP, are sufficient to maintain and continue food distribution of those programs at the same levels prior to diverting USDA Foods for disaster response.

Additionally, negative impacts to the distribution of USDA Foods through other programs administered by the distributing agency can include, for example, when a disaster distribution lowers the USDA Foods inventory of another program, such as FDPIR, to a level that may impact the distributing agency's ability to provide FDPIR benefits to participants at the current program levels. Distributing agencies should ensure

the operation of congregate meals service and disaster household distribution, including under situations of distress, does not lower the inventory levels of other programs below their regulatory requirements. When determining whether an ongoing negative impact may occur, the distributing agency must take into consideration, among other factors, current program participation levels, household food preferences and the historical and projected volume of food distribution at each site.

The unsupportive comment argued the proposed provision would put the responsibility on distributing agencies to implement other programs like FDPIR and TEFAP and would put an undue burden on distributing agencies to determine how to divide resources. The Department clarifies this provision codifies a principle that is already in place for USDA Foods in Disasters, which is that distributing agencies should consider the operation, including inventory levels and current participant caseload levels, of their permanent programs like TEFAP and FDPIR when making decisions about using USDA Foods for disaster response. Although the distribution of USDA Foods during and after disasters divides a distributing agency's resources, operating USDA Foods disaster response activities should not negatively impact the operation of other programs. Specifically, disaster household distributions should not take the place of regular FDPIR or TEFAP operations, nor reduce food benefits and services of those programs. Per current regulations at § 250.69(g), USDA is responsible for the replacement of USDA Foods used in Presidentially-declared disaster or emergency response, if requested by the distributing agency. Replacement of those USDA Foods occurs within 45 days following the termination of disaster assistance.

## **V. Updated Reporting Requirements for Distribution of USDA Foods to Households During a Disaster (§§ 250.69(d) and 250.70(d))**

This final rule codifies the requirement at §§ 250.69(d) and 250.70(d) with modification to require distributing agencies operating disaster household distributions to submit a biweekly report to FNS, rather than weekly as described in the proposed rule. All distributing agencies operating disaster household distributions must submit a biweekly report (every two weeks) for the duration of the approved disaster household distribution, regardless of the distribution period's length. Distributing agencies must use the format prescribed by FNS, which must be submitted electronically for the duration of the approved disaster household distribution. The biweekly report must include: (i) The weekly distribution start and end dates, (ii) The total number of individual household members receiving assistance at all locations, (iii) Material identification codes for USDA Foods distributed, (iv) The USDA Foods description of the foods distributed, and (v) The total units of each food distributed. The information will be submitted electronically.

### **Public Comments and USDA Response**

The Department received 19 comments on the proposed reporting requirement, with 7 in support and 12 in opposition. Supportive commenters included: 2 State agencies, 3 advocacy groups, 1 food bank association, and 1 individual. Unsupportive commenters included: 4 State agencies, 7 advocacy groups, and 1 local agency. Commenters in support of this provision discussed how the proposed reports would more efficiently help efforts to replace USDA Foods used in disaster response and would also assist in inventory management, ordering, and distribution. Supporters of the proposed provision also suggested the reporting mechanism be user-friendly and be a reasonable process that uses modern technology.

Commenters expressed concern with the resulting administrative burden associated with the increased reporting while also requesting increased funding or widespread adoption of automated reporting mechanisms to lessen the burden. Commenters also

mentioned how the administrative burden would occur during times of already heightened administrative burden. Other suggestions included using a reporting method that uses current, up-to-date technology and to consider utilizing the data of other sources, such as the Federal Emergency Management Agency (FEMA), to collect this information.

This provision was intended to improve FNS' and State distributing agencies' understanding of the quantity and types of USDA Foods available for emergency response and facilitate FNS' efforts to replace USDA Foods used in disaster response to prioritize nutrition security for participants in all programs serving USDA Foods. The prolonged nature of the COVID-19 pandemic and the quantity of USDA Foods distributed under disaster household distributions illustrated that requiring reporting of USDA Foods distributed only after the end of the disaster assistance period presented challenges. These challenges included timely tracking of USDA Foods inventories at both the national and State distributing agency levels, which affected USDA and State distributing agencies' ability to source and distribute foods to meet the needs of the public. However, the Department concurs with commenters who stated the proposed requirement as written represented a potential administrative burden on State distributing agencies.

In response to these comments, the Department amends the proposed provision in the final rule to lessen the associated administrative burden. Instead of weekly reporting required for disaster household distributions longer than 14 calendar days, the Department requires all distributing agencies operating disaster household distributions to submit a biweekly report (every two weeks) for the duration of the approved disaster household distribution, regardless of the distribution period's length.

The Department's decision to limit reporting to a biweekly basis, rather than the proposed weekly basis, lessens the administrative burden on distributing agencies while

still collecting the information needed to track USDA Foods used in disaster response and monitoring inventory levels.

The Department clarifies the information requested in this new biweekly report is the same information that must be submitted with the currently required FNS-292A, *Report of Commodity Distribution for Disaster Relief*, that must be completed within 45 days following the termination of disaster assistance. Under this new reporting requirement, State distributing agencies may use the same data submitted in the biweekly report(s) to timely submit the FNS-292A to FNS. The Department agrees with utilizing available technology and will require the submission of biweekly reports electronically.

## **C. The Emergency Food Assistance Program (TEFAP)**

### **I. Technical Updates to the Entire Part 251**

This final rule codifies the technical updates to 7 CFR part 251 as proposed. The Department is replacing instances of the outdated terms “commodities,” “food commodities,” “TEFAP commodities,” “TEFAP foods,” “donated foods,” and “donated commodities” to “USDA Foods” to further align the program with the definition of “USDA Foods” in 7 CFR part 250.

### **Public Comments and USDA Response**

The Department received 15 comments that were all in support of the proposed technical changes to 7 CFR part 251. Commenters included: 5 State and 5 local agencies, 2 food bank associations, and 3 advocacy groups. The Department concurs with the commenters.

### **II. Technical Clarification to the Definition of a Food Bank (§ 251.3)**

This final rule codifies the update to the definition of a food bank at § 251.3 as proposed. The Department is removing a description of food provided by food banks in

§ 251.3(f), deleting “or edible commodities, or the products of food or edible commodities” from the definition of *food bank*, as this description caused confusion about the types of foods to which regulations apply. The Department did not receive any comments on this provision.

### **III. Requirement for the Public Posting of Availability of USDA Foods through TEFAP and Encouraging Distribution of USDA Foods in Tribal Areas (§ 251.4)**

This final rule codifies the proposed provision at § 251.4(l) with modification to require eligible recipient agencies (ERAs) that have agreements with the State agency to be posted to a publicly available internet webpage. This final rule also codifies as proposed the provision at § 251.4(l) that each State agency publicly posts the State’s uniform statewide eligibility criteria to receive USDA Foods for household consumption. The Department also codifies the provision at § 251.4(k) as proposed to encourage State agencies and ERAs to implement or expand USDA Foods distributions in rural, remote, and Tribal areas of the State, wherever possible.

#### **1. Requirement for the Public Posting of Availability of USDA Foods Through TEFAP (§ 251.4(l))**

ERAs are organizations that distribute USDA Foods through TEFAP. The proposed rule would have required TEFAP State agencies to post information about all ERAs to publicly available websites, to include those ERAs which have agreements with other ERAs. In consideration of the administrative burden associated with this provision as highlighted through public comments, this final rule codifies the proposed provision at § 251.4(l) with modification to require ERAs that have agreements with the State agency to be posted to a publicly available internet webpage. At minimum, State agencies must publicly post the names, addresses, and contact telephone numbers for all ERAs that have an agreement with the State agency.

The Department codifies as proposed the requirement that State agencies must post the State's uniform Statewide eligibility criteria to receive USDA Foods for household consumption. The information must be posted on a publicly available internet web page and be updated on an annual basis or whenever changes to eligibility criteria are made (See IV. State Agency Options for TEFAP Eligibility Criteria, Documentation, and Public Communication (§ 251.5) 3. Public Posting of Statewide TEFAP Eligibility Criteria for further discussion (§ 251.5(b)). State agencies must implement this provision no later than 12 months after the date of publication of the final rule in the Federal Register.

### **Public Comments and USDA Response**

The Department received 28 comments on this provision, 24 of which were supportive and 4 that were not supportive. Supportive commenters included 5 State and 6 local agencies, 6 food bank associations, 5 advocacy groups, and 2 individuals. Unsupportive commenters included 3 State agencies and 1 local agency.

Supporters of the change explained how publicly listing ERAs helps potential participants find food assistance during non-working hours and access residency information.

Other commenters supported the intent of the provision but had concerns with the administrative and financial burden associated with listing all ERAs, since information on smaller ERAs can change frequently and without notice. Commenters suggested that single points of direct contact be established that are better equipped to handle potential participants. Additional commenters had concerns over the accuracy of the data that would be made available to the public.

The Department agrees with commenters that suggested the proposed list of all ERAs may not be useful to participants or potential participants if there are issues with the list being outdated or inaccurate. Smaller ERAs may be added or removed from the program

more frequently and may not have the capacity to handle direct referrals or questions from potential participants as well as larger ERAs. To lower the administrative and financial burden of this provision, the Department is revising the provision to only require that ERAs holding an agreement with the State agency be posted publicly. ERAs that have direct agreements with the State agency are more likely to maintain consistent contact information and have the resources to direct potential participants to the program. Additionally, excluding ERAs that have agreements with other ERAs reduces the State agency's burden of posting the list.

Some commenters suggested that certain types of ERAs should not be posted publicly, for example, domestic violence shelters. The Department recognizes that some ERAs may have a compelling public safety reason for not having their address posted publicly and commits to working with State agencies on a case-by-case basis for ERAs that may be in this situation.

The intent of this provision is to improve participants' and potential participants' access to TEFAP, and the Department encourages State agencies to post the complete list of ERAs, including ERAs that hold agreements with other ERAs, to help the public understand where they may access TEFAP.

State agencies are still encouraged, but not required, to post more frequent updates as they are needed and to include additional information, such as operating hours, the areas served by the ERA, links to ERA websites, and distribution site addresses. State agencies are also encouraged, but not required, to develop tools to aid eligible individuals in accessing the program (*e.g.*, a searchable tool by ZIP code).

## **2. Encouraging Distribution of USDA Foods in Tribal areas (§ 251.4(k))**

This final rule codifies the revision to § 251.4(k) as proposed to encourage State agencies and ERAs to implement or expand distributions of USDA Foods in Tribal areas, in addition to the rural areas already listed.

### **Public Comments and USDA Response**

The Department received 22 comments for this provision that were all supportive of the proposed change. Commenters included: 4 State and 5 local agencies, 6 food bank associations, 6 advocacy groups, and 1 individual. Supportive commenters discussed how this provision would help expand access to TEFAP in Tribal communities and other historically underserved populations while bolstering partnerships with Tribal Nations. Others mentioned their continued support for TEFAP Reach and Resiliency grant funding to carry out projects to expand the reach of TEFAP to remote, rural, Tribal and/or low-income areas and how this provision can aid in these efforts. The Department agrees with all the commenters who supported the proposed provision and with the commenters who stated this proposed provision could expand TEFAP access to historically underserved populations while strengthening the program.

Commenters also suggested that FNS release guidance or best practices on how to achieve expanded access to TEFAP in Tribal areas. FNS will provide guidance and best practices to help implement or expand distributions of USDA Foods in Tribal areas as a part of the final rule implementation.

One commenter expressed the language that encourages the expansion of TEFAP is not strong enough and suggested that it should be required, and separately, that Congress should designate Tribes as legally eligible to administer TEFAP. While the Department appreciates this comment and agrees it is important to continue expanding TEFAP's reach into Tribal areas, this request is outside of the scope of this rulemaking.

#### **IV. State Agency Options for TEFAP Eligibility Criteria, Documentation, and Public Communication (§ 251.5)**

The Department is revising TEFAP regulations to increase alignment of income eligibility criteria nationwide, ensure access for vulnerable individuals, and ensure that statewide eligibility criteria are posted in a manner accessible to the public.

##### **1. TEFAP Maximum Income Eligibility Range and State Agency Option for Alternative Income Eligibility Thresholds (§ 251.5(b)(2))**

This final rule codifies the proposed change with modification to implement a TEFAP maximum income eligibility range and State agency option for alternative income eligibility thresholds at § 251.5(b)(2). This change requires that income-based eligibility standards be between 185 percent and 300 percent of the U.S. Federal Poverty Guidelines, which are published annually by the U.S. Department of Health and Human Services (HHS). This is an increase from the upper threshold in the proposed rule, which would have set income-based standards at a maximum income eligibility threshold at or between 185 percent to 250 percent of the U.S. Federal Poverty Guidelines. This revision maintains the ability for State agencies to propose alternative income-based eligibility standards above this threshold with supporting rationale, subject to FNS approval. Consistent with current program requirements at § 251.5(b), income eligibility standards set by a TEFAP State agency under the final provision must be applied uniformly statewide.

##### **Public Comments and USDA Response**

The Department received 62 comments on the proposed provision. Twenty commenters supported the proposed range of 185-250 percent of the U.S. Federal Poverty Guidelines, 32 did not support the cap as proposed and requested a cap above 250 percent, 3 were opposed to any maximum cap, 1 supported raising the lowest maximum above 185 percent to 200 percent, 3 commenters opposed the 250 percent maximum as

too high, and 3 commenters opposed the proposed provision in full. Commenters included 9 State agencies, 24 local agencies, 11 food bank associations, 11 advocacy groups, and 7 individuals.

Commenters in support of the proposed provision stated the change would increase access for individuals who would not have previously qualified under the current guidelines and that the range is a starting point for standardizing eligibility standards nationwide.

Commenters who supported increasing the maximum cap beyond 250 percent stated the proposed cap was too low and would create an undue administrative burden on States currently operating over the 250 percent level, as they would have to submit additional justification to FNS to maintain their current income eligibility guidelines. They also mentioned the proposed maximum may be a potential deterrent for other States to adjust their income eligibility thresholds above 250 percent in the future, due to the increased administrative burden. Some commenters who felt the 250 percent maximum threshold was too low suggested that either FNS use no maximum threshold or create a maximum of 400 percent if necessary.

Commenters also mentioned concerns that USDA may deny requests for higher maximums above the proposed range. Supporters of a maximum cap above 250 percent stated that a higher maximum would be more inclusive of current State agency income eligibility thresholds and better reflect the economic realities of food insecurity in the country. Commenters also expressed concerns that in States with current income eligibility thresholds above the maximum identified in the proposed rule, participants could lose access to the program if their higher thresholds were not approved. One commenter suggested that all TEFAP participants be treated like those visiting prepared meal sites and not be subject to income eligibility guidelines.

The Department concurs with commenters who expressed that a maximum income eligibility threshold of 250 percent of the U.S. Federal Poverty Guidelines is too low and may not encompass those in need who are living in areas with a high cost of living, such as urban centers, Tribal areas, and some geographically isolated States and U.S. Territories.

As some commenters mentioned, the Department also recognizes that current participants may be impacted by the proposed maximum threshold and the Department wishes to mitigate that impact. Thus, the Department is revising the provision to increase the maximum income threshold in this provision, from 250 percent to 300 percent of the Federal Poverty Guidelines. Additionally, the Department retains the ability for States to propose alternative income-based eligibility standards (i.e., standards above 300 percent) with FNS approval. While the Department recognizes there is administrative burden associated with requesting this approval, the Department estimates the burden is modest and views this as necessary to ensure TEFAP resources are only reaching individuals most in need, without unduly impacting current participants.

Commenters also questioned whether FNS is changing its funding allocation model to reflect a larger pool of eligible participants. The TEFAP food and administrative funding formulas are set in program statute and accordingly, FNS will continue to use this formula to allocate program resources.

Additionally, some commenters requested guidance from FNS, including an approval matrix for States wishing to increase their ceiling above the maximum, and examples of what types of justification will be approved by FNS. FNS will provide guidance during implementation of this final rule to aid State agencies in requesting maximum income eligibility thresholds over 300 percent and expects requests will likely align with guidance in Policy Memo FD-153, *Guidance for Submitting Amendments to TEFAP State Plans per 7 CFR 251.6*. For those State agencies who currently have income guidelines

over 300 percent, FNS will provide technical assistance to submit timely justifications as needed, in accordance with FNS guidance, and prior to this rulemaking's effective date.

## **2. Methods for Verifying Residency and Removal of Federal Address Collection**

### **Requirements (§§ 251.5(b)(3) and 251.10(a)(4))**

This final rule codifies the change at § 251.5(b)(3) as proposed to establish that length of residency, address, or identification documents shall not be used as eligibility criteria when determining household eligibility. This final rule also codifies the removal of Federal address collection requirements at § 251.10(a)(4) as proposed. Current regulations at § 251.10(a)(3) require distribution sites to collect the addresses of households receiving USDA Foods for home consumption and maintain the record of participant addresses per the retention policy described in § 251.10(a)(4).

### **Public Comments and USDA Response**

The Department received 53 comments on this provision, 43 of which were supportive and 10 unsupportive. Supportive commenters included: 6 State and 16 local agencies, 7 advocacy groups, 12 food bank associations, and 2 individuals. Unsupportive commenters included: 1 State agency, 6 local agencies, and 3 individuals.

Supportive comments stated the current practice to collect full household addresses is burdensome to participants and ERAs, as well as a hindrance to migrant workers, people experiencing homelessness, those who move frequently, or those who have privacy concerns with providing an address. Other supportive comments stated that ERAs would benefit from the change by eliminating a lengthy administrative intake step, freeing up staff capacity and helping to shorten long lines at distributions. The Department concurs with the majority of commenters in support of the proposed change at § 251.5(b)(3) that collecting household information can be burdensome to both participants and ERAs. FNS aims to ensure that TEFAP State agencies retain the ability to develop statewide

eligibility criteria which fit their needs, while supporting program access for vulnerable individuals and households.

Opposed commenters had concerns that not using an address to verify residency could result in individuals outside of their community accessing their distribution sites and depleting resources intended for community members. Some commenters expressed concern about not being able to collect zip codes under the proposed provision. Some commenters also suggested the final rule remove geographic limitations on service altogether. Finally, one commenter requested clarification for State agencies on acceptable alternative forms of verification.

Along with self-attestation, other options for State agencies to confirm residency of TEFAP applicants may include collecting the zip code or county of residence of TEFAP applicants. These alternate forms of confirming residency also help address the concerns raised by a few commenters of the risk of individuals from outside of a community accessing an ERA's TEFAP offerings. In addition, the significant benefits of this provision, including supporting program access for vulnerable individuals and households, eliminating a lengthy administrative intake step, freeing up staff capacity, and helping to shorten long lines at distributions, outweigh the minimal concerns raised by some commenters.

Some commenters requested clarification on whether addresses can still be collected for other purposes, such as in cases of food recalls and providing information on more resources. The Department clarifies that ERAs cannot collect addresses as part of the eligibility determination process but may still collect addresses on a *voluntary* basis for other purposes, such as in cases of food recalls and providing information on other assistance programs, if it is clear providing the information is optional for applicants and is being collected for reasons other than TEFAP eligibility.

### **3. Public Posting of Statewide TEFAP Eligibility Criteria (§ 251.5(b))**

This final rule codifies the change at § 251.5(b) as proposed to require State agencies to post statewide eligibility criteria, including requirements for demonstrating income and residency, to a publicly available website. State agencies must implement this provision no later than 12 months after the date of publication of the final rule in the Federal Register.

#### **Public Comments and USDA Response**

The Department received 13 comments for this proposed change, 12 of which were supportive and one which was mixed. Commenters included 3 food bank associations, 5 local agencies, and 5 advocacy groups.

Supportive commenters discussed how making this information available online would make the program more transparent and accessible to people seeking food assistance. One commenter expressed concern with the administrative burden associated with posting the criteria, given staffing shortages. The Department recognizes this provision poses an administrative burden on State agencies; however, FNS estimates the annual administrative burden as relatively low. Once a State agency has posted their statewide eligibility criteria to a publicly available website, State agencies only need to make updates if their Statewide eligibility criteria changes. The benefits of ensuring that eligible applicants are more easily able to understand how they may receive TEFAP outweigh the minimal administrative burden associated with this requirement.

### **V. Updated Reference for Farm to Food Bank Projects (§ 251.6)**

This final rule codifies the change to § 251.6 as proposed to update the paragraphs cited for information that must be included in TEFAP State Plans for Farm to Food Bank Projects to reflect the reorganized section of regulations related to Farm to Food Bank

Projects at new § 251.13. The Department did not receive any comments on this proposed change.

#### **VI. Updated Reference for TEFAP Reporting Requirements (§ 251.9)**

This final rule codifies the technical edit to § 251.6 as proposed to update the paragraph cited for the FNS–667, *Report of TEFAP Administrative Costs*. The Department did not receive any comments on this proposed change.

#### **VII. Establishing Confidentiality Protections for Applicant and Participant**

##### **Household Information and Participant Household Information (§ 251.10(c))**

This final rule codifies the changes to § 251.10(c) as proposed to require that TEFAP participant information must be kept confidential and to create limits on the disclosure of information obtained from applicants or participants and the identity of persons making a complaint or allegation against persons participating in or administering the program. Current regulations do not include requirements for protecting the confidentiality of TEFAP applicant or participant household information. This new provision ensures the protection of information collected from households and aligns recordkeeping and retention requirements with those of other food assistance programs.

##### **Public Comments and USDA Response**

The Department received 29 comments on the proposed provision, 27 of which were supportive and 2 that were unsupportive. Supportive commenters included: 2 State and 13 local agencies, 5 advocacy groups, and 7 food bank associations. One State agency and 1 food bank association were unsupportive of the provision.

Supportive commenters agreed that collecting names and addresses from clients can pose risks to confidentiality and requires data protection and stated that participants should not be vulnerable to unlawful targeting or harassment throughout any process.

Other supportive comments cited that this provision would uphold privacy, confidentiality, and dignity standards within the program and one commenter urged USDA to prohibit the collection of unnecessary personally identifying information, such as social security numbers, on the TEFAP eligibility form.

Some commenters expressed concern about whether the proposed provision would allow for the use of electronic intake platforms. The use of electronic systems in TEFAP, including electronic intake platforms, will continue to be acceptable under the final provision, as long as the systems are able to properly ensure the protection of information collected from households and meet existing program requirements and all relevant Federal or State requirements.

Other commenters expressed concern that the provision would not allow volunteers to collect information. This provision is not intended to stop the use of volunteers to collect program information. However, volunteers should be made aware of the confidentiality rules in TEFAP and keep information collected confidential. Commenters also questioned whether the requirement would require each participant to sign a separate sign-in sheet or intake form, which would be costly and time consuming. Provided that confidentiality is maintained, a separate sign-in sheets is not required for each participant. Finally, one commenter was concerned the provision would negatively impact categorical eligibility, and another was concerned the proposed requirement would impact existing data sharing agreements and questioned whether the proposed requirement would have a detrimental impact on efforts to improve nutrition and hunger relief programming. This provision does not impact categorical eligibility, as the regulatory language at § 251.10(c)(2) allows, with the consent of the participant, State or local agencies to share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach.

## **VIII. Nondiscrimination Statement Update (§ 251.14(b))**

The Department proposed an update to the nondiscrimination statement language at § 251.10(c) and redesignating as § 251.14(b) to state that TEFAP must be operated in accordance with the most-up-to-date USDA nondiscrimination statement. Because the nondiscrimination statement is applicable to multiple USDA programs, the Department has reconsidered its approach. The Department will not finalize the proposed provision in this rulemaking. The Department will consider options to address this in future rulemaking. This rulemaking moves the current nondiscrimination statement language from § 251.10(c) to newly created § 251.14(b), with confidentiality protections codified at § 251.10(c).

### **Public Comments and USDA Response**

The Department received 4 comments from 2 State agencies and 2 advocacy groups, all of which were supportive of the proposed change. The Department appreciates support for the proposed changes and will consider this feedback in future rulemaking addressing the nondiscrimination statement, with the goal of consistency across USDA programs.

## **IX. Eligible Recipient Agency Reporting (§ 251.10(b)(3))**

This final rule codifies the proposed provision at § 251.10(b)(3) with modification to establish a new requirement for State agencies to annually submit a list of all ERAs and statewide eligibility criteria to FNS. The Department is revising the regulatory language to retain the intent of this provision as proposed. The proposed revision referenced the publicly available list of ERAs described at § 251.4(l). Since that provision is revised in this final rule to only include ERAs with direct agreements with the State agency, (see ‘Requirement for the Public Posting of Availability of USDA Foods Through TEFAP’), the Department removes reference to the publicly posted ERA list at § 251.4(l) and

instead modifies the provision to require that State agencies must annually submit a list of all ERAs and statewide eligibility criteria. This revision ensures this report includes all ERAs, including those ERAs which distribute USDA Foods to other ERAs, to eligible households for home consumption, or in prepared meals.

This information is collected for program management purposes so that FNS may understand both where TEFAP services are offered and the national landscape of participating TEFAP ERAs. It is not intended to be a ‘real-time’ list for active participant referrals. The list provided to FNS will include ERAs that have agreements with a State agency and ERAs that have agreements with another ERA. The list also includes ERAs that distribute USDA Foods for home consumption and those that distribute USDA Foods in the form of prepared meals. This will allow FNS to better understand areas where there may be gaps in service, and work with States to eliminate these gaps. The Department did not receive any specific comments on the above proposed change at § 251.10(b)(3).

#### **X. Household Distribution Participation Reporting (§ 251.10(b)(4))**

This final rule codifies the provision at § 251.10(b)(4) with modification to require State agencies to report the number of persons (i.e., site visits) served by all TEFAP distribution sites providing USDA Foods for home consumption per month. State agencies and ERAs will only need to count the total number of individuals served in a month and will not need to identify the number of unique households that are served in a month. To the extent possible, State agencies and ERAs should record the total number of persons in each household that is served for each site visit, but the Department acknowledges accuracy of these data will vary based on each agency’s method of tracking participants. This is a revision from the proposed provision which would have required the State agency to report the total number of persons in all households receiving USDA Foods for household consumption per month. Consistent with the proposed rule,

State agencies will be required to provide this information on a quarterly basis. FNS will align the timing of this report with other required quarterly reporting, such as administrative funds usage, in order to minimize reporting burden for State agencies.

### **Public Comments and USDA Response**

The Department received 23 comments on the proposed provision, 14 of which were supportive and 9 which were not supportive. Supportive commenters included: 1 State and 4 local agencies, 2 advocacy groups, 5 food bank associations, and 2 individuals. Non-supportive commenters included: 6 State agencies, 2 local agencies, and 1 food bank association. A commenter indicated that increased reporting on TEFAP participation would enhance transparency in implementation and support informed decisions about program improvements. Additionally, commenters expressed support for the alignment of this report with other required quarterly reporting, indicating that it will reduce the overall reporting burden for State agencies.

Commenters expressed concern that the proposed method of tracking could be complex because participants typically indicate the number of household members on their application, and do not typically convey the monthly number of individuals in their household each time they receive food. Commenters discussed how this could result in inaccuracies as individuals may move in and out of a household in each month, and that tracking nonresponse forms would be time consuming. Other commenters cited general administrative burden and more specifically, an increased burden for those using manual data collection systems. Further concerns were raised about the difficulty of ensuring unduplicated data when comparing the number of visits to a distribution site versus the number of individuals served.

The Department concurs with the commenters who expressed concern with the potential difficulties of reporting an unduplicated record of each household that visits a distribution site and other potential inaccuracies with the data. The Department is

revising this provision in response to those comments to instead require that TEFAP State agencies report the total number of individuals served by each TEFAP distribution site per month, on a quarterly basis. This revision addresses concerns on the additional administrative burden of providing accurate and/or unduplicated data. For example, households that participate more than once a month may be counted as a separate visit each time they access a TEFAP distribution site. Distribution sites only need to report the total number of persons they served at the end of each month, without regard to how many unique households were served. To the extent possible, State agencies and ERAs should record the total number of individuals in each household who are served for each site visit, but the Department acknowledges that the accuracy of this data will vary based on each agency's method of tracking participants.

The Department currently has little insight into the total number of people served by TEFAP. This data will be used to help the Department understand the current reach of the program and to better understand and plan for future resource needs. The Department recognizes there is administrative burden associated with collecting this data and determined it is in the best interest of the program to collect this data to support the current operation of TEFAP and plan for the future of the program. The Department will provide additional guidance on this provision as part of the implementation of this final rule. In recognition of the burden this provision requires, State agencies will have 12 months to implement this provision.

#### **XI. Technical Corrections for Miscellaneous Provision (§ 251.10(d) and (f))**

This final rule codifies the technical corrections at § 251.10(d) and (f) as proposed. The Department updates § 251.10(d) to correct an error in a reference to reporting requirements. The Department updates paragraph (f) references to reflect redesignations and newly created sections in the proposed rule, which are discussed below. The

Department is also clarifying the requirements for limits on unrelated activities during the administration of TEFAP and potential consequences for violation of these limits by more clearly stating existing requirements.

### **Public Comments and USDA Response**

The Department received 15 comments which were all supportive. Commenters included 5 State and 5 local agencies, 2 food bank associations, and 3 advocacy groups. The Department concurs with the commenters.

### **XII. Redesignations for Miscellaneous Provisions (§ 251.10)**

This final rule codifies the redesignation for miscellaneous provisions at § 251.10 as proposed. The Department is breaking the current § 251.10 Miscellaneous into five distinct sections: § 251.10 Reports and recordkeeping, § 251.11 State monitoring system, § 251.12 Limitation on unrelated activities, § 251.13 Farm to Food Bank projects, and § 251.14 Miscellaneous to significantly improve the readability of the regulation, with the intent of reducing confusion on the part of State agencies. The Department did not receive any specific comments on this provision.

### **XIII. New Sections Created for Clarity (§§ 251.11, 251.12, 251.13, and 251.14)**

This final rule codifies the creation of new sections for clarity at §§ 251.11, 251.12, 251.13, and 251.14 as proposed. Section 251.11 includes requirements for State agency monitoring systems, and § 251.12 explains limitations on unrelated activities at TEFAP distributions. Farm to Food Bank Project regulations move into § 251.13 so that State agencies can easily locate all requirements for these projects. Finally, § 251.14 includes miscellaneous provisions that are not closely related to other provisions, such as nondiscrimination and use of volunteer workers and non-USDA foods. The Department did not receive any specific comments on the creation of new sections for clarity.

## **D. Food Distribution Program on Indian Reservations**

Final revisions to FDPIR regulations (7 CFR part 253) establish further parity between FDPIR eligibility requirements and SNAP and support program access. Among the final changes, the Department is finalizing as proposed provisions to: clarify the household concept for purposes of FDPIR eligibility for spouses living together and spouses living apart in separate households; remove the urban place requirement which limits the operation of FDPIR in approved near areas and/or service areas that have a population of 10,000 people or more; update the shelter/utility standard deduction to remove the Regional standard deduction and set forth a revised approach pursuant to Tribal leader and FDPIR program community feedback; and establish a limited administrative waiver to be more consistent with SNAP waiver authorities. As discussed in Procedural Matters: Executive Order 13175, the Department consulted with Tribal leaders on a number of occasions on the development of both the proposed and final rules. The Department also commits to further consultation, including on implementation of the below FDPIR provisions, as needed.

## **I. Technical Updates to the Entire Part 253**

This final rule codifies technical updates to the entire 7 CFR part 253 as proposed. Technical corrections throughout 7 CFR part 253 replace instances of the outdated terms “commodity” and “commodities” with “USDA Foods” and the outdated term “Food Stamps” with “SNAP,” the Supplemental Nutrition Assistance Program. These updates align 7 CFR part 253 with other sections in this chapter. The Department is also adding a technical edit to the definition of State agency at § 253.2. This technical change adds clarification to the definition of State agency that State agencies are also referred to as FDPIR administering agencies. This technical change supports modernizing terminology

and recognizes that FDPIR administering agencies are primarily ITOs, with 107 ITOs and only 3 State agencies administering the program in 2024. Additional technical corrections are noted, as applicable, in section discussions below.

### **Public Comments and USDA Response**

The Department received 7 comments that were all supportive of the proposed changes. Commenters included: 2 ITOs and 5 advocacy groups. One comment noted how replacing commodities with USDA Foods will improve clarity and consistency across food distribution programs. The Department concurs with the commenters.

## **II. Removal of Urban Place Definition (§§ 253.2 and 253.4)**

This final rule codifies the removal of references to urban places and the associated requirement that an FDPIR Indian Tribal Organization (ITO) or State agency must provide a justification to FNS to serve urban places off the reservation at §§ 253.2 and 253.4 as proposed. Prior to this rule change, per § 253.2, an urban place was defined as a city or town with a population of 10,000 or more. Further, per § 253.4(d), any urban place outside of the reservation boundaries could not be served unless an ITO or State agency requested to serve the urban place with a justification for FNS review and approval. Conforming revisions are also made to 7 CFR part 254, Administration of the Food Distribution Program for Indian Households in Oklahoma.

Additionally, the Department is changing the term “contract” in § 253.4(b)(3) to “delegate” in order to improve the clarity of the section and to be consistent with language used in 7 CFR parts 247, 250, and 251.

### **Public Comments and USDA Response**

The Department received 16 comments about this provision, all of which were supportive. Commenters included: 2 ITOs, 10 advocacy groups, and 4 local agencies. Eleven comments specifically requested language ensuring that serving an urban

population remains optional. The Department affirms that with the removal of the urban place language, FDPIR administering agencies maintain the choice of serving an urban population.

### **III. Periodically Assessing the FDPIR Food Package (§ 253.3)**

In § 253.3, this final rule codifies as proposed the provision which requires FNS to periodically assess how USDA Foods provided in FDPIR compare to the *Dietary Guidelines for Americans* (DGAs) and the market baskets of the Thrifty Food Plan (TFP) and, to the extent practicable, adjust the FDPIR food package benefit as needed to ensure the FDPIR food package continues to be consistent with these assessments of basic dietary needs. The provision prohibits the FDPIR food package benefit from being reduced as a result of the analysis.

Additionally, this final rule codifies as proposed the provisions at § 253.3(a)(2) to clarify in plain language that FDPIR households can receive FDPIR USDA Foods as well as USDA Foods from other programs in the same month, in accordance with the requirements of 7 CFR part 250 and with other Federal regulations applicable to specific USDA Foods programs.

This final rule also codifies a technical correction that removes the list of food groups in the FDPIR food package from § 253.3(d) as proposed.

#### **Public Comments and USDA Response**

The Department received 11 comments about this provision, all of which were supportive. Comments were submitted by 2 ITOs, 7 advocacy groups, and 2 local agencies. Commenters encouraged FNS to allow food package reviews on an as-needed basis without limitations on frequency. Comments also requested a requirement that any change in SNAP benefits would trigger an immediate FDPIR food package review.

Commenters mentioned that changes to the FDPIR food package made during the pandemic were not commensurate with changes made to SNAP benefit levels.

FNS will continue to work with the program community, including Tribal partners, to routinely review the FDPIR food package and, to the extent practicable, offer USDA Foods that reflect preferences of eligible households. In addition, FNS will assess consistency between the amounts of food provided in FDPIR and SNAP at a frequency that aligns with the reevaluation of the TFP market basket and is practically feasible. While both SNAP and FDPIR benefit amounts are determined in part by TFP market basket amounts, SNAP provides participants with an electronic benefit to purchase eligible foods and FDPIR provides participants with a tangible food package benefit. This means that SNAP benefit levels must be adjusted annually for inflation to ensure that participants can purchase the same amount of food year-to-year, while FDPIR participants receive the same amount of food each year regardless of inflation. When inflation affects food prices, the increased cost of the FDPIR food package is absorbed by USDA and does not impact participants in the same way as it does in SNAP. To support transparency, FNS will communicate when assessments will occur to program stakeholders with the frequency of such evaluations informed by publication of the most current DGAs and reevaluations of the TFP market baskets.

#### **IV. Nondiscrimination Statement Update (§ 253.5)**

The Department proposed an update to the nondiscrimination statement language at § 253.5 to state that FDPIR must be operated in accordance with the most up-to-date USDA nondiscrimination statement. Because the nondiscrimination statement is applicable to multiple USDA programs, the Department has reconsidered its approach. The Department will not finalize the proposed provision in this rulemaking. The Department will consider options to address this in future rulemaking.

## **Public Comments and USDA Response**

The Department received 4 comments on this provision, all of which were supportive. Comments included: 3 advocacy groups and 1 individual. One commenter specifically requested that FNS ensure sexual orientation and gender identity are protected classes in program implementation. The Department appreciates input on the proposed changes and will consider this feedback in future rulemaking addressing the nondiscrimination statement, with the goal of consistency across USDA programs.

## **V. Updates to FDPIR Eligibility Provisions (§ 253.6)**

This final rule codifies several changes to FDPIR eligibility provisions as proposed at § 253.6 to increase access to the program and to improve consistency between FDPIR and SNAP requirements.

### **1. Separate Household Status for Spouses Not Living Together (§ 253.6(a)(1))**

This final rule codifies the removal of the regulatory prohibition at § 253.6(a)(1) on granting separate household status to spouses living apart as proposed. For additional clarity, this final rule also adds a new paragraph § 253.6(a)(1)(iv) stating that spouses living separately and apart are considered separate households. Prior to this change, separate household status could not be granted to spouses living apart. The final provision establishes parity between FDPIR and SNAP regarding the treatment of household composition for spouses.

## **Public Comments and USDA Response**

The Department received 12 comments about this provision, all of which were supportive. Comments included: 2 ITOs, 6 advocacy groups, and 2 local agencies. Comments described increased flexibility and maintaining parity with SNAP as positive factors for this provision. The Department concurs with the commenters.

## **2. Minor Children Living Apart from Parents and Household Status (§ 253.6(a)(4))**

This final rule codifies a new section at § 253.6(a)(4) as proposed to clarify that a child is considered under parental control if they are financially or otherwise dependent on a member of that household. This change improves consistency between FDPIR and SNAP requirements to ensure that both programs only certify a child if the adult household member has “parental” control over the child. For example, if a child is living with their grandparents, the child is not considered a part of their parents’ household when determining eligibility. Previous FDPIR regulations at § 253.6(a)(1) included language that children under the age of 18 under the parental control of a member of the household cannot receive separate household status, which is now allowed through this rulemaking.

### **Public Comments and USDA Response**

The Department received 8 comments about this provision, all of which were supportive. Comments included: 2 ITOs, 4 advocacy groups, and 2 food bank associations. Comments supported increased flexibility and parity with SNAP for this provision. The Department concurs with the commenters.

## **3. Removal of California SSI Cash-Out Reference (§ 253.6(a)(2)(ii))**

This final rule codifies the removal of reference to Supplemental Security Income (SSI) cash-out at § 253.6(a)(2)(ii) when determining household eligibility as proposed, as this provision is no longer applicable. The Department did not receive any comments on this proposed change.

## **4. Revisions to Shelter/Utility Deductions (§ 253.6(e)(5))**

This final rule codifies the change to § 253.6(e)(5) as proposed to update the existing FDPIR standard shelter/utility deduction to allow a household to choose either a standard deduction amount or actual shelter/utility expenses when determining income eligibility for FDPIR. Consistent with the proposed rule provision, FNS will both simplify the standard deduction and increase it by using the level of the SNAP maximum shelter deduction instead of the prior Regional standard deductions. The FDPIR base income eligibility thresholds are set annually using 100 percent of the U.S. Federal Poverty Guidelines published by the U.S. Department of Health and Human Services (HHS) and increased by the SNAP standard deduction by household size. FDPIR regulations at § 253.6(e) provide for income deductions, including the shelter/utility deduction, in recognition of expenses which impact the amount of household income available for food purchases. The new standard deduction for the applicable area (e.g., contiguous U.S., Alaska) will be consistent with SNAP maximum monthly excess shelter expense deduction limits outlined at § 273.9(d)(6)(ii). If a household chooses to claim actual expenses, then the household may claim up to 50 percent of their monthly net income and must provide verification of expenses. See VI. Verification Procedures (§ 253.7), where the Department finalizes verification requirements for applicants and participants seeking to provide actual shelter and utility expenses.

Under the revised standard deduction method, when the SNAP excess shelter deduction is updated annually for the next fiscal year (FY), as per § 273.9(d)(6)(ii), the maximum monthly excess shelter deduction limit established for the area is used as the FDPIR shelter/utility standard deduction amount. For example, in FY 2024, the SNAP maximum shelter deduction amount for the 48 contiguous States and the District of Columbia was \$672 and Alaska was \$1,073. Under this finalized provision, these amounts are used for the standard deduction for households that elect to use this amount; or the household could choose to provide actual expenses up to 50 percent of net income.

The shelter/utility standard deduction amounts will be updated annually by October 1. For FY 2025, the Department will issue shelter/utility deduction standard amounts following publication of this final rule and prior to the effective date of 60 days after publication of this final rule. In future years, on October 1, the shelter/utility standard deduction will be updated and effective immediately.

In addition to these changes, the Department also finalizes the technical change at § 253.6(e)(1) to indicate that under the earned income deduction, twenty percent should be deducted from “gross earned income,” instead of the previous “earned income,” which increases clarity in this section.

### **Public Comments and USDA Response**

The Department received 15 comments on this provision, all of which were supportive. Comments included: 3 ITOs, 7 advocacy groups, and 5 food bank associations. Commenters highlighted the previous shelter and utility deduction process sometimes failed to consider the unique conditions in Indian country. Commenters also noted the proposed changes would increase FDPIR access and acknowledge the varying circumstances in Tribal communities. The Department concurs with commenters; these changes to the shelter/utility deductions help ensure access to households who may be food insecure due to high costs of shelter and utility expenses.

### **5. Request for Public Comments: FDPIR Income Standards (§ 253.6(d))**

As provided in the discussion of 4. Revisions to Shelter/Utility Deductions (§ 253.6(e)(5)) above, the FDPIR base income eligibility thresholds are set annually using 100 percent of the U.S. Federal Poverty Guidelines published by HHS and increased by the SNAP standard deduction by household size. The Department solicited comments regarding whether further changes should be made to FDPIR income eligibility standards to increase program access and parity with SNAP. The Department sought feedback from

FDPIR ITOs and State agencies to inform potential future proposals on alternative eligibility thresholds for FDPIR, including feedback on the following questions:

1. Are there data sources in addition to HHS data that the Department should consider when determining income eligibility standards for FDPIR?
2. Should the Department consider use of a gross income eligibility requirement for FDPIR *e.g.*, 185 percent of the U.S. Federal Poverty Guidelines published annually by HHS, without application of any income deductions?

### **Public Comments and USDA Response**

The Department received 9 comments related to this request for comment. Comments included: 2 ITOs, 6 advocacy groups, and 1 local agency. Six commenters stated that national and regional standards do not always accurately reflect the situations of those living in Indian country and requested that FNS simplify the process by providing for an alternate calculation for determining eligibility. These commenters requested FNS allow applicants the choice of qualifying under either increased gross income guidelines without deductions, or current guidelines with the proposed, and now finalized, increased shelter and utility cost deduction. Another commenter expressed that using gross income eligibility without deductions would simplify the process for many ITOs by minimizing the burden for administrative staff.

The Department appreciates the feedback received in response to this request for comment and will consider these comments for potential future rulemaking.

### **VI. Verification Procedures (§ 253.7)**

This final rule codifies a technical update to the verification requirements for the shelter/utility deduction as proposed to provide verification for all expenses if actuals are used. The Department also finalizes a technical update to the threshold for which an ITO

or State agency must verify a change in income from \$50 to \$100 at the time of recertification.

### **Public Comments and USDA Response**

The Department received 1 comment from an advocacy group on this provision, which was supportive of the increased threshold. The Department concurs with the commenter.

## **VII. USDA Foods Inventory Management (§ 253.10)**

This final rule codifies technical updates to § 253.10 as proposed to make this section consistent with the 2016 Final Rule, *Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014*.<sup>1</sup> The Department also finalizes the removal of current FDPIR regulatory requirements at § 253.10(c)(1) through (6) and replacing them with a reference to follow storage and inventory management regulations listed at §§ 250.12 and 250.14. Additionally, the Department finalizes the proposed changes to move regulations at § 253.10(c)(7) through (17) to (d), as these regulations are applicable to distribution procedures and moving them improves readability and clarity. The Department did not receive any comments on this provision.

## **VIII. Soliciting Tribal Stakeholder Feedback on the FDPIR Administrative Funding**

### **Methodology**

The Department solicited comments on the method used to allocate administrative funding to FDPIR administering agencies, which include ITOs and State agencies that have an agreement with FNS to administer FDPIR. This solicitation of comments was

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<sup>1</sup> USDA Food and Nutrition Service, *Final Rule: Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085). Accessed 23 January 2023. Available at internet site: <https://www.federalregister.gov/documents/2016/04/19/2016-08639/requirements-for-the-distribution-and-control-of-donated-foods-the-emergency-food-assistance-program>.

intended to gather FDPIR administering agency feedback on the existing administrative funding methodology, including the budget negotiation process, to frame any necessary future discussions and changes to the methodology.

The Department specifically requested comments from FDPIR administering agencies on the following questions:

1. With the advent of two-year FDPIR administrative funding, and given the increase in funding in recent years, does the current methodology provide your organization with adequate funding to meet its administrative needs?
2. Are there aspects of the current funding methodology that could be improved, and if so, how?
3. Specifically, please provide comment on the effectiveness of the current regional allocation and budget negotiation process and if modifications or another model could better serve Indian Tribal Organization needs.

### **Public Comments and USDA Response**

The Department received 8 comments applicable to this request for comment. Commenters included: 2 ITOs and 6 advocacy groups. Some commenters felt the current funding structure is adequate, while others suggested improvements are needed. Commenters also suggested that regional allocations and budget negotiations do not fully capture the challenges ITOs face. Because ITOs have different needs, commenters suggested increased flexibility in use of funds. Allowable uses of appropriated funds may include salaries and benefits for FDPIR personnel, materials and supplies, equipment, and meetings and conferences. FNS allocates funding according to the requests it receives from ITOs each fiscal year.

Commenters also requested increased Tribal inclusion in the USDA annual budget process, with commenters suggesting a process similar to the approach(es) at other Federal agencies.

The Department appreciates the varied feedback from commenters on this request for comment and will use this feedback to inform any future discussions on FDPIR administrative funding.

#### **IX. Establishment of Administrative Waiver Authority in FDPIR (§ 253.12)**

This final rule codifies a new section at § 253.12 as proposed with technical modifications that provides authority for USDA FNS to waive or modify specific administrative requirements contained in the regulations under similar situations and processes and for similar amounts of time as SNAP regulations at § 272.3(c). Under this provision, ITOs and State agencies can request waivers of specific regulatory requirements. A technical correction was made to the text of § 253.12(a), which simplifies the language to be more in line with current SNAP waiver language without impacting the effect of the provision. The process requires ITOs and State agencies to provide compelling justification for each waiver request submitted. FNS may approve waivers only in the following circumstances: (1) the specific regulatory provision cannot be implemented due to extraordinary temporary situations, (2) FNS determines that the waiver would result in a more effective and efficient administration of the program, or (3) unique geographic conditions within the geographic area served by the administering agency preclude effective implementation of the specific regulatory provision and require an alternative procedure. FNS will not issue any waivers in situations where the waivers are inconsistent with provisions of the Food and Nutrition Act of 2008, as amended (Pub. L. 95–113). This provision is intended to mirror SNAP waiver requirements, thus increasing parity between the two programs, but the provision is separate and distinct from SNAP waiver authority. The Department recognizes that immediate implementation of this provision may benefit FDPIR ITOs and State agencies. Because this provision

recognizes an exemption, the Department is using the authority at 5 U.S.C. 553(d)(1) to make this provision effective immediately upon the date of publication of this final rule.

### **Public Comments and USDA Response**

The Department received 10 comments regarding this provision, all of which were generally supportive but also outlined specific requests or concerns about the provision. Commenters included 2 ITOs and 8 advocacy groups. Five commenters requested more specific language or examples regarding the need to provide a compelling justification for a waiver, and specific language or examples of what documentation may be needed to demonstrate a compelling justification. FNS will provide written guidance on implementation of this provision including examples of compelling justifications for requesting a waiver in addition to example documentation and/or templates/formats for FDPIR ITOs and State agencies to use. To support simplicity in the administrative waiver process, FNS may also issue nationwide waivers if determined to be necessary and applicable to all FDPIR ITOs and State agencies, further reducing burden.

Multiple commenters also requested that FNS use the waiver authority in Executive Order 13175 to provide additional flexibility to the provision and to better reflect Tribal sovereignty. FNS notes the waiver authority referenced in Executive Order 13175 only applies to statutory or regulatory requirements that are discretionary and subject to waiver by the agency. FNS currently does not have any statutory or regulatory requirements for FDPIR that are discretionary in nature and subject to waiver. However, FNS believes this provision, as proposed, supports Executive Order 13175 by streamlining the process for FDPIR ITOs and State agencies to apply for waivers of specific regulatory requirements and further supports the comments received of providing additional flexibility to better reflect Tribal sovereignty.

The Department has simplified the language of the provision to be more in line with current SNAP waiver language, but the effect of the provision has not changed from what

was proposed. While this provision will be effective upon publication of the final rule, the Department commits to further consultation on the implementation of this provision, including the waiver submission process, as needed.

### **E. Administration of the Food Distribution Program for Indian Households in Oklahoma (7 CFR Part 254)**

Circumstances unique to distributing FDPIR to households residing in FNS services areas in Oklahoma are addressed in 7 CFR part 254. This final rule codifies changes to 7 CFR part 254 to align with updates made to 7 CFR part 253 as proposed. The technical updates to 7 CFR part 254 include replacing the outdated term “commodities” with “USDA Foods” to further align the program with the definition of “USDA Foods” in 7 CFR part 250. In accordance with the finalized changes in d. Food Distribution on Indian Reservations, ii. Removal of Urban Place Definition (§§ 253.2 and 253.5), the Department is removing the references to the urban place definition and related terminology and the requirement to provide justification to FNS.

The Department did not receive any comments specific to changes made in 7 CFR part 254.

### **Section 2. Implementation**

The Department initially proposed that State agencies, ITOs, and other affected parties must implement the provisions of the proposed rule no later than 60 days after the date of publication of the final rule in the **Federal Register**. The Department sought comments on the type and scope of administrative burden that may be associated with implementing the provisions in this proposed rule in this manner.

Commenters generally highlighted time, limited resources, and systems changes needed to successfully implement some of the provisions in this final rule. After

evaluating comments, the Department is providing a 60-day implementation timeline for all provisions, with the exception of the following:

1. Two provisions will be effective immediately upon publication of the final rule:
  - a. Under 5 U.S.C. 553(d)(1), because this provision recognizes an exemption, the Department is making the Establishment of Administrative Waiver Authority in FDPIR (7 CFR 253.12) effective immediately upon the date of publication of this final rule.
  - b. Under 5 U.S.C. 553(d)(1), because this provision relieves a restriction, the Department is making the Removal of Prohibition on Simultaneous Provision of USDA [Donated] Foods and D-SNAP during a Disaster (§§ 250.69(c)(2) and 250.70(d)) effective immediately upon the date of publication of this final rule.
2. The Department is establishing a 12-month implementation period for the following six provisions:
  - a. CSFP State Plan Requirement (§§ 247.6(a) and 247.5(b)(17));
  - b. CSFP Public Posting of the Availability of USDA Foods (§ 247.5(b)(16));
  - c. CSFP Referral Materials for the Senior Farmers' Market Nutrition Program (§ 247.14(a)(4));
  - d. TEFAP Requirement for the Public Posting of Availability of USDA Foods Through TEFAP (§ 251.4(l));
  - e. TEFAP Household Distribution Participation Reporting (§ 251.10(b)(4)); and
  - f. TEFAP Public Posting of Statewide TEFAP Eligibility Criteria (§ 251.5(b)).

State agencies are allowed and encouraged to implement these provisions prior to the 12-month deadline. For more information on each of these provisions, please refer to section

1. Background and Discussion of the Final Rule.

**Severability:** If any provision of such section promulgated through this final rule, “Food Distribution Programs: Improving Access and Parity” (FNS-2024-00XX; RIN 054-AE92), is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable and not affect the remainder thereof.

### **Section 3. Procedural Matters**

#### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

#### Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

While there may be some burden/impact on some small eligible recipient agencies in TEFAP because of the proposed requirement to report participation in TEFAP, the impact is not significant because these entities are already collecting this information as a part of their normal program operations under existing regulatory requirements.

### **Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule, as defined by 5 U.S.C. 804(2).

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

## **Executive Order 12372**

Program names are listed in the Catalog of Federal Domestic Assistance under Numbers 10.565 (CSFP), 10.569 (TEFAP), 10.568 (TEFAP Administrative Costs), 10.567 (FDPIR), and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

## **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

## **Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

## **Civil Rights Impact Analysis**

FNS has reviewed the final rule, in accordance with the Department Regulation 4300-004 “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the final rule might have on participants on the basis of race, sex (including gender identity and sexual orientation), national origin, disability, or age. The requirements outlined in the final rule aim to remove barriers to access and improve parity across programs. The final rule would impact State agencies, ITOs, local agencies, and food banks in ways that are expected to increase equity and access for participants.

To mitigate potential impacts on program access, FNS will provide State agencies with technical assistance aimed at ensuring that communication about program changes is available in appropriate languages and in alternative formats for persons with disabilities. After reviewing the potential impacts, FNS does not believe the final rule would result in civil rights impacts on protected groups of participants and applicants. However, the FNS Civil Rights Division will propose further outreach and mitigation strategies to alleviate any unforeseen impacts, if deemed necessary.

## **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

On November 8, 2022, December 6 and 13, 2022, February 22, 2023, and June 27, 2023, FNS provided the opportunity for Tribal consultation on the proposed rule and received substantive feedback from several Tribal leaders which were taken into consideration during the development of the proposed rule. FNS also consulted with Tribal leaders on the implementation of the final rule on February 16, 2024. Notes from these consultations are available at <https://www.usda.gov/tribalrelations/tribal-consultations>.

If a Tribe requests additional consultation in the future, FNS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided. We are unaware of current Tribal laws that could be in conflict with this rule.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The information collection and recordkeeping requirements included in this final rule have been submitted by the Agency to OMB for approval which is currently pending. FNS will not collect any information associated with this rule until the information collections are approved by OMB.

### **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

## **List of Subjects**

### **7 CFR Part 247**

Aged, Agricultural commodities, Food assistance programs, Public assistance programs.

### **7 CFR Part 250**

Administrative practice and procedure, Aged, Disaster assistance, Food assistance programs, Grant programs-social programs, Indians, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

### **7 CFR Part 251**

Food assistance programs, Grant programs-social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

### **7 CFR Part 253**

Administrative practice and procedure, Agricultural commodities, Food assistance programs, Grant programs-social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

### **7 CFR Part 254**

Food assistance programs, Grant programs-social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 247, 250, 251, 253, and 254 are amended as follows:

**PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM**

1. The authority citation for part 247 continues to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107–171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110–246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113–79, 7 U.S.C. 612c note).

2. Amend § 247.1 by:

- a. Removing the definitions of “Commodities” and “Elderly persons”;
- b. Revising the definitions of “Proxy” and “Subdistributing agency”; and
- c. Adding in alphabetical order a definition for “USDA Foods”.

The revisions and addition read as follows:

**§ 247.1 Definitions.**

\* \* \* \* \*

*Proxy* means any person designated by a participant or caretaker to obtain USDA Foods on behalf of the participant.

\* \* \* \* \*

*Subdistributing agency* means an agency or organization that has entered into an agreement with the State agency to perform functions normally performed by the State, such as entering into agreements with eligible recipient agencies under which USDA Foods are made available, ordering USDA Foods and/or making arrangements for the storage and delivery of such USDA Foods on behalf of eligible recipient agencies.

*USDA Foods* means nutritious foods purchased by USDA to supplement the diets of CSFP participants, also referred to as donated foods.

\* \* \* \* \*

**§ 247.2 [Amended]**

3. In § 247.2 amend paragraph (a):
  - a. In the first sentence, by removing the term “commodities” and adding in its place the term “USDA Foods”;
  - b. In the first sentence, by removing the term “elderly persons” and adding in its place the term “participants”; and
  - c. Removing the second sentence.

**§ 247.3 [Amended]**

4. Amend § 247.3 in the first and fifth sentences of paragraph (a) by removing the term “commodities” and adding in its place the term “USDA Foods”.

**§ 247.4 [Amended]**

5. Amend § 247.4 by removing the term “commodities” wherever it appears in paragraphs (a)(1) through (3), (b)(3), and (c)(3) and adding in its place the term “USDA Foods”.

6. Amend § 247.5 by:

a. Revising paragraphs (a)(2) through (4) and (b)(14) and (15);

b. Adding paragraphs (b)(16) and (17); and

c. Revising paragraph (c)(7).

The revisions and additions read as follows:

**§ 247.5 State and local agency responsibilities.**

\* \* \* \* \*

(a) \* \* \*

(2) Ordering USDA Foods for distribution;

(3) Storing and distributing USDA Foods;

(4) Establishing procedures for resolving complaints about USDA Foods;

\* \* \* \* \*

(b) \* \* \*

(14) Providing guidance to local agencies, as needed;

(15) Ensuring that program participation does not exceed the State agency's caseload allocation on an average monthly basis; and

(16) Making publicly available a list of all CSFP local agencies on a publicly available internet web page. The State agency must post the name, address, and telephone number for each local agency. The list must be updated, at a minimum, on an annual basis.

(17) Posting the State Plan that is currently in use on a publicly available internet web page.

(c) \* \* \*

(7) Meeting the special needs of homebound participants, to the extent possible;  
and

\* \* \* \* \*

7. Amend § 247.6 by revising the last sentence of paragraph (a), revising paragraphs (c)(5) and (6) and (10) through (12), and adding paragraph (c)(13) to read as follows:

**§ 247.6 State Plan.**

(a) \* \* \* A copy of the State Plan must be kept on file at the State agency and must also be posted on a publicly available internet web page for public inspection.

\* \* \* \* \*

(c) \* \* \*

(5) A description of plans for conducting outreach to participants;

(6) A description of the system for storing and distributing USDA Foods;

\* \* \* \* \*

(10) A description of the means by which the State will meet the needs of homebound participants;

(11) Copies of all agreements entered into by the State agency;

(12) The length of the State agency's certification period; and

(13) A description of the process in place to verify the identity of participants before receipt of USDA Foods.

\* \* \* \* \*

8. Amend § 247.9 by revising paragraphs (b), (c), (d)(2) introductory text, and (d)(3) to read as follows:

**§ 247.9 Eligibility requirements.**

\* \* \* \* \*

(b) *What are the income eligibility requirements for CSFP applicants?* The State agency must use a household income limit at or below 150 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). Participants in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements contained in this part). However, participants certified before September 17, 1986 (*i.e.*, under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

(1) The State agency may accept as income-eligible for CSFP benefits any applicant that documents that they are certified as fully eligible for the following Federal

programs: the Supplemental Nutrition Assistance Program, the Food Distribution Program on Indian Reservations, Supplemental Security Income (SSI), the Low Income Subsidy Program, and the Medicare Savings Programs.

(2) The State agency may accept, as evidence of income within the State agency's CSFP guidelines, documentation of the applicant's participation in State-administered programs not specified in this paragraph that routinely require documentation of income, provided that those programs have income eligibility guidelines at or below the State agency's CSFP threshold.

(3) Applicants who are adjunctively income eligible, as set forth in paragraphs (b)(1) and (2) of this section, shall not be subject to the income limits established under paragraph (b) of this section.

*(c) When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the U.S. Federal Poverty Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 150 percent and 100 percent of the U.S. Federal Poverty Guidelines published annually by HHS. The memorandum will reflect the annual adjustments to the U.S. Federal Poverty Guidelines issued by HHS. The State agency must implement the adjusted guidelines immediately upon receipt of the memorandum.

(d) \* \* \*

(2) The State agency may exclude from consideration the following sources of income:

\* \* \* \* \*

(3) The State agency must exclude from consideration all income sources excluded by legislation. FNS will notify State agencies of forms of income excluded by statute through program policy memoranda. The income sources which must be excluded from consideration as income include, but are not limited to:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, sec. 216, 42 U.S.C. 4636);

(ii) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(iii) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95–510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian Tribes (Pub. L. 94–114, sec. 6, 25 U.S.C. 459e);

(v) Payments received under the Job Training Partnership Act (Pub. L. 97–300, sec. 142(b), 29 U.S.C. 1552(b));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, sec. 6);

(vii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 100–241, sec. 15, 43 U.S.C. 1626(c));

(viii) The value of assistance to children or their families under the National School Lunch Act, as amended (Pub. L. 94–105, sec. 9(d), 42 U.S.C. 1760(e)), the Child

Nutrition Act of 1966 (Pub. L. 89–642, sec. 11(b), 42 U.S.C. 1780(b)), and the Food and Nutrition Act of 2008 (Pub. L. 95–113, sec. 1301, 7 U.S.C. 2017(b));

(ix) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433, sec. 2, 25 U.S.C. 609c–1);

(x) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c));

(xi) Payments under the Low-income Home Energy Assistance Act, as amended (Pub. L. 99–125, sec. 504(c), 42 U.S.C. 8624(f));

(xii) Student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, which is used for costs described in section 472 (1) and (2) of that Act (Pub. L. 99–498, section 479B, 20 U.S.C. 1087uu). The specified costs set forth in section 472 (1) and (2) of the Higher Education Act are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution. The specified costs set forth in section 472(1) and (2) of the Act are those costs which are related to the costs of

attendance at the educational institution and do not include room and board and dependent care expenses;

(xiii) Payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Pub. L. 100–707, sec. 105(i), 42 U.S.C. 5155(d));

(xiv) Effective July 1, 1991, payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, sec. 501, 20 U.S.C. 2466d);

(xv) Payments pursuant to the Agent Orange Compensation Exclusion Act (Pub. L. 101–201, sec. 1);

(xvi) Payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988 (Pub. L. 100–383, sec. 105(f)(2), 50 App. U.S.C. 1989b–4(f)(2));

(xvii) Value of any child care payments made under section 402(g)(1)(E) of the Social Security Act, as amended by the Family Support Act (Pub. L. 100–485, sec. 301, 42 U.S.C. 602 (g)(1)(E));

(xviii) Value of any “at-risk” block grant child care payments made under section 5081 of Pub. L. 101–508, which amended section 402(i) of the Social Security Act;

(xix) Value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended (Pub. L. 102–586, Sec. 8(b)), 42 U.S.C. 9858q);

(xx) Mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended (Pub. L. 99–576, sec. 303(a)(1), 38 U.S.C. 1411 (b));

(xxi) Payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of \$2,000 (Pub. L. 98–500, sec. 8, 25 U.S.C. 2307);

(xxii) Payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80 percent of the median income of the area (Pub. L. 101–625, sec. 522(i)(4), 42 U.S.C. 1437f nt);

(xxiii) Payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (Pub. L. 100–242, sec. 126(c)(5)(A), 25 U.S.C. 2307);

(xxiv) Payments received under the Sac and Fox Indian claims agreement (Pub. L. 94–189, sec. 6);

(xxv) Payments received under the Judgment Award Authorization Act, as amended (Pub. L. 97–458, sec. 4, 25 U.S.C. 1407 and Pub. L. 98–64, sec. 2(b), 25 U.S.C. 117b(b));

(xxvi) Payments for the relocation assistance of members of Navajo and Hopi Tribes (Pub. L. 93–531, sec. 22, 22 U.S.C. 640d–21);

(xxvii) Payments to the Turtle Mountain Band of Chippewas, Arizona (Pub. L. 97–403, sec. 9);

(xxviii) Payments to the Blackfeet, Grosventre, and Assiniboine Tribes (Montana) and the Papago (Arizona) (Pub. L. 97–408, sec. 8(d));

(xxiv) Payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana) (Pub. L. 98–124, sec. 5);

(xxx) Payments to the Red Lake Band of Chippewas (Pub. L. 98–123, sec. 3);

(xxxi) Payments received under the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Pub. L. 99–346, sec. 6(b)(2));

(xxxii) Payments to the Chippewas of Mississippi (Pub. L. 99–377, sec. 4(b));

(xxxiii) Payments received by members of the Armed Forces and their families under the Family Supplemental Subsistence Allowance from the Department of Defense (Pub. L. 109–163, sec. 608); and

(xxxiv) Payments received by property owners under the National Flood Insurance Program (Pub. L. 109–64).

(xxxv) Combat pay received by the household member under Chapter 5 of Title 37 or as otherwise designated by the Secretary.

\* \* \* \* \*

9. Revise § 247.10 to read as follows:

**§ 247.10 Distribution and use of USDA Foods.**

(a) *What are the requirements for distributing USDA Foods to participants?* The local agency must distribute a package of USDA Foods to participants each month, or a two-month supply of USDA Foods to participants every other month, in accordance with the food package guide rates established by FNS.

(b) *What must the local agency do to ensure that USDA Foods are distributed only to CSFP participants?* The local agency must have a process in place, in accordance with State agency requirements, to verify the identity of participants or the participant's proxy before distributing USDA Foods to that person.

(c) *What restrictions apply to State and local agencies in the distribution of USDA Foods?* State and local agencies must not require, or request, that participants make any payments, or provide any materials or services, in connection with the receipt of USDA Foods. State and local agencies must not use the distribution of USDA Foods as a means of furthering the political interests of any person or party.

(d) *What are the restrictions for the use of USDA Foods?* USDA Foods may not be used for outreach, refreshments, or for any purposes other than distribution to, and nutrition education for, CSFP participants.

10. Amend § 247.14 by revising paragraphs (a)(2) and (3) and adding paragraph (a)(4) to read as follows:

**§ 247.14 Other public assistance programs.**

(a) \* \* \*

(2) Medical assistance provided under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), including medical assistance provided to a qualified Medicare beneficiary (42 U.S.C. 1395(p) and 1396d(5));

(3) The Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*); and

(4) The Senior Farmers' Market Nutrition Program (7 U.S.C. 3007 *et seq.*).

\* \* \* \* \*

11. Amend § 247.18 by revising paragraphs (b)(1) and (2) and (d) to read as follows:

**§ 247.18 Nutrition education.**

\* \* \* \* \*

(b) \* \* \*

(1) The nutritional value of USDA Foods, and their relationship to the overall dietary needs of the population groups served;

(2) Nutritious ways to use USDA Foods;

\* \* \* \* \*

(d) *May USDA Foods be used in cooking demonstrations?* Yes. The State or local agency, or another agency with which it has signed an agreement, may use USDA Foods to conduct cooking demonstrations as part of the nutrition education provided to program participants, but not for other purposes.

**§ 247.20 [Amended]**

12. Amend § 247.20:

a. In paragraph (a)(3), by removing the term “commodities” and adding in its place the term “USDA Foods”; and

b. In paragraphs (b)(1) through (3) by removing the term “CSFP commodities” and adding in its place the term “USDA Foods”.

13. Amend § 247.21 by revising the first sentence of paragraph (a)(3) to read as follows:

**§ 247.21 Caseload assignment.**

(a) \* \* \*

(3) \* \* \* Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve participants, as requested in the State Plan. \* \* \*

\* \* \* \* \*

#### **§ 247.25 [Amended]**

14. Amend § 247.25 in paragraph (e) by removing the term “commodities” and adding in its place “USDA Foods”.

15. Revise § 247.28 to read as follows:

#### **§ 247.28 Storage and inventory of USDA Foods.**

(a) *What are the requirements for storage of USDA Foods?* State and local agencies must provide for storage of USDA Foods that protects them from theft, spoilage, damage or destruction, or other loss. State and local agencies may contract with commercial facilities to store and distribute USDA Foods. The required standards for warehousing and distribution systems, and for contracts with storage facilities, are included in §§ 250.12 and 250.14 of this chapter.

(b) *What are the requirements for the inventory of USDA Foods?* A physical inventory of all USDA Foods must be conducted annually at each storage and distribution site where these USDA Foods are stored. Results of the physical inventory must be reconciled with inventory records and maintained on file by the State or local agency.

16. Amend § 247.29 by revising paragraphs (a) and (b)(2)(ii) to read as follows:

#### **§ 247.29 Reports and recordkeeping.**

(a) *What recordkeeping requirements must State and local agencies meet?* State and local agencies must maintain accurate and complete records relating to the receipt, disposal, and inventory of USDA Foods, the receipt and disbursement of administrative funds and other funds, eligibility determinations, fair hearings, and other program activities. State and local agencies must also maintain records pertaining to liability for any improper distribution of, use of, loss of, or damage to USDA Foods, and the results obtained from the pursuit of claims arising in favor of the State or local agency. All records must be retained for a period of three years from the end of the fiscal year to which they pertain, or, if they are related to unresolved claims actions, audits, or investigations, until those activities have been resolved. All records must be available during normal business hours for use in management reviews, audits, investigations, or reports of the General Accounting Office.

(b) \* \* \*

(2) \* \* \*

(ii) The receipt and distribution of USDA Foods, and beginning and ending inventories, as well as other USDA Foods data; and

\* \* \* \* \*

17. Amend § 247.30 by revising paragraphs (b), (c), (d) introductory text, and (d)(1) to read as follows:

**§ 247.30 Claims.**

\* \* \* \* \*

(b) *What happens if a State or local agency misuses USDA Foods?* If a State or local agency misuses USDA Foods, FNS must initiate a claim against the State agency to recover the value of the misused USDA Foods. The procedures for pursuing claims resulting from misuse of USDA Foods are detailed in § 250.16(a) of this chapter.

Misused USDA Foods include USDA Foods improperly distributed or lost, spoiled, stolen, or damaged as a result of improper storage, care, or handling. The State agency is responsible for initiating and pursuing claims against subdistributing agencies, local agencies, or other agencies or organizations if they misuse USDA Foods. The State agency must use funds recovered as a result of claims for USDA Foods losses in accordance with § 250.17(c) of this chapter.

*(c) What happens if a participant improperly receives or uses CSFP benefits through fraud?* The State agency must ensure that a local agency initiates a claim against a participant to recover the value of USDA Foods improperly received or used if the local agency determines that the participant or caretaker of the participant fraudulently received or used the USDA Foods. For purposes of this program, fraud includes intentionally making false or misleading statements, or intentionally withholding information, to obtain USDA Foods, or the selling or exchange of USDA Foods for non-food items. The local agency must advise the participant of the opportunity to appeal the claim through the fair hearing process, in accordance with § 247.33(a). The local agency must also disqualify the participant from CSFP for a period of up to one year, unless the local agency determines that disqualification would result in a serious health risk, in accordance with the requirements of § 247.20(b).

*(d) What procedures must be used in pursuing claims against participants?* The State agency must establish standards, based on a cost-benefit review, for determining when the pursuit of a claim is cost-effective, and must ensure that local agencies use these standards in determining if a claim is to be pursued. In pursuing a claim against a participant, the local agency must:

(1) Issue a letter demanding repayment for the value of the USDA Foods improperly received or used;

\* \* \* \* \*

**§ 247.31 [Amended]**

18. Amend § 247.31 in paragraph (d) by removing the term “CSFP commodities” and adding in its place the term “USDA Foods”.

**§ 247.33 [Amended]**

19. Amend § 247.33 in paragraph (a) by removing the term “commodities” and adding in its place the term “USDA Foods”.

**PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION**

20. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

21. Revise § 250.69 to read as follows:

**§ 250.69 Disasters.**

(a) *Use of USDA Foods to provide congregate meals.* The distributing agency may provide USDA Foods from current inventories, either at the distributing or recipient agency level, to a disaster organization (as defined in § 250.2), for use in providing congregate meals to persons in need of food assistance as a result of a Presidentially declared disaster or emergency (hereinafter referred to collectively as a “disaster”). FNS approval is not required for such use.

(1) *Notification of congregate meals activity to FNS.* Prior to using USDA Foods for congregate meals under this section, the distributing agency must notify FNS that such assistance is to be provided, and the period of time that it is expected to be needed. The distributing agency may extend such period of assistance as needs dictate but must notify FNS of such extension.

(2) *Selection of disaster organizations for disaster congregate meal service by the distributing agency.* Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to FNS approval as described in paragraph (a)(1) of this section. Before distribution of USDA Foods to a disaster organization for congregate meal service, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance. A disaster organization's application must be submitted to the distributing agency in written form. The disaster organization's application must, to the extent possible, include the following information at a minimum:

- (i) A description of the disaster situation;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;
- (iv) The quantity and types of USDA Foods needed; and
- (v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known.

(3) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use USDA Foods to provide meals to any emergency relief workers at the congregate feeding site who are directly engaged in providing relief assistance.

(b) *Use of USDA Foods for distribution to households.* Subject to FNS approval, the distributing agency may provide USDA Foods from current inventories in accordance with paragraph (c) of this section, either at the distributing or recipient agency level, to a disaster organization, for distribution to households in need of food assistance because of a disaster. Once approved, such distribution may continue for the period that FNS has determined to be necessary to meet the needs of such households. Distributing agencies may request an extension of the distribution period, subject to FNS approval.

(1) *FNS approval of disaster household distribution.* Before permitting the distribution of USDA Foods to a disaster organization for household distribution, the distributing agency must submit an application to FNS for review and approval. The distributing agency's application must, to the extent possible, include the following information:

- (i) A description of the disaster situation;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;
- (iv) The quantity and types of USDA Foods needed;
- (v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known;
- (vi) An explanation as to why household distribution is needed; and
- (vii) The method(s) of distribution available.

(2) *Selection of a disaster organization for disaster household distribution of USDA Foods.* Distributing agencies are responsible for choosing disaster organizations to

implement a disaster household distribution, subject to FNS approval as described in paragraph (b)(1) of this section. Before distribution of USDA Foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency either electronically or in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of USDA Foods to households.

(c) *Limitation on impacts to other programs.* Distributing agencies must ensure that the operation of disaster congregate meal service and/or disaster household distribution is not administered in lieu of regular program operations nor does it negatively impact the distribution of USDA Foods through other programs administered by the distributing agency.

(d) *Reporting and recordkeeping requirements.* The distributing agency must report the following to FNS:

(1) The number, names, and locations of sites where USDA Foods are used in congregate meals or household distribution as these sites are established.

(2) The types and amounts of USDA Foods from distributing or recipient agency storage facilities used in disaster assistance, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of disaster assistance. This form must also be used to request replacement of USDA Foods, in accordance with paragraph (e) of this section. The distributing agency must maintain records of reports and other information relating to disasters.

(3) If the distributing agency is operating disaster household distribution per 250.69(b), the distributing agency must submit a biweekly report to FNS, utilizing the format requested by FNS, for the approved disaster period. This report must be submitted electronically biweekly as long as the disaster household distribution continues operation.

Biweekly reports must include:

(i) The weekly distribution start and end dates;

(ii) The total number of individual household members receiving assistance at all locations;

(iii) Material identification codes for USDA Foods distributed;

(iv) the USDA Foods description of the foods distributed; and

(v) the total units of each food distributed.

(e) *Replacement of USDA Foods.* In order to ensure replacement of USDA Foods used in disasters, the distributing agency must submit to FNS a request for such replacement, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, within 45 days following the termination of disaster assistance. The distributing agency may request replacement of USDA Foods used from inventories in which USDA Foods are commingled with other foods (*i.e.*, at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received USDA Foods of the same type as the foods used during the year preceding the onset of the disaster assistance. FNS will replace such USDA Foods in the amounts used, or in the amount of like USDA Foods received during the preceding year, whichever is less.

(f) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting USDA Foods within the State, or from one State to

another, for use in disasters, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency.

22. Revise § 250.70 to read as follows:

**§ 250.70 Situations of distress.**

(a) *Use of USDA Foods to provide congregate meals.* The distributing agency may provide USDA Foods from current inventories, either at the distributing or recipient agency level, to a disaster organization, for use in providing congregate meals to persons in need of food assistance because of a situation of distress, as this term is defined in § 250.2.

(1) *Notification of congregate meals activity to FNS.* If the situation of distress results from a natural event (*e.g.*, a hurricane, flood, or snowstorm), congregate meals may be provided for a period not to exceed 30 days, without the need for FNS approval. However, the distributing agency must notify FNS that such assistance is to be provided. FNS approval must be obtained to permit such USDA Foods assistance for a period exceeding 30 days. If the situation of distress results from other than a natural event (*e.g.*, an explosion), FNS approval is required to permit USDA Foods assistance for use in providing congregate meals for any period of time.

(2) *Selection of disaster organizations for disaster congregate meal service by the distributing agency.* Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to approval as described in paragraph (a)(1) of this section. Before distribution of USDA Foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the

distributing agency in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of USDA Foods in a situation of distress that is not the result of a natural event. The disaster organization's application must, to the extent possible, include the following information:

(i) A description of the situation of distress;

(ii) The number of people requiring assistance;

(iii) The period of time for which USDA Foods are requested;

(iv) The quantity and types of USDA Foods needed; and

(v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known.

(3) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use USDA Foods to provide meals to any emergency relief workers at the congregate feeding site that are directly engaged in providing relief assistance.

(b) *Use of USDA Foods for distribution to households.* The distributing agency must receive FNS approval to provide USDA Foods from current inventories in accordance with paragraph (c) of this section, either at the distributing or recipient agency level, to a disaster organization for distribution to households in need of food assistance because of a situation of distress. Such distribution may continue for the period of time that FNS determines necessary to meet the needs of such households. Before permitting the distribution of USDA Foods for household distribution, the distributing agency must submit an application to FNS for review and approval. The distributing agency's application must, to the extent possible, include the following information:

- (1) A description of the situation of distress;
- (2) The number of people requiring assistance;
- (3) The period of time for which USDA Foods are requested;
- (4) The quantity and types of USDA Foods needed;
- (5) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known;
- (6) An explanation as to why household distribution is needed; and
- (7) The method(s) of distribution available.

(c) *Limitation on impacts to other programs.* Distributing agencies must ensure that the operation of congregate meal service and/or disaster household distribution in situations of distress is not administered in lieu of regular program operations nor does it negatively impact the distribution of USDA Foods through other programs administered by the distributing agency.

(d) *Reporting and recordkeeping requirements.* The distributing agency must report the following to FNS:

- (1) The number, names, and locations of sites where USDA Foods are used in congregate meals or household distribution as these sites are established.

- (2) The distributing agency must also report the types and amounts of USDA Foods from distributing or recipient agency storage facilities used in the situation of distress, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of

assistance. This form must also be used to request replacement of USDA Foods, in accordance with paragraph (e) of this section. The distributing agency must maintain records of reports and other information relating to situations of distress.

(3) If the distributing agency is operating disaster household distribution per 250.70(b), the distributing agency must submit a biweekly report to FNS, utilizing the format requested by FNS, for the approved disaster period. This report must be submitted electronically biweekly as long as the disaster household distribution continues operation.

Biweekly reports must include:

(i) The weekly distribution start and end dates;

(ii) The total number of individual household members receiving assistance at all locations;

(iii) Material identification codes for USDA Foods distributed;

(iv) The USDA Foods description of the foods distributed; and

(v) The total units of each food distributed.

(e) *Replacement of USDA Foods.* FNS will replace USDA Foods used in a situation of distress only to the extent that funds to provide for such replacement are available. The distributing agency must submit to FNS a request for replacement of such USDA Foods, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of assistance. The distributing agency may request replacement of foods used from inventories in which USDA Foods are commingled with other foods (*i.e.*, at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received USDA Foods of the same type as the USDA Foods used during the year

preceding the onset of the situation of distress. Subject to the availability of funds, FNS will replace such USDA Foods in the amounts used, or in the amount of like USDA Foods received during the preceding year, whichever is less.

(f) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting USDA Foods within the State, or from one State to another, for use in a situation of distress, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency to the extent that funds are available.

## **PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM**

23. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516; 7 U.S.C. 2011–2036.

### **§ 251.2 [Amended]**

24. Amend § 251.2:

a. In paragraph (a), by removing the term “food commodities” and adding in its place the term “USDA Foods”;

b. In paragraphs (c)(1) and (2), by removing the term “donated foods” wherever it appears and adding in its place the term “USDA Foods”;

c. In paragraph (d)(1)(ii), by removing the term “commodities” and adding in its place the term “USDA Foods”; and

d. In paragraph (d)(2)(ii), by removing the terms “TEFAP commodities” and “commodities” and adding in their place the term “USDA Foods”.

25. Amend § 251.3:

a. In paragraphs (c) and (d)(5), by removing the term “commodities” and adding in its place the term “USDA Foods”;

b. In paragraph (e) by removing the term “TEFAP commodities” and adding in its place the term “USDA Foods”;

c. By revising paragraph (f); and

d. In paragraphs (h) and (k) by removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”.

The revision reads as follows:

**§ 251.3 Definitions.**

\* \* \* \* \*

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

\* \* \* \* \*

26. Amend § 251.4 by:

a. Revising the section heading;

b. Removing the term “donated commodity” in paragraph (c)(4) and adding in its place the term “USDA Foods”;

c. Removing the term “donated food” in paragraphs (c)(4) and (5) and adding in its place the term “USDA Foods”;

d. Removing the term “Commodities” in paragraph (f) introductory text and adding in its place the term “USDA Foods”;

e. Revising paragraph (f)(3);

f. Removing the term “donated commodities” wherever it appears in paragraph (g) and in paragraph (i) and adding in its place the term “USDA Foods”;

g. Removing the term “TEFAP commodities” wherever it appears in paragraphs (h)(1)(i) and (ii) and (h)(2) through (4) and adding in its place the term “USDA Foods”;

h. Removing the term “commodity” in paragraphs h(1)(i) and (ii) and adding in its place the term “USDA Foods”;

i. Removing the term “USDA donated commodities” in paragraph (i) and adding in its place the term “USDA Foods”;

j. Revising paragraph (k);

k. Removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”; and

k. Adding paragraph (l).

The revisions and addition read as follows:

**§ 251.4 Availability of USDA Foods.**

\* \* \* \* \*

(f) \* \* \*

(3) The State shall require the processor to meet Federal, State, and local health standards.

\* \* \* \* \*

(k) *Distribution in rural and Tribal areas.* FNS encourages State agencies and eligible recipient agencies to implement or expand USDA Foods distributions in rural, remote, and Tribal areas of the State wherever possible.

(l) *Public posting of availability of USDA Foods.* State agencies must make publicly available the list of eligible recipient agencies that have an agreement with the State agency and the State's uniform Statewide eligibility criteria to receive USDA Foods for household consumption as per § 251.5(b), to ensure that eligible populations understand eligibility criteria and are able to identify where they may access USDA Foods. At minimum, State agencies must publicly post the names, addresses, and contact telephone numbers for all eligible recipient agencies that have an agreement with the State agency. The information must be posted on a publicly available internet web page and be updated on an annual basis or whenever changes to eligibility criteria are made.

27. Amend § 251.5 by revising paragraphs (a) introductory text, (a)(1) and (2), (b), and (c) to read as follows:

**§ 251.5 Eligibility determinations.**

(a) *Criteria for determining eligibility of organizations.* Prior to making USDA Foods or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of USDA Foods or administrative funds, must ensure that an organization applying for participation in the

program meets the definition of an “eligible recipient agency” under § 251.3(d). In

addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing USDA Foods to households for home consumption.*

Organizations distributing USDA Foods to households for home consumption must limit the distribution of USDA Foods provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of USDA Foods or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than “predominantly” and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

\* \* \* \* \*

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive USDA Foods provided under this part for home consumption and must make these criteria publicly available as per § 251.4(l). The criteria must:

(1) Enable the State agency to ensure only households that need food assistance because of inadequate household income receive USDA Foods;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards. Income-based standards must include a maximum income eligibility threshold at or between 185 percent to 300 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). States may propose alternative income-based eligibility standards above this threshold with supporting rationale, subject to approval by FNS; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, and the method for how residency will be determined. Length of residency, address, or identification documents shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of USDA Foods and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive USDA Foods and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive USDA Foods and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that USDA Foods and administrative funds are distributed in accordance with the provisions contained in this part.

28. Amend § 251.6 by revising paragraphs (a)(1), (2), (4), (5), and (6) to read as follows:

**§ 251.6 Distribution plan.**

(a) \* \* \*

(1) A designation of the State agency responsible for distributing USDA Foods and administrative funds provided under this part, and the address of such agency;

(2) A plan of operation and administration to expeditiously distribute USDA Foods received under this part;

\* \* \* \* \*

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive USDA Foods for home consumption;

(5) At the option of the State agency, a plan of operation for one or more Farm to Food Bank Projects in partnership with one or more emergency feeding organizations located in the State, as described in § 251.13. The plan must include all items listed at § 251.13(e); and

(6) A plan, which may include the use of a State advisory board established under § 251.4(h)(4), that provides emergency feeding organizations or eligible recipient agencies within the State an opportunity to provide input on the USDA Foods preferences and needs of the emergency feeding organization or eligible recipient agency.

\* \* \* \* \*

**§ 251.7 [Amended]**

29. Amend § 251.7 in paragraph (a) by removing the word “commodity” and adding in its place the term “USDA Foods”.

30. Amend § 251.8 by revising paragraphs (a), (d), (e)(1) introductory text, (e)(1)(i) and(iii), and (e)(4)(iii) to read as follows:

**§ 251.8 Payment of funds for administrative costs.**

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of USDA Foods under this part shall, in any fiscal year, be distributed to each State agency on the basis of the funding formula defined in § 251.3(h).

\* \* \* \* \*

(d) *Priority for eligible recipient agencies distributing USDA Foods.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA Foods are met, relative to both USDA Foods and any non-USDA foods they may receive before such funding is made available to eligible recipient agencies which distribute only non-USDA foods.

(e) \* \* \*

(1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA Foods and foods secured from other sources to the extent that the foods are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of foods (including donated wild game); except that for interstate expenditures to be allowable, the foods must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

\* \* \* \* \*

(iii) Costs of providing information to persons receiving USDA Foods concerning the appropriate storage and preparation of such foods;

\* \* \* \* \*

(4) \* \* \*

(iii) State agencies must not charge for USDA Foods made available under this part to eligible recipient agencies.

\* \* \* \* \*

31. Amend § 251.9:

a. In paragraph (c)(2)(i) by removing the word “commodities” and adding in its place the term “USDA Foods”;

b. In paragraph (d) by removing the term “donated foods” and adding in its place “USDA Foods”; and

c. Revising paragraph (e).

The revision reads as follows:

**§ 251.9 Matching of funds.**

\* \* \* \* \*

(e) *Reporting requirements.* State agencies must identify their matching contribution on the FNS–667, Report of TEFAP Administrative Costs, in accordance with § 251.10(b)(1).

\* \* \* \* \*

32. Revise § 251.10 to read as follows:

**§ 251.10 Reports and recordkeeping.**

(a) *Records—(1) USDA Foods.* State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of USDA Foods received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for USDA Foods which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Eligible recipient agency list.* State agencies must maintain a list of eligible recipient agencies, including eligible recipient agencies that have agreements with the

State agency and eligible recipient agencies that have agreements with another eligible recipient agency. The list must include eligible recipient agencies that distribute USDA Foods for home consumption and those that distribute USDA Foods in the form of prepared meals.

(4) *Information about households receiving USDA Foods for home consumption.* Each distribution site must collect and maintain on record for each household receiving USDA Foods for home consumption, the name of the household member receiving USDA Foods, the number of persons in the household, and the basis for determining that the household is eligible to receive USDA Foods for home consumption.

(5) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

(b) *Reports* —(1) *Submission of Form FNS–667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of USDA Foods are not maintained, in accordance with the requirements of § 250.18(a) of this chapter.

(3) *Report of eligible recipient agency list.* On an annual basis, each State agency must provide the list of eligible recipient agencies and statewide eligibility criteria, as described in paragraph (a)(3) of this section, to FNS. The report should specify whether each eligible recipient agency has an agreement with the State agency or with another eligible recipient agency.

(4) *Recipients of USDA Foods for home consumption.* State agencies must report the total number of persons served by each distribution site for home consumption as collected in paragraph (a)(4) of this section to FNS on a quarterly basis. This report must capture the total number of persons in all households which participated in each calendar month within the quarter.

(c) *Confidentiality of applicants and participants* —(1) *Confidential applicant and participant information.* Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of TEFAP application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State, or local law.

(2) *Limits on disclosure of information obtained from applicants or participants.* State and local agencies must restrict the use or disclosure of information obtained from TEFAP applicants or participants to persons directly connected with the administration or

enforcement of the program. With the consent of the participant, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

*(3) Limits on disclosing the identity of persons making a complaint or allegation against an individual participating in or administering the program.* The State and local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering TEFAP, except as necessary to conduct an investigation, hearing, or judicial proceeding, as applicable.

33. Add §§ 251.11 through 251.14 to read as follows:

Sec.

\* \* \* \* \*

251.11 State monitoring system.  
251.12 Limitation on unrelated activities.  
251.13 Farm to Food Bank Projects.251.14 Miscellaneous.

**§ 251.11 State monitoring system.**

(a) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(b) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(1) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided each such agency must be reviewed no less frequently than once every four years; and

(2) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive USDA Foods and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of USDA Foods and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(c) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(d) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (b) of this section.

(e) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

**§ 251.12 Limitation on unrelated activities.**

(a) Activities unrelated to the distribution of USDA Foods or meal service may be conducted at distribution sites as long as:

(1) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department. Nutrition education materials, such as recipes or other information about USDA Foods, dates of future distributions, hours of operations, or information about other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(2) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of USDA Foods for home consumption or prepared meals containing USDA Foods (cooperation includes contributing money, signing petitions, or conversing with the person(s));

(3) The activity is not conducted in a manner that disrupts the distribution of USDA Foods or meal service, and;

(4) The activity does not involve information unrelated to TEFAP being placed in or printed on bags, boxes, or other containers in which USDA Foods are distributed.

(b) Eligible recipient agencies and distribution sites shall ensure that activities unrelated to the distribution of USDA Foods or meal service are conducted in a manner consistent with paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any eligible recipient agency that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (a) of this section.

(d) The State agency may withhold termination of an eligible recipient agency's or distribution site's TEFAP participation if the State agency cannot find another eligible recipient agency to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the violating organization to ensure that no further violations occur.

**§ 251.13 Farm to Food Bank Projects.**

(a) *Definition of project.* Farm to Food Bank Projects are the harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackageged foods donated by agricultural producers, processors, or distributors for use by emergency feeding organizations under section 203D of the Emergency Food Assistance Act of 1983.

(b) *Availability and allocation of funds.* Funds for the costs of carrying out a Farm to Food Bank Project will be allocated to State agencies as follows:

(1) Funds made available to the Department for Farm to Food Bank Projects will be distributed to State agencies that have submitted an approved amendment to their State plan. The amendment must describe a plan of operation for a Farm to Food Bank Project and include all elements listed in paragraph (e) of this section. The plan of operation must be updated and resubmitted on an annual basis by the dates requested by FNS.

(2) Funds for Farm to Food Bank Projects will be distributed each fiscal year to State agencies using the funding formula defined in § 251.3(h).

(3) Funds will be available to State agencies for one year from the date of allocation.

(c) *Purpose and use of funds.* State agencies may only use funds made available under this section for the costs of carrying out a Farm to Food Bank Project.

(1) Farm to Food Bank Projects must have a purpose of:

(i) Reducing food waste at the agricultural production, processing, or distribution level through the donation of food;

(ii) Providing food to individuals in need; and

(iii) Building relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(2) Project funds may only be used for costs associated with harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged foods donated by agricultural producers, processors, or distributors for use by emergency feeding organizations.

(3) Project funds cannot be used to purchase foods or for agricultural production activities such as purchasing seeds or planting crops.

(d) *Matching of funds* —(1) *State matching requirement.* The State agency must provide a cash or in-kind contribution at least equal to the amount of funding received under this section for a Farm to Food Bank Project.

(2) *Allowable contributions.* State agencies shall meet the match requirement in paragraph (d) of this section by providing allowable contributions as described at § 251.9(c); contributions must only be for costs which would otherwise be allowable as a Farm to Food Bank Project cost.

(3) *Emergency feeding organization contributions.* Cash or in-kind contributions from emergency feeding organizations that partner with the State agency to administer the Farm to Food Bank Project are allowable.

(4) *Food donations.* Donations of foods, including the value of foods donated as a part of a Farm to Food Bank Project, cannot count toward the match requirement in paragraph (d) of this section.

(e) *Plans of Operation for Farm to Food Bank Projects.* A plan of operation for a Farm to Food Bank Project must include:

- (1) A high-level summary of the Farm to Food Bank Project.
- (2) A description of the types of foods expected to be donated through the Project.
- (3) A list of emergency feeding organizations within the State that will operate the Project in partnership with the State agency.
- (4) A list of any State agencies that will operate the Project as a part of a cooperative agreement.
- (5) A description of the Project that includes how the Project will:
  - (i) Reduce food waste at the agricultural production, processing, or distribution level through the donation of food;
  - (ii) Provide food to individuals in need; and
  - (iii) Build relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.
- (6) The fiscal year in which the Project will begin operating; and

(7) A description of how the match requirement will be met.

(f) *Reallocation of funds.* If, during the course of the fiscal year, the Department determines that a State agency will not expend all of the funds allocated to the State agency for a fiscal year under this section, the Department shall reallocate the unexpended funds to other State agencies that have an approved State Plan describing a plan of operation for a Farm to Food Bank Project during that fiscal year or the subsequent fiscal year.

(g) *Reporting requirements.* Each State agency to which Farm to Food Bank Project funds are allocated for a fiscal year must submit a report describing use of the funds. The data must be identified on Form SF-425, Federal Financial Report, and submitted to the appropriate FNS Regional Office on a semiannual basis. The reports, including a final report, must be submitted by the dates requested by FNS.

(h) *Cooperative agreements.* State agencies that carry out a Farm to Food Bank Project may enter into cooperative agreements with State agencies of other States to maximize the use of foods donated under the project.

#### **§ 251.14 Miscellaneous.**

(a) *USDA Foods not income.* In accordance with section 206 of Public Law 98-8, as amended, and notwithstanding any other provision of law, USDA Foods distributed for home consumption and meals prepared from USDA Foods distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(b) *Nondiscrimination.* There shall be no discrimination in the distribution of USDA Foods for home consumption or availability of meals prepared from USDA Foods donated under this part because of race, color, national origin, sex, age, or handicap.

(c) *Use of volunteer workers and non-USDA foods.* In the operation of The Emergency Food Assistance Program, State agencies and eligible recipient agencies shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(d) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide USDA Foods or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

(e) *Recruitment activities related to the Supplemental Nutrition Assistance Program (SNAP).* Any entity that receives USDA Foods identified in this section must adhere to regulations set forth under § 277.4(b)(6) of this chapter.

## **PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS**

34. The authority citation for part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

35. Revise § 253.1 to read as follows:

### **§ 253.1 General purpose and scope.**

This part describes the terms and conditions under which: USDA Foods (available under part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations (ITOs) and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program and the Supplemental Nutrition Assistance Program (SNAP) on Indian reservations when such concurrent operation is requested by an ITO.

36. Amend § 253.2 by revising the definitions of “Indian tribal organization (ITO)”, “Overissuance”, and “State agency” and removing the definition of “Urban place”.

The revisions read as follows:

§ 253.2 Definitions.

\* \* \* \* \*

*Indian Tribal Organization (ITO)* means:

- (1) The recognized governing body of any Indian tribe on a reservation; or
- (2) The tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to operate SNAP or a Food Distribution Program on their behalf.
- (3) State agencies are also referred to as FDPIR administering agencies.

\* \* \* \* \*

*Overissuance* means the dollar value of USDA Foods issued to a household that exceeds the dollar value of USDA Foods it was eligible to receive.

\* \* \* \* \*

*State agency* means:

(1) The agency of State government, including the local offices thereof, which enters into an agreement with FNS for the distribution of USDA Foods on all or part of an Indian reservation, and

(2) The ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, which enters into an agreement with FNS for the distribution of USDA Foods on all or part of an Indian reservation.

37. Revise § 253.3 to read as follows:

**§ 253.3 Availability of USDA Foods.**

(a) *Conditions for distribution.* In jurisdictions where SNAP is in operation, there shall be no distribution of USDA Foods to households under the authority of any law, except that distribution may be made:

(1) On a temporary basis under programs authorized by law to meet disaster relief needs;

(2) For the purpose of the USDA Foods programs in accordance with the requirements of part 250 of this chapter and with other Federal regulations applicable to specific food assistance programs; and

(3) Whenever a request for concurrent or separate Food Distribution Program on a reservation is made by an ITO.

(b) *Concurrent or separate food program operation.* Distribution of USDA Foods under the Food Distribution Program, with or without SNAP, shall be made whenever an ITO submits to FNS a completed application for the Food Distribution Program on all or part of a reservation and the application is approved by FNS.

(1) Except as provided in paragraph (b)(2) of this section, when the Food Distribution Program is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program, or, if the ITO has elected concurrent operation of SNAP, may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(2) FNS may determine, based on the number of non-Indian tribal households located on all or part of a reservation, that concurrent operation is necessary. When such a determination has been made all households residing in such areas may apply to participate in either SNAP or the Food Distribution Program.

(c) *Household distribution.* USDA Foods acquired under section 416 of the Agricultural Act of 1949, as amended; section 32 of Public Law 320, 74th Congress, as amended; section 709 of the Food and Agricultural Act of 1963, as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, by section 1304 of the Food and Agriculture Act of 1977, may be made available under part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(d) *Food distribution program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food

package offered to each household shall consist of a quantity and variety of USDA Foods made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to SNAP benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size. FNS shall periodically notify State agencies of the kinds of USDA Foods it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed USDA Foods cannot be delivered, the Department shall arrange for delivery of a similar USDA Foods within the same food group. FNS shall periodically assess how the USDA Foods provided in the Food Distribution Program compares to the Dietary Guidelines for Americans and the market baskets of the Thrifty Food Plan and, to the extent practicable, will adjust the food package as needed to ensure that the food package benefit is in alignment. The food package benefit will not decrease based on this adjustment.

**§ 253.4 [Amended]**

38. Amend § 253.4:

a. In paragraph (b)(3) by removing the term “contract” in the first and fourth sentences and adding in its place the term “delegate” and in the second sentence removing the terms “commodity” and “commodities” and adding in their place the term “USDA Foods”;

b. In paragraph (d) by removing the term “the Food Stamp Program” in the second sentence and adding in its place the term “SNAP” and by removing the fifth, sixth, and seventh sentences; and

c. In paragraphs (e)(1)(i) and (iii) by removing the term “commodities” and adding in its place the term “USDA Foods”.

39. Amend § 253.5:

a. By removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”;

b. In paragraph (a)(2)(i) by removing the term “the Food Stamp Program” and adding in its place the term “SNAP”;

c. By revising paragraph (e); and

d. In paragraphs (f)(1) and (i)(2) by removing the term “commodity” and adding in its place the term “USDA Foods”.

**§ 253.4 State agency requirements.**

\* \* \* \* \*

(e) *Outreach and referral.* The State agency shall inform potentially eligible households of the availability of the Food Distribution Program. The State agency shall develop and distribute printed information in the appropriate languages about the program and eligibility requirements. Outreach material shall contain information about a household's right to file an application on the same date it contacts the certification office. The State agency shall be sufficiently familiar with general eligibility requirements for the Supplemental Food Program for Women, Infants and Children (WIC), the Commodity Supplemental Food Program (if available to reservation residents), the Supplemental Security Income Program (SSI), and appropriate public and general assistance programs, to identify those applicants whose households contain persons who

may be eligible for these programs, to inform the applicants of their potential eligibility, and to provide the applicants with the addresses and telephone numbers for these programs. For example, the State agency should provide information on the WIC program to applicants whose households contain pregnant women, nursing or postpartum women, or children up to the fifth birthday.

\* \* \* \* \*

40. Amend § 253.6 by:

- a. Revising paragraph (a);
- b. Revising the second sentence in paragraph (b)(1) and removing the term “the Food Stamp Program” in the seventh sentence;
- c. Revising paragraphs (c) heading, (c)(1), and (d)(1)(i);
- d. Removing the term “the Food Stamp Program” in paragraph (d)(1)(ii) and adding in its place the term “SNAP”; and
- e. Revising paragraph (d)(2)(ii)(D);
- f. Removing the term “the Food Stamp Program” in paragraph (d)(2)(ii)(G) and adding in its place the term “SNAP”;
- g. Revising paragraphs (d)(3)(vii), (d)(3)(x)(C), and (e).

The revisions and addition read as follows:

**§ 253.6 Eligibility of households.**

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution.

(i) An individual living alone.

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others.

(iii) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(iv) *Spouses living separately.* For purposes of this part, spouses living separately and apart are considered separate households.

(2) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility. Nonhousehold members specified in paragraphs (a)(2) (i) and (v) who are otherwise eligible may participate in the Program as separate households.

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *Disqualified individuals.* Individuals disqualified from the Food Distribution Program per 253.7(f)(1) and SNAP for fraud, as set forth in § 273.16.

(iii) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program, persons receiving food distribution benefits must be lawfully living in the United States.

(iv) *Others*. Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(3) *Authorized representatives*. The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for USDA Foods and/or obtaining USDA Foods as provided in § 253.7(a)(10)(i) and § 253.7(a)(10)(ii) respectively.

(4) *Children*. A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member must be considered a member of the household. A child must be considered under parental control for purposes of this provision if they are financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(b) \* \* \*

(1) \* \* \* All Indian tribal households as defined in § 253.2 of this part which reside in near areas established under § 253.4(d) of this part shall be eligible to apply for program benefits. \* \* \*

\* \* \* \* \*

(c) *Income eligibility standards of public assistance, supplemental security income (SSI), and certain general assistance households*. (1) Households in which all members are included in a federally aided public assistance or SSI grant shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income of the household members.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, SSI, paragraph (c) of this section, or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the applicable SNAP net monthly income eligibility standards for the appropriate area, increased by the amount of the applicable SNAP standard deduction for that area.

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(D) Scholarships, education grants, fellowships, deferred payment loans for education, veteran's education benefit and the like in excess of amounts excluded under paragraph (d)(3)(iii) of this section.

(3) \* \* \*

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

\* \* \* \* \*

(x) \* \* \*

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113), as amended. Payments under title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated USDA Foods, SNAP, or public assistance at the time they joined the title I program, except that households which are receiving an income exclusion for a VISTA or other title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving federally donated USDA Foods, SNAP benefits or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

\* \* \* \* \*

(e) *Income deductions*—(1) *Earned income deduction*. Households with earned income, as defined in paragraph (d)(2)(i) of this section, shall be allowed a deduction of twenty percent of their gross earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) *Dependent care deduction*. Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment.

(3) *Child support deduction.* Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) *Excess medical deduction.* Households must receive a medical deduction for that portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 253.2. Spouses or other persons receiving benefits as a dependent of a Supplemental Security Income (SSI), or disability and blindness recipient are not eligible to receive this deduction; however, persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. The allowable medical costs are those permitted at § 273.9(d)(3) of this chapter for the Supplemental Nutrition Assistance Program (SNAP).

(5) *Shelter/utility deduction.* Households that incur monthly shelter and utility expenses will receive a shelter/utility deduction. The household may choose to receive a standard deduction or to provide actual expenses, subject to the provisions below.

(i) The household must incur, on a monthly basis, at least one allowable shelter/utility expense. The allowable shelter/utility expenses are those permitted at § 273.9(d)(6)(ii) of this chapter for SNAP.

(ii) The shelter/utility standard deduction amounts are set by FNS. The standard deductions are adjusted annually to reflect changes to SNAP maximum monthly excess

shelter expense limits per § 273.9(d)(6)(ii) of this chapter. FNS will advise the State agencies of the updates prior to October 1 of each year.

(iii) Households that select actual expenses, may claim expenses up to the amount that does not exceed 50 percent of their net monthly income.

41. Amend § 253.7 by:

a. Revising the paragraph (a)(6)(i)(C) heading and paragraphs (a)(6)(i)(D), (a)(6)(v), and (b)(3)(iii)(A);

b. Removing the term “USDA commodities” in paragraph (b)(3)(iii)(E) and the term “commodity” in paragraph (d)(2) and adding in their place the term “USDA Foods”;

c. Revising paragraphs (e) and (f)(1)(ii);

d. Removing the term “food stamp” wherever it appears in paragraph (e)(1) and adding in its place the term “SNAP”;

e. Removing the term “the Food Stamp Program” wherever it appears in paragraph (f)(1)(ii) and adding in its place the term “SNAP”; and

f. Removing the term “commodities” wherever it appears in the section and adding in its place the term “USDA Foods”.

The revisions read as follows:

**§ 253.7 Certification of households.**

(a) \* \* \*

(6) \* \* \*

(i) \* \* \*

(C) *Medical expense deduction.* \* \* \*

(D) *Shelter/utility deduction.* A household must incur, on a monthly basis, at least one allowable shelter/utility expense in accordance with § 253.6(e)(5)(i) of this chapter to qualify for the shelter/utility deduction. The State agency must verify that the household incurs the expense. If the household chooses to provide actual expenses, then the State agency must obtain verification for each shelter/utility deduction that the household wishes to deduct.

\* \* \* \* \*

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in gross income if the source has changed or the amount has changed by more than \$100 per month since the last time the gross income was verified. State agencies may verify income which is unchanged or has changed by \$100 per month or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to SNAP, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken. The notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next scheduled distribution of USDA Foods that follows the expiration of the advance notice period unless the household requests a fair hearing.

\* \* \* \* \*

(e) *Controls for dual participation*—(1) *Prohibition on dual participation.* No household shall be allowed to participate simultaneously in SNAP and the Food Distribution Program. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified households provided by and provided to the appropriate SNAP agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate SNAP agency or agencies in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either SNAP or the Food Distribution Program on reservations on which both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation and notifying the State agency of their intention to

switch programs. Households certified in either the Food Distribution Program or SNAP on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household elects to change programs, the household should notify the State agency of its intent to switch programs and should file an application for the program in which it wishes to participate.

Households voluntarily withdrawing from one program with the intent of switching to the other shall have their eligibility terminated for the program in which they are currently certified on the last day of the month in which the household notifies the State agency of its intent to change programs. Entitlement in the program for which a household is now filing an application, if all eligibility criteria are met, would begin in the month following the month of termination in the previous program.

(f) \* \* \*

(1)\* \* \*

(ii) Household members disqualified from SNAP for an intentional program violation under § 273.16 of this chapter. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under SNAP has ended. The State agency must, in cooperation with the appropriate SNAP agency, develop a procedure that ensures that these household members are identified.

\* \* \* \* \*

### **§ 253.8 [Amended]**

42. Amend § 253.8 by removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”.

## § 253.9 [Amended]

43. Amend § 253.9 in paragraph (a)(1) by removing the term “commodities” and adding in its place the term “USDA Foods”.

44. Revise § 253.10 to read as follows:

### **§ 253.10 USDA Foods inventory management, storage, and distribution.**

(a) *Control and accountability.* The State agency shall be responsible for the issuance of USDA Foods to households and the control of and accountability for the USDA Foods upon its acceptance of the USDA Foods at time and place of delivery.

(b) *USDA Foods inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of USDA Foods inventories at storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that USDA Foods inventories at each storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of USDA Foods.

(c) *Inventory management and control.* The State agency shall as a minimum ensure that: all USDA Foods are stored and inventory is maintained per §§ 250.12 and 250.14 of this chapter.

(d) *Distribution.* The State agency shall distribute USDA Foods only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service, or similar organization to effect or assist in the certification of households or distribution of USDA Foods, the State agency shall impose

upon such organization responsibility for determining that households to whom USDA Foods are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and control of the Food Distribution Program. The State agency shall as a minimum ensure that:

(1) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(2) An adequate supply of USDA Foods which are available from the Department is on hand at all distribution sites.

(3) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(4) Days and hours of distribution are sufficient for caseload size and convenience.

(5) Households are advised they may refuse any USDA Foods not desired, even if the USDA Foods are prepackaged by household size.

(6) Emergency issuance of USDA Foods will be made to households certified for expedited service in accordance with the provisions of § 253.7(a)(9).

(7) Eligible households or authorized representatives are identified prior to the issuance of USDA Foods.

(8) Authorized signatures are obtained for USDA Foods issued and the issue date recorded.

(9) Posters are conspicuously displayed advising program participants to accept only those USDA Foods, and in such quantities, as will be consumed by them.

(10) Complete and current records are kept of all USDA Foods received, issued, transferred, and on hand and of any inventory overages, shortages, and losses.

(11) A list of USDA Foods offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(e) *Improper distribution or loss of or damage of USDA Foods.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss, or damage of USDA Foods in accordance with §§ 250.16 and 250.17 of this chapter.

(f) *Damaged or out-of-condition USDA Foods.* The State agency shall immediately notify the appropriate FNS Regional Office if any USDA Foods are found to be damaged or out- of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. The FNS Regional Office shall advise the State agency of the appropriate action to be taken with regard to such USDA Foods. If the USDA Foods are declared unfit for human consumption in accordance with § 250.15 of this chapter, they shall be disposed of as provided for under that section. When out-of-condition USDA Foods do not create a hazard to other food at the same location, they shall not be disposed of until the FNS Regional Office or the responsible contractor approves. When circumstances require prior disposal of USDA Foods, the quantity and manner of disposition shall be reported to the appropriate FNS Regional Office. If any damaged or out-of-condition USDA Foods are inadvertently issued to a household and are rejected or returned by the household because the USDA Foods were unsound at the time of issuance and not because the household failed to provide proper storage, care or

handling, the State agency shall replace the damaged or out-of-condition USDA Foods with the same or similar kind of USDA Foods which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

45. Add § 253.12 to read as follows:

**253.12 Administrative waivers.**

(a) The Administrator of the Food and Nutrition Service may waive or modify specific regulatory provisions contained in this part for one or more State agencies.

Waivers may be issued only in the following situations:

(1) The specific regulatory provision cannot be implemented due to extraordinary temporary situations;

(2) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(3) Unique geographic conditions within the geographic area served by the administering agency preclude effective implementation of the specific regulatory provision and require an alternate procedure.

(b) FNS shall not approve waivers when:

(1) The waiver would be inconsistent with the provisions of the Food and Nutrition Act of 2008; or

(2) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(c) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that State agencies submit appropriate justification to FNS.

(d) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will meet the conditions of paragraphs (a)(1), (2), and/or (3) of this section. At a minimum, requests for waivers shall include but not necessarily be limited to:

(1) Reasons why the waiver is needed;

(2) Anticipated impact on service to participants or potential participants who would be affected;

(3) Anticipated time period for which the waiver is needed; and

(4) Thorough explanation of the proposed alternative provision to be used in lieu of the waived or modified regulatory provision.

## **PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA**

46. The authority citation for part 254 continues to read as follows:

Authority: Pub. L. 97–98, sec. 1338; Pub. L. 95–113.

### **§ 254.1 [Amended]**

47. Amend § 254.1 by removing the term “commodities” and adding in its place the term “USDA Foods”.

48. Amend § 254.2 by revising paragraphs (b), (d), (f), and (g) and removing paragraph (h).

The revisions read as follows:

**§ 254.2 Definitions.**

\* \* \* \* \*

(b) *FNS service area* means the areas over which FNS has approved the food distribution program in Oklahoma.

\* \* \* \* \*

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in § 253.2 of this chapter.

\* \* \* \* \*

(f) *Overissuance* means the dollar value of USDA Foods issued to a household that exceeds the dollar value of USDA Foods it was eligible to receive.

(g) *State agency* means the ITO of an Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, or an agency of State government, which enters into an agreement with FNS for the distribution of USDA Foods on an Indian reservation.

**§ 254.4 [Amended]**

49. Amend § 254.4 in paragraphs (b)(1)(i) and (iii) by removing the term “commodities” and adding in its place the term “USDA Foods”.

**§ 254.5 [Amended]**

50. Amend § 254.5 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

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Tameka Owens  
Acting Administrator and Assistant Administrator,  
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