

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 251

[FNS–2009–0026]

RIN 0584–AD94

#### The Emergency Food Assistance Program: Amendments to Requirements Regarding the Submission of State Plans and Allowability of Certain Administrative Costs

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations for The Emergency Food Assistance Program (TEFAP) by making State plans permanent, which is intended to reduce the administrative burden on States; and by explicitly designating the processing of donated wild game as an allowable use of TEFAP administrative funds, which is intended to increase the amount and variety of protein-rich foods available to program participants. These changes are required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

**DATES:** This rule is effective on March 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Rogelio Carrasco at [Rogelio.Carrasco@fns.usda.gov](mailto:Rogelio.Carrasco@fns.usda.gov) or by telephone at (703) 305–2662.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Prior to enactment of the 2008 Farm Bill on June 18, 2008, § 202A of the Emergency Food Assistance Act of 1983 (the EFAA), 7 U.S.C. 7501 *et seq.*, required TEFAP State agencies to submit operating plans to USDA for approval every four years (7 U.S.C. 7503). This statutory requirement was

reflected in program regulations at 7 CFR 251.6(b). The regulation required States to submit a plan for Fiscal Year 2001 by August 15, 2000. Thereafter, the States were required to submit a plan every four years. Section 4201(b) of the Farm Bill amended Section 202A of the EFAA by making State plans permanent. This change was implemented by policy memorandum on July 16, 2008. This final rule amends 7 CFR 251.6(b) to make State plans permanent, bringing program regulations into compliance with the EFAA, as amended. This rule also deletes 251.6(c), Amendments, and moves the contents of the paragraph into 251.6(b).

Prior to enactment of the Farm Bill on June 18, 2008, § 204(a)(1) of the EFAA did not specifically include the processing of donated wild game as an allowable use of TEFAP administrative funds. Section 204(a)(1) and 7 CFR 251.8(e) did allow State agencies and eligible recipient agencies to use administrative funds to pay for certain direct and indirect costs associated with foods secured from sources other than TEFAP. While this section does not specifically address donations of wild game, it does allow the costs associated with transport, storage, handling, repackaging, processing, and distribution of foods secured from sources outside of TEFAP, as long as those foods are ultimately distributed to eligible recipient agencies for distribution to needy people. As a matter of policy, FNS included donated wild game under the category of foods secured from other sources. Section 4201(c)(2) of the 2008 Farm Bill amended Section 204(a)(1) of the EFAA Act to specifically allow the use of TEFAP administrative funds to process and distribute donated wild game. This clarification was reflected in a policy memorandum on July 16, 2008. This final rule amends 7 CFR 251.8(e)(1)(i) to reflect that TEFAP administrative costs can be used to defray the eligible direct and indirect costs associated with donated wild game. This amendment will bring program regulations into compliance with the EFAA, as amended.

##### II. Procedural Matters

###### A. Executive Order 12866

This rule has been determined to be not significant and was not reviewed by

the Office of Management and Budget under Executive Order 12866.

###### B. Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. Making State plans permanent will only affect the State agencies that administer TEFAP, and will decrease their administrative burden. Allowing the use of TEFAP administrative funds to process donations of wild game will only affect entities that accept such donations, and only to the extent that they choose to use their funds in that manner.

###### C. 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 to State, local, or Tribal governments in the aggregate, or to the private sector, of \$100 million or more 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 least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

###### D. Executive Order 12372

TEFAP is listed in the Catalog of Federal Domestic Assistance under Nos. 10.568 and 10.569. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this program is excluded from the scope of Executive Order 12372 which

requires intergovernmental consultation with State and local officials.

E. 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 agencies' considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and 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.

F. Executive Order 12988

This 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 implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

G. Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

H. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that 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. This rule does not contain any information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

I. E-Government Act Compliance

FNS 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.

J. Good Cause Determination

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The language of Sections 4201(b) and 4201(c)(2) of the Farm Bill, which amend Sections 202A and 204(a)(1) of the EFAA, respectively, is clear and leaves no room for discretion. Consequently, that language also renders 7 CFR 251.6(b) and 7 CFR 251.8(e)(1) inconsistent with the Sections 202A and 204(a)(1) of the EFAA, respectively. This final rule will bring program regulations into compliance with the EFAA. Thus, FNS has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and opportunity for public comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(b), finds that good cause exists for making this action effective without prior public comment.

List of Subjects in 7 CFR Part 251

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

■ Accordingly, 7 CFR Part 251 is amended as follows:

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

■ 1. The authority citation for 7 CFR Part 251 continues to read as follows:

Authority: 7 U.S.C. 7501-7516.

■ 2. Section 251.6 is amended by revising paragraph (b) to read as follows:

§ 251.6 Distribution plan.

\* \* \* \* \*

(b) Plan submission and amendments. Once approved, State plans are permanent. State agencies must submit amendments to the distribution plan when necessary to reflect any changes in program operations or administration as described in the plan, or at the

request of FNS, to the appropriate FNS Regional Office.

\* \* \* \* \*

■ 3. Section 251.8 is amended by revising paragraph 251.8(e)(1)(i) to read as follows:

§ 251.8 Payment of funds for administrative costs.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

Dated: November 20, 2009.

Julia Paradis,

Administrator, Food, Nutrition, and Consumer Services.

[FR Doc. E9-28611 Filed 11-27-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE303; Special Conditions No. 23-243-SC]

Special Conditions: Embraer S.A., Model EMB-505; High Altitude Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB-505 airplane. This airplane will have a novel or unusual design feature(s) associated with the operation at altitudes not previously envisioned. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 12, 2009. We must receive your comments by December 30, 2009.