**01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**Chapter 3: THE EMERGENCY FOOD ASSISTANCE PROGRAM**

1. **POLICY STATEMENT**

The purpose of these rules is to implement Title II of the Emergency Jobs and Humanitarian Aid Programs Bill, *the Temporary Emergency Food Assistance Program Act of 1983*, Public Law 98-8, as amended (“Act”). The Act establishes a program through which surplus agricultural commodities are made available to food insecure persons through emergency feeding organizations. Federal funds have been appropriated for the cost of storage and distribution of these commodities. These rules also implement the Emergency Food Assistance Program Fund as established by 12 M.R.S. § 5018 and as augmented by 36 M.R.S. § 5293.

1. **DEFINITIONS**
	1. “Act” means Title II of the Emergency Jobs and Humanitarian Aid Programs Bill, *the Temporary Emergency Food Assistance Program Act of 1983*, Public Law 98-8, as amended.
	2. “Commissioner” means the Commissioner of the Department of Agriculture, Conservation and Forestry.
	3. “Department” means the Department of Agriculture, Conservation and Forestry.
	4. “Distributing Agency” means the Department due to its selection by the Governor of the State or the State legislature, to distribute donated foods in the state, in accordance with an agreement with the Food and Nutrition Service of the Department of Agriculture.
	5. “Distribution site” means the site at which USDA Foods are distributed to persons for household use by the emergency feeding organization.
	6. “Eligible household” means a household that qualifies for the program under Section 3(2)(A).
	7. “Emergency feeding organization” means an eligible recipient agency that provides nutrition assistance to relieve situations of emergency and distress through the provision of food to food insecure persons, including low-income and unemployed persons.
	8. “Eligible Recipient Agency” or “ERA” means a food pantry, soup kitchen, or other organization that provides nutrition assistance to low-income Maine people and has a contract with a Distributing Agency to receive USDA foods.
	9. “Food assistance program” means the Temporary Emergency Food Assistance Program established under the Act, also referred to as TEFAP.
	10. “Fund” means the Emergency Food Assistance Program Fund.
	11. “Grantee” means an Eligible Recipient Agency awarded a grant from the Fund.
	12. “Grant Selection Committee” means a committee designated by the Commissioner to review and make recommendations regarding grant applications.
	13. “Household income” means total cash receipts from all sources before taxes.
	14. “USDA” means the United States Department of Agriculture.
	15. “USDA Foods” means commodity foods, provided at no cost, that are 100% American-grown and provided by the USDA.
	16. “Value of commodities distributed” means the USDA’s cost of acquiring USDA Foods for distribution under the Act.
	17. “Household” means:
		1. An individual living alone; or
		2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others; or
		3. A group of individuals living together who customarily purchase and prepare meals in common for home consumption.
2. **FOOD ASSISTANCE PROGRAM**
	1. **Administration**
		1. The Department shall have the following duties and responsibilities. The Department shall:
			1. Request the USDA Foods promptly as required.
			2. Request USDA Foods made available to the State of Maine that can be utilized without waste in the food assistance program and distribute to the emergency feeding organizations all the USDA Foods that have been delivered to the State.
			3. Ensure that no emergency feeding organization receives USDA Foods in excess of its anticipated use or in excess of its ability to accept and store such USDA Foods.
			4. Be responsible for intrastate handling, storage, transportation, and the charges associated therewith, which are required to place the USDA Foods in the hands of the emergency feeding organizations.
			5. Develop and provide the application and any other forms required by these rules or the sub-grant agreement between the Department and the emergency feeding organizations or approve any such forms developed by the emergency feeding organizations and submitted as part of its distribution plan.
			6. Monitor emergency feeding organizations for compliance with the Act, federal and state regulations, and their agreements with the Department in accordance with the Department’s Distribution Plan for the Emergency Food Assistance Program as approved by the Federal Office of Food and Nutrition Services.
			7. Provide technical assistance to any emergency feeding organization that is experiencing difficulties in administering the program.
			8. Comply with the provisions of the Act, 7 CFR Part 251 The Emergency Food Assistance Program and 7 CFR Part 250 Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction, and other associated regulations as applicable.
		2. Emergency feeding organizations shall have the following duties and responsibilities. Emergency feeding organizations shall:
			1. Distribute all USDA Foods made available to them by the Department, except any USDA Foods that are determined to be unfit for human consumption because of spoilage or damage, which shall be disposed of only in accordance with instructions from the Department.
			2. On forms provided by the Department or Distributing Agency, request USDA Foods in sufficient quantities to meet the needs of the eligible households in its service area.
			3. Not diminish their normal expenditures for food because of receipt of USDA Foods.
			4. Immediately report to the Department any loss or damage to USDA Foods.
			5. Provide facilities for the proper care, handling, storage, and distribution of the USDA Foods accepted. An emergency feeding organization must enter into an agreement with all municipalities and other sub-distributing entities that have responsibility for the distribution of USDA Foods. Full restitution shall be made to the Department for any loss or damage to USDA Foods resulting from failure to provide such facilities or from any acts of negligence on the part of the emergency feeding organization or sub-distributing entity.
			6. Maintain complete and accurate records as required by the Department, including, but not limited to, records:
				1. To document the receipt, disposal, and inventory of USDA Foods received under the food assistance program, including, but not limited to, the name, address, and size of the household of all eligible households to whom USDA Foods were distributed;
				2. To document the receipt and disbursement of funds arising from the operation of the food assistance program;
				3. To show the data and method used to determine the number of eligible persons served by the emergency feeding organization; and
				4. To document the number of eligible households that did not receive USDA Foods because of insufficient supply, to the extent feasible.

All such records shall be made available for inspection by the USDA, General Accounting Office, the Department or their authorized representatives and shall be retained for three years from the close of the federal fiscal year to which they pertain.

* + - 1. To ensure that each distribution site shall keep accurate and complete records showing the data and method used to determine the number of eligible households served at that site. Each distribution site shall collect from each household participating in the program the name of the household member receiving USDA Foods, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive USDA Foods. Emergency feeding organizations shall report to the State agency no later than thirty days following the end of the quarter to which such data pertain, as well as household participation figures that have been collected in accordance with this section.
			2. Complete and submit in a timely manner all reports required by the Department or by USDA.
			3. Cooperate with any monitoring visits or investigations made by the Department or by USDA.
			4. Make available to an auditor all materials and documentation necessary to permit a conclusion by the auditor on the allowability of expenditures.
			5. Comply with all provisions of the Act; 7 CFR 251 and 7 CFR 250, as applicable; these rules; any agreements entered into with the Department; and the Department’s Distribution Plan.
			6. Comply with the procedures and policies regarding claims as prescribed by the Department and USDA.
			7. Maintain adequate insurance to cover any injury suffered by emergency feeding organization personnel, volunteers, or clients involved in the distribution.
			8. Ensure that activities conducted at distribution sites and unrelated to TEFAP do not interfere with the operation of the distribution and, further, that such activities are clearly not endorsed by the State or USDA. Ensure that persons conducting activities at distribution sites shall make clear that cooperation is not a condition of the receipt of USDA Foods. Cooperation includes contributing money, signing petitions, or conversing with the persons.
	1. **Eligibility and Documentation**
		1. A household is eligible for the food assistance program if either:
			1. A member of the household participates in any of the following federal or state programs:
				1. HEAP (Home Energy Assistance Program);
				2. Supplemental Nutrition Assistance Program (SNAP, formerly food stamps);
				3. Medicaid;
				4. Supplemental Security Income (SSI);
				5. Low Cost Drugs for the Elderly or Disabled (DEL) Program; or
				6. Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
			2. The annual household income is less than or equal to 185% of the federal poverty guidelines or less than or equal to the percentage of the federal poverty guidelines as reflected in the most current State of Maine TEFAP Distribution Plan.
		2. The household must demonstrate its eligibility in one of the following ways:
			1. Complete the application form, providing:
				1. The number and names of all household members;
				2. The household address;
				3. A statement that the household participates in one of the programs set forth in Section 3(2)(A)(1) or that the household income is at or below the allowable amounts set forth in Section 3(2)(A)(2). If the household participates in one of the eligible programs, the emergency feeding organization shall request but not require proof of such participation.
		3. Members of the household must be residents of the State of Maine. Proof of residency may be required by the emergency food organization.
		4. No person shall be denied participation in the food assistance program because of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.
		5. Under no circumstances will recipients of USDA Foods be required to make any payments in money, materials, or services for or in conjunction with the receipt of USDA Foods, nor shall voluntary contributions of any kind be solicited from recipients in connection with the receipt of USDA Foods.
	2. **Distribution**
		1. Notwithstanding any provision of law, USDA Foods distributed under these rules shall not be considered income or resource for any purposes under any federal, state, or local law.
		2. None of the USDA Foods distributed under the food assistance program shall be sold or otherwise disposed of in commercial channels in any form.
	3. **Confidentiality and Complaints**
		1. All information about applicants shall be considered confidential and shall not be released to any person or agency not directly involved in the administration or auditing of the food assistance program except with the express written consent of the applicant.
		2. Complaints
			1. Complaints from recipients or denied applicants, or complaints of other sources of poor administration of the program, including but not limited to duplication or fraud; complaints of failure to provide assistance; or any other complaint shall be made in writing to the Department and/or the appropriate emergency feeding organization.
			2. If the Department determines that the complaint would be more appropriately handled by the emergency feeding organization, it shall refer the complaint accordingly.
			3. The Department or the emergency feeding organization will immediately investigate any such complaints and provide the complaining party with the results in writing of the investigation of the complaint.
1. **THE EMERGENCY FOOD ASSISTANCE PROGRAM FUND GRANT**
	1. **Purpose**
		1. Emergency Food Assistance Program Fund, as established by P.L. 2021, ch. 437, § 1, is a non-lapsing fund to support TEFAP as administered by the Department. The objective of the Fund is to provide financial support for Eligible Recipient Agency infrastructure through a competitive grant program.
		2. The grant program will help finance eligible projects that allow ERA’s to increase their infrastructure capacity to meet the nutrition assistance needs of their clientele.
		3. Eligible grant uses of the Fund are the following infrastructure-related projects or items that are solely intended to increase the infrastructure capacity of an ERA to meet the nutrition assistance needs of the ERA’s clientele: the design, construction, renovation, or improvements to existing buildings or systems; critical cooling or freezing equipment, storage improvements such as shelving; and storage and distribution-related equipment such as trailers, carts, and pallet jacks.
	2. **Grant Amount**
		1. The grant program is funded through annual State income tax return donations, as detailed by 36 M.R.S. § 5293 (2023), and the funding balance will, by its nature, fluctuate depending on the amount of donations received. The Department will determine the timing of the grant program and the maximum grant amounts based on the funds available.
		2. When a grant is awarded, the Department may impose conditions and requirements designed to provide for accountability and achievement of program objectives.
	3. **Application Process**
		1. The Department shall issue a grant application solicitation request in accordance with departmental rule chapter 001-00x (Rules for Grant Administration and Appeals).
		2. Grant applications must be submitted in accordance with the instructions and criteria included in the grant solicitation. At a minimum, the grant solicitation will require applicants to include the following information and descriptions:
			1. Scope of work
			2. Budget and budget narrative
			3. Impact on operational capacity
			4. Community need
			5. Community collaboration
	4. **Administration and Scoring**
		1. Criteria for the Department’s evaluation of applications consistent with this rule will be set forth in the grant solicitation.
		2. The Commissioner shall make the final decision on grant awards based on recommendations from the Grant Selection Committee.
	5. **Appeals**
		1. Award decisions may be appealed. Department rule Chapter 8 shall apply (Rule for Grant Administration and Appeals).

STATUTORY AUTHORITY: P.L. 1991, ch. 591, § P-17; 12 M.R.S. § 5018(3).

EFFECTIVE DATE:

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**Note: Following a March 24, 1997 memo from Linda L. Sears, Chief Counsel for the Maine State Housing Authority, this chapter has been transferred from the Department of Human Services (now Department of Health and Human Services) to the Department of Agriculture, Food and Rural Resources (now Department of Agriculture, Conservation and Forestry).**