

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

### COVID-19 Waivers

The Texas Department of Agriculture (TDA) has received the following waivers from the United States Department of Agriculture (USDA) in order to support the continued operation of meal services. As used herein, "CFR" refers to the Code of Federal Regulations. According to the United States Centers for Disease Control and Prevention, "COVID-19" refers to the coronavirus disease first identified in 2019, i.e., "CoronaVirusDisease-19."

**TX-1 Waiver:** TDA was granted the flexibility to waive the requirement under 7 CFR 225.6(e)(15) to maintain children on site while meals are consumed. The waiver allows sites operating the Summer Food Service Program (SFSP) during a COVID-19 related school closure to serve meals in a non-congregate setting.

**TX-2 Waiver:** TDA was granted the flexibility to waive the requirement under 7 CFR 225.6(d)(1)(iv) that requires meals to be offered at non-school sites during an unanticipated school closure. The waiver allows sites operating SFSP to serve meals at school sites during the COVID-19 related school closures.

**TX-3 Waiver:** TDA was granted the flexibility to waive the requirement under USDA's Food and Nutrition Service (FNS) Instruction 786-8 (June 6, 1988) to serve and consume meals on school or school-related premises and to not reimburse school meals given to children to take home. The waiver allows sites operating Seamless Summer Option (SSO) during a COVID-19 related school closure to serve meals in a non-congregate setting.

**TX-4 Waiver:** TDA was granted the flexibility to waive the requirement under Section 13(c)(1) of the National School Lunch Act requiring meals served to children not in school during an unanticipated school closure to only serve meals at non-school sites. The waiver allows sites operating SSO to serve meals at school sites during the COVID-19 related school closure.

**TX-5 Waiver:** TDA was granted the flexibility to waive the requirement under 7 CFR 225.7(d) and USDA Memo SP-04-2020, CACFP 03-2020-Meal Service During Unanticipated School Closures, requiring TDA to monitor SFSP operators that serve meals during unanticipated school closures. The waiver gives TDA the discretion to postpone or waive on-site state monitoring requirements of SFSP operators serving meals during COVID-19 related school closures if the conditions in the area are at high risk for infection.

**TX-6 Waiver:** TDA was granted the flexibility to waive the requirement under Policy Memo FD-079 (revised) that food packages must not be distributed retroactively. The waiver allows local agencies to deliver a previous month's package in the current month.

**TX 7 Waiver:** TDA was granted the flexibility to waive meal pattern requirements under 7 CFR 210.10, 7 CFR 220.8, 7 CFR 210.10, and 7 CFR 225.16. The waiver gives TDA the discretion to waive meal pattern requirements in cases where (1) food supply was affected in COVID-19 impacted areas to a degree that specific meal components could not be procured by program operators; (2) access to food vendors (such as local grocery stores) is hindered, requiring operators to temporarily use whatever is in their inventory; and/or (3) operators are implementing an approved grab-and-go service (with approved non-congregate waiver) where available non-perishable meal items do not meet the full meal pattern requirements for a reimbursable meal. TDA will grant this waiver on a case-by-case basis.

porarily use whatever is in their inventory; and/or (3) operators are implementing an approved grab-and-go service (with approved non-congregate waiver) where available non-perishable meal items do not meet the full meal pattern requirements for a reimbursable meal. TDA will grant this waiver on a case-by-case basis.

**TX-8 Waiver:** TDA was granted the flexibility to waive the requirement in 7 CFR 226.17a(b)(ii and iii) that requires a site operating Child and Adult Care Food Program (CACFP) At-Risk to have an after-school care program with organized, regularly scheduled activities. The waiver allows sites operating CACFP At-Risk during a COVID-19 related school closure to waive the enrichment activity requirement and serve meals in a non-congregate setting.

**TX-9 Waiver:** TDA was granted the flexibility to waive the major local agency responsibility to issue foods to participants in accordance with the established food package guide rates as required under 7 CFR 247.5(c)(4). The waiver allows TDA to allow local agencies to issue food packages to participants for the Commodity Supplemental Food Program (CSFP) without the cheese component.

**TX-11 Waiver:** TDA was granted the flexibility to waive the following requirements: 7 CFR 249.9(f)(4) which requires the School Food Authority (SFA) to indicate its intention to operate the Community Eligibility Provision (CEP) in the following school year by June 30; 7 CFR 245.9(f)(5) which requires the SFA to submit its identified student percentage (ISP) for each site to the state agency by April 15; 7 CFR 245.9(f)(6) which requires TDA to notify the SFAs about possible CEP eligibility sites by April 15; and 7 CFR 245.9(f)(7) which requires TDA to provide information on its website about possible CEP eligibility for sites and provide notice to USDA of the information posted. The waiver gives TDA the authority to allow all SFAs across Texas the flexibility to extend the following timeline for CEP reporting and notifications as follows: (1) SFAs electing CEP may calculate their ISP using data drawn any time between April 1, 2020, and June 30, 2020; (2) SFAs must submit the required CEP Report (normally due by March 20) to TDA by June 15, 2020; (3) TDA must notify SFAs of district-wide and site eligibility for CEP by June 15, 2020; (3) TDA must post the list of possible CEP eligible districts and sites on its website by June 30, 2020; and (4) by August 31, 2020, all SFAs intending to operate CEP will notify the state agency of their intention to operate the program in SY 2020-2021.

**TX-12 Waiver:** TDA was granted three waivers as part of this request.

--Food and Nutrition Service (FNS) waived National School Lunch Program (NSLP)/School Breakfast Program (SBP)/SSO SFA on-site monitoring requirements included in 7 CFR 210.8, 210.18, and 220.8(h).

--FNS waived for all SFSP sponsoring organizations the on-site monitoring requirements included in 7 CFR 225.15(d).

--FNS waived for all CACFP sponsoring organizations the on-site monitoring requirements included in 7 CFR 226.16(d)(4)(iii), which stipulated that sponsoring organizations in CACFP must review each facility three times each year. CACFP sponsors now have the following flexibilities under this waiver: (1) complete two reviews per year; (2) only one of the facility reviews must be unannounced; (3)

observation of a meal service is no longer required in an unannounced review; and (4) more than six months may elapse between reviews.

TX 13 Waiver: TDA was granted the flexibility to waive FNS Instruction 786-8 (June 6, 1988) which requires that meals reimbursed under the programs be served and consumed as part of the school program, on school or school-related premises. Therefore, school meals given to children to take home are not reimbursable. The waiver allows SFAs that consider school to be in session (via online learning or modified hours) and wish to continue offering National School Lunch Program (NSLP) and School Breakfast Program (SBP) to serve breakfast and lunch in a non-congregate setting.

TX-14 Waiver: TDA was granted the flexibility to allow COVID-19 related operations under all child nutrition programs to distribute meals to a parent or guardian to take home to their children. TDA has developed a plan for ensuring that program operators are able to maintain accountability and program integrity, and program operators must indicate their intent to TDA to operate under this waiver.

TX-15 Waiver: TDA was granted the flexibility to waive the following requirements:

--7 CFR 225.14(c)(3) - No applicant sponsor shall be eligible to participate in the program unless it will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist.

--7 CFR 225.6(c)(2)(i)(G) State agency responsibilities, Content of sponsor application

--7 CFR 225.6(c)(3)(i)(B) State agency responsibilities, Content of sponsor application

--7 CFR 225.6(d)(1)(i) State agency responsibilities, Approval of sites

--7 CFR 225.16(b)(4) Meal service requirements, Sites which serve children of migrant families

--Area eligibility guidance as described in SP 08-2017, CACFP 04-2017, SFSP 03-2017 Area Eligibility in Child Nutrition Programs (December 1, 2016)

This waiver allows SFSP and SSO sponsors in good standing to operate open sites in areas where poor economic conditions do not exist if approved by TDA on a case-by-case basis consistent with the TDA-developed State plan.

TX-Waiver 18: TDA was granted the flexibility to waive the meal service time requirement in 7 CFR 226.6(k). The waiver allows CACFP operators to also distribute meals over multiple days (up to 7 days).

TX-Waiver 25: TDA submitted this waiver to allow SFSP/SSO sites to operate on weekends and holidays as allowed per regulation during standard summer operations but had been suspended per USDA guidance during unanticipated closures. FNS granted program operators licensed to operate on weekends and holidays the flexibility to serve on those days with approval from TDA.

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