

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION RECEIVED</p> <p>FEB 18 2022</p> <p>Independent Regulatory Review Commission</p>	
<p>(1) Agency</p> <p>Pennsylvania Department of Agriculture</p>		<p>IRRC Number: 3317</p>	
<p>(2) Agency Number: 2</p> <p>Identification Number: 195</p>			
<p>(3) PA Code Cite: Pennsylvania Code, Title 7, Chapter 160</p>			
<p>(4) Short Title: State Food Purchase Program</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Jorge Augusto, 717.787.8744, jaugusto@pa.gov</p> <p>Secondary Contact: Caryn Long Earl, 717.772.2688, cearl@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The Department's current State Food Purchase Program (SFPP) regulations provide that "persons shall be eligible to be Program participants if their incomes do not exceed 150% of the poverty levels established by the USDA." This regulation will increase the income limit to 185% of the poverty levels established by the USDA. Increasing the income limit to 185% will allow the charitable feeding network to feed more food insecure Pennsylvanians who make just above the current income limit and will bring SFPP in line with the eligibility limits set for several other food assistance programs, including the Special Supplemental Nutrition Assistance Program for Women, Infants and Children (WIC), WIC and Senior Farmers Market Nutrition Programs, and reduced-price School Breakfasts and Lunches.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This rulemaking is authorized under the general authority in section 3(a) of the State Food Purchase Program Act (Act) (62 P.S. § 4043(a)), and the specific regulatory authority set forth in section 9 of the Act (62 P.S. § 4049).</p>			
<p>(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.</p>			

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

A change to the State Food Purchase Program (SFPP) regulation is necessary so that more people in Pennsylvania at risk of hunger and in need of food assistance may be served through both State and Federal food assistance programs. Because the Pennsylvania Department of Agriculture (PDA) administers both SFPP and USDA's The Emergency Food Assistance Program (TEFAP) using the same rules, requirements, and paperwork, the income limits for both programs in Pennsylvania have been set at 150% since the inception of SFPP. While, pursuant to 7 CFR 251.5(b), state agencies must set income-based standards for TEFAP eligibility and determine the methods by which households may demonstrate eligibility under such standards, Pennsylvania has chosen to keep the income levels for TEFAP commensurate with SFPP. Once PDA increases the income limit for SFPP by regulation, PDA will also administratively increase the income limit for TEFAP.

According to 2019 food insecurity data provided by Feeding America, 10.6% of all residents in Pennsylvania – 1,353,730 people – didn't always know where their next meal was coming from. That number included 383,500 – or 14.6% – of all Pennsylvania's children. In 2020, as a result of the coronavirus pandemic, these numbers grew substantially. According to a series of data analysis reports compiled by Feeding America looking at the impact of coronavirus on food insecurity, the number of Pennsylvanians facing food insecurity is projected to have grown to 13.8% in 2020, an increase of 30%. Even more startling, they project that the percentage of children in our state facing food insecurity rose to 20.4%, an increase of 40% in just one year. (See, 2019 and 2020 data looking at impact of coronavirus on food insecurity:

<https://feedingamericaaction.org/resources/state-by-state-resource-the-impact-of-coronavirus-on-food-insecurity/>).

As the number of Pennsylvanians facing food insecurity has significantly increased in the wake of the Coronavirus pandemic, the availability of food from traditional commercial resources has decreased. As more Americans have been preparing meals at home, manufacturers and food retailers have seen an increase in demand for their goods, dramatically decreasing the amount of product available for donation to the charitable feeding sector. In addition, as food retailers have faced an increased demand for food, the availability of products for purchase by the charitable food system has diminished. Moreover, what product is available to the charitable food sector is no longer available at a competitive price point.

At the same time, the charitable food sector in Pennsylvania has seen a significant increase in government-supplied food. In state FY 2020/2021, as a result of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding awarded by the State, the SFPP will see an increase of \$15 million and the Pennsylvania Agricultural Surplus System will see an additional \$10 million worth of PA-sourced agricultural products. Similarly, supplies of TEFAP will significantly increase. Prior to Federal FY2018, PDA annually received ~\$20 million/year in TEFAP. Beginning in FY2019, as a result of USDA's Trade Mitigation program, that amount increased to \$49.8 million. In FY2020, as a result of continued Trade Mitigation, as well as CARES and Families

First Coronavirus Response Act (FFCRA) funding, that amount increased to \$72.2 million. And in FY2021, we project the amount of TEFAP that PDA will receive will be ~ \$70 million.

There is a distinction between purchased/donated food and government-funded food when it comes to distribution. While products that have been donated or purchased by the charitable feeding sector can be distributed to anyone the organization deems eligible, foods provided through SFPP or TEFAP can only be distributed to those who meet the income eligibility threshold. With a growing number of food insecure Pennsylvanians, and a decreasing supply of food that is not tied to an income test, there are fewer and fewer food resources currently available to those who are food insecure but make *just* too much to qualify.

According to the U.S. Census Bureau’s annual American Community Survey data for 2019, there were 2,377,227 Pennsylvanians with incomes below 150% of the poverty level and 3,081,893 Pennsylvanians with incomes below 185% of the poverty level. That is a difference of 704,666. While not all of this population identifies as food insecure, there is certainly a significant enough segment of this population that does which makes it critical to open up these additional food assistance programs to serve them.

The charts included below illustrate the income differences, according to household size, of 150% of the poverty level versus 185% of the poverty level.

Total Household Income (based on 150% of Poverty)			
July 1, 2020 - June 30, 2021			
Household Size	Annual Income	Monthly Income	Weekly Income
1	\$ 19,140	\$ 1,595	\$ 368
2	\$ 25,860	\$ 2,155	\$ 497
3	\$ 32,580	\$ 2,715	\$ 627
4	\$ 39,300	\$ 3,275	\$ 756
5	\$ 46,020	\$ 3,835	\$ 885
6	\$ 52,740	\$ 4,395	\$ 1,014
7	\$ 59,460	\$ 4,955	\$ 1,143
8	\$ 66,180	\$ 5,515	\$ 1,273
For each additional family member add:	\$ 6,720	\$ 560	\$ 129

Total Household Income (based on 185% of Poverty)			
July 1, 2020 - June 30, 2021			
Household Size	Annual Income	Monthly Income	Weekly Income
1	\$ 23,606	\$ 1,968	\$ 454
2	\$ 31,894	\$ 2,658	\$ 613
3	\$ 40,182	\$ 3,349	\$ 773
4	\$ 48,470	\$ 4,040	\$ 932
5	\$ 56,758	\$ 4,730	\$ 1,092

6	\$ 65,046	\$ 5,421	\$ 1,251
7	\$ 73,334	\$ 6,112	\$ 1,410
8	\$ 81,622	\$ 6,802	\$ 1,570
For each additional family member add:	\$ 8,288	\$ 691	\$ 159

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No, there are no provisions that are more stringent than Federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The State Food Purchase Program (SFPP) is Pennsylvania's state-funded compliment to the Federal food assistance program known as The Emergency Food Assistance Program (TEFAP). As such, the income limits for these programs have been aligned since SFPP was first created. While other states fund various food assistance programs, there is no other comparable program to SFPP. Therefore, the best measure of comparison to other states is to assess what income eligibility level they use for TEFAP.

According to a guide published by Feeding America in February 2020, only 6 states have their TEFAP income eligibility level set at 150% of the poverty level, and only 11 have it set at less than 150% of the poverty level. Twenty states currently set the level at 185% and 12 states set it at 200% or higher.

Current TEFAP income threshold levels are:

- **125% (general) /150% (elderly/disabled): Missouri**
- **130%: Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, and Wyoming**
- **133%: Idaho**
- **135%: Mississippi**
- **150%: Maryland, Pennsylvania, South Carolina, Tennessee, Utah, and Virginia**
- **180%: Nebraska**
- **185%: Alaska, Arizona, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Nevada, New Jersey, New Mexico, Oklahoma, South Dakota, Texas, Vermont, Washington, West Virginia, and Wisconsin**
- **200%: Colorado, Michigan, Minnesota, Montana, New York, North Carolina, North Dakota, Ohio, and Rhode Island**
- **235%: California and Connecticut**
- **300%: Oregon**
- **Unknown: New Hampshire and Puerto Rico**

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, the regulation will not affect any other regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Emergency Food Assistance Advisory Committee is established in Section 6 of the State Food Purchase Program Act (Act) (62 P.S. § 4046). Per section 6 of the Act, "There is hereby established an advisory committee within the department to be known as the Emergency Food Assistance Advisory Committee. This committee shall be composed of food and nutrition advocates, regional food bank representatives, county government representatives and representatives of the department and the Governor's Office."

On October 7, 2020, at a meeting of the Emergency Food Assistance Advisory Committee, Dennis McManus, Government Affairs Director at the Greater Pittsburgh Community Food Bank, made a presentation on behalf of the Feeding Pennsylvania and Hunger-Free Pennsylvania proposing to increase the income threshold for the State Food Purchase Program from 150% of the poverty level to 185% of the poverty level as established by USDA. Subsequent to this presentation, a motion was made, and seconded, to recommend to the Secretary of Agriculture that the Pennsylvania Department of Agriculture seek to change the existing SFPP regulation to increase the income threshold to 185% of the poverty level established by USDA. The vote on this recommendation carried unanimously.

Voting members of the committee present at the meeting were:

- **Joe Arthur, Executive Director, Central Pennsylvania Food Bank**
- **Jane Clements-Smith, Executive Director, Feeding Pennsylvania**
- **Tracey DePasquale, Executive Director, Lutheran Advocacy Ministry in Pennsylvania**
- **Patrick Druhan, Director, Montco Hunger Solutions**
- **Rich Kutz, Food Bank Director, Weinberg NE PA Regional Food Bank**
- **Deb Mest, Director of Food Sourcing and Logistics, Helping Harvest**
- **Jennifer Miller, CEO, Westmoreland County Food Bank**
- **Jessica Mockabee, Assistant Director, York County Human Services Department**
- **Brinda Penyak, Deputy Director, County Commissioners Association of Pennsylvania**
- **Kate Scully, Director of Government Relations, Philabundance**
- **Erin Spangler, Nutrition and Wellness Coordinator, Greater Pittsburgh Community Food Bank**

No feedback was received on this proposal at the meeting from the general public.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

As is noted above in Question #10, this change in regulation has the potential to positively impact an additional approximately 700,000 low-income Pennsylvanians who will now be able to access food assistance. This regulatory change will impact the 66 of the 67 counties and county lead agencies which administer the State Food Purchase Program and The Emergency Food Assistance Program and the approximately 1,700 local food pantries that provide direct food assistance to individuals in need. (Montgomery County would not be impacted by this rulemaking as it already took advantage of the option provided in subsection 160.5(b) to set its own income level. Montgomery County set its income level at 185% of poverty.) There would be no additional paperwork burden. The only impact these organizations might see would be an increase in the numbers of people being served.

No businesses or small businesses would be affected.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The entities required to comply with this regulation would be 66 of the 67 counties and county lead agencies (except Montgomery County) which administer the State Food Purchase Program and The Emergency Food Assistance Program and the approximately 1,700 local food pantries that provide direct food assistance to individuals in need.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There will be no financial, economic, or social impact of the regulation on small businesses, businesses and labor communities and other public organizations. There would be minimal social impact on private, non-profit organizations who distribute food assistance, as they may see a slight uptick in the number of individuals they would be serving.

For the approximately 700,000 low-income Pennsylvanians with incomes between 150% and 185% of the Federal poverty level, this regulatory change could provide a substantial financial, economic, and social benefit. By helping to connect more low-income Pennsylvanians with access to the food resources they need at no cost, it will help to free up personal economic resources that the individuals need to pay for other needs such as living expenses, utilities, and child care. Additionally, by providing these individuals with increased access to healthy, nutritious foods, there is a social benefit as their health conditions improve and health-care costs decrease.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This regulation will not impose any costs or adverse effects on any entity. While more people will now be eligible to receive food assistance provided through the State Food Purchase Program and The Emergency Food Assistance Program, there is no requirement or expectation that additional food resources will be provided by the State and/or Federal government.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation will not impose any costs or result in any savings to the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation will not impose any costs or result in any savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation will not impose any costs or result in any savings to the State government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No such procedures, reporting, forms or documentation shall be required by the regulation.

(22a) Are forms required for implementation of the regulation?

No forms are required in order to implement the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

No forms are required in order to implement the regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year 2020-2021	FY +1 Year 2021- 2022	FY +2 Year 2022-2023	FY +3 Year 2023-2024	FY +4 Year 2024- 2025	FY +5 Year 2025-2026
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	0	0	0	0	0	0

Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2017-2018	FY -2 2018-2019	FY -1 2019-2020	Current FY 2020-2021
State Food Purchase	\$19,188,000	\$19,688,000	\$19,688,000	\$19,688,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation is not expected to have an adverse impact upon small businesses, as related in Question #15 above.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No such special provisions have been developed.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions have been considered or rejected. For Program participants, the regulatory change will simply result in wording changes to existing paperwork.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

PDA does not expect this regulation to have an adverse impact on small businesses; accordingly, PDA did not conduct a regulatory flexibility analysis.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for the regulation, obviating the need for the referenced description.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: **30 days**
- B. The date or dates on which any public meetings or hearings will be held: **None will be held**

C. The expected date of delivery of the final-form regulation:	1st Quarter - 2022
D. The expected effective date of the final-form regulation: final-form regulation	Upon publication of the
E. The expected date by which compliance with the final-form regulation will be required: final-form regulation	Upon publication of the
F. The expected date by which required permits, licenses or other approvals must be obtained:	Not applicable

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

No formal review schedule has been established. The efficacy of the proposed regulation will be reviewed on an ongoing basis, including in consultation with the Emergency Food Assistance Advisory Committee.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

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FEB 18 2022

**Independent Regulatory
Review Commission**

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Agriculture</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>2-195</u></p> <p>DATE OF ADOPTION: <u>1-10-2022</u></p> <p>BY: <u><i>Russell C. Redding</i></u> Russell C. Redding</p> <p>TITLE: <u>Secretary</u> Pennsylvania Department of Agriculture</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u><i>Abigail B. ...</i></u></p> <p><u>February 11, 2022</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**NOTICE OF FINAL-FORM RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE**

Title 7 - AGRICULTURE

7 Pa. Code, Chapter 160

STATE FOOD PURCHASE PROGRAM

NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 160]

State Food Purchase Program Regulations

The Department of Agriculture (Department) amends Chapter 160 (relating to State Food Purchase Program) to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is authorized under the general authority in section 3(a) of the State Food Purchase Program Act (act) (62 P.S. § 4043(a)) and the specific regulatory authority set forth in section 9 of the act (62 P.S. § 4049).

Purpose of the Regulation

This final-form rulemaking will increase the income threshold cap for the State Food Purchase Program (Program) from the current 150% of the poverty level established by the United States Department of Agriculture (USDA) to 185%. This final-form rulemaking will amend the heading of Part VII from “Bureau of Government Donated Food” to “Bureau of Food Assistance” to align the name change of the Bureau.

Explanation

On October 7, 2020, the Emergency Food Assistance Advisory Committee recommended that the income threshold for the Program be increased from the current 150% to 185% of the poverty level established by the USDA. Specifically, § 160.5(b) (relating to eligibility of persons to participate) presently provides that “persons shall be eligible to be Program participants if their incomes do not exceed 150% of the poverty levels established by the USDA.” Presently, 66 out of 67 Pennsylvania counties do not have procedures and guidelines for determining the eligibility level for Program participants. Those counties, therefore, rely upon the Department’s existing regulations. (Montgomery County has established its own poverty income level at 185%.) These regulations were adopted on October 28, 1994, and have been effective since October 29, 1994. The Department believes for the following reasons, it is appropriate to amend this regulation.

Increasing the threshold to 185% would allow the charitable feeding network to feed more food insecure Pennsylvanians who make just above the current income limit and would bring the Program in line with the eligibility limits set for several other food assistance programs, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (7 CFR 246.7(d)(1) (relating to certification of participants)), reduced-price school breakfasts and school lunches provided through the National School Lunch and Breakfast Programs (7 CFR 245(3) (relating to determining eligibility for free and reduced price meals and free milk in schools)), the WIC Farmers’ Market Nutrition Program (7 CFR 248.6(a) (relating to recipient eligibility)) and the Senior Farmers’ Market Nutrition Program and (7 CFR 249.6(a)(3) (relating to participant eligibility)) within this Commonwealth.

Increasing the income eligibility threshold for the Program would allow the Department to administratively raise this Commonwealth's income eligibility threshold for The Emergency Food Assistance Program (TEFAP). Under the USDA's regulations in 7 CFR 251.5(b) (relating to eligibility determinations), state agencies must set income-based standards for TEFAP eligibility and determine the methods by which households may demonstrate eligibility under these standards. Currently, the income limit for TEFAP in this Commonwealth is kept commensurate with the Program and increasing it to 185% would bring this Commonwealth in line with the TEFAP income limit of 20 other states, including Delaware, the District of Columbia, New Jersey and West Virginia. Currently, only 17 states (including Pennsylvania) have an income threshold set at or below 150%.

According to 2019 food insecurity data provided by Feeding America, 10.6% of all residents in this Commonwealth—1,353,730 people—did not always know where their next meal was coming from. That number included 383,500—or 14.6%—of all children in this Commonwealth. In 2020, as a result of the novel coronavirus (COVID-19) pandemic, these numbers grew substantially. According to a series of data analysis reports compiled by Feeding America looking at the impact of coronavirus on food insecurity, the number of Pennsylvanians facing food insecurity is projected to have grown to 13.8% in 2020, an increase of 30%. Even more startling, they project that the percentage of children in our State facing food insecurity rose to 20.4%, an increase of 40% in just 1 year. (See, 2019 and 2020 data looking at impact of coronavirus on food insecurity at <https://feedingamericaaction.org/resources/state-by-state-resource-the-impact-of-coronavirus-on-food-insecurity/>).

With a growing number of food insecure Pennsylvanians, and a decreasing supply of food that is not tied to an income test, there are fewer and fewer food resources currently available to those who are food insecure but make just too much to qualify. Increasing the income threshold to 185% of the poverty level for the Program—and by administrative extension to TEFAP—will allow food banks to more easily and efficiently serve the increasing numbers of people who are seeking out their services. Lastly, this final-form rulemaking will bring us more in line with the income eligibility thresholds of several other Federal food assistance programs and with many of our neighboring states in the Mid-Atlantic Region.

This final-form rulemaking seeks to formally amend the name “Bureau of Government Donated Food” as presently set forth in the heading of Part VII and in § 160.13 (relating to filing the grant agreement) to the “Bureau of Food Assistance.” On May 15, 2019, the Executive Board, by Resolution No. OR-19-007, approved the change to the Bureau's name as requested by the Secretary of Agriculture under sections 212 and 709(b) of The Administrative Code of 1929 (71 P.S. §§ 72 and 249(b)).

Comments to the Proposed Rulemaking

The Department published a notice of proposed rulemaking at 51 Pa.B. 6399 (October 9, 2021), for 30 days of public comment. The Department did not receive any public comments relating to the proposed rulemaking. The Independent Regulatory Review Commission (IRRC) reviewed the proposed regulation and informed the Department that it had no objections, comments, or recommendations to offer on the proposed regulation. The Department did not receive any comments from the House Agriculture and Rural Affairs Committee or the Senate

Agriculture and Rural Affairs Committee as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1 – 745.15).

Fiscal Impact

Commonwealth. The Department does not expect that this final-form rulemaking will have a fiscal impact on the Department or other Commonwealth agencies.

Political subdivisions. This final-form rulemaking will have no appreciable fiscal impact on political subdivisions of this Commonwealth.

Private sector. This final-form rulemaking will not have a fiscal impact on the private sector other than for those who elect to participate in the Program as previously set forth.

General public. This final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This final-form rulemaking will have no impact on the paperwork handled by the Department.

Effective Date

This final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Additional Information

Additional information may be obtained from Caryn Long Earl, Director, Bureau of Food Assistance, Pennsylvania Department of Agriculture, 2301 N. Cameron Street, Harrisburg, PA 17110-9408, (717) 772-2688. (cearl@pa.gov).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 29, 2021, the Department submitted a copy of the proposed rulemaking, published at 51 Pa.B. 6399 (October 9, 2021), to IRRC and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

On February 18, 2022, the Department delivered the final-form rulemaking to IRRC, and the House and Senate Agriculture and Rural Affairs Committees. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2022, the final-form rulemaking was deemed approved by the House and Senate Agriculture and Rural Affairs Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2022, and announced, because it had had no comments on the proposed rulemaking and the Department did not amend the rulemaking, IRRC was deemed to have approved the final-form rulemaking under section 5(g) of the Regulatory Review Act.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2. (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 51 Pa.B. 6399.

(4) The final-form regulation is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under its authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 160, are amended by amending § 160.5(b) and §160.13 to read as set forth in Annex A.

(b) The Department shall submit this final-form regulation to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Department shall submit this final-form regulation to IRRC and the applicable standing committees as required by law.

(d) The Department shall certify this final-form regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) The final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RUSSELL C. REDDING,
Secretary

Annex A

TITLE 7. AGRICULTURE

PART VII. BUREAU OF [GOVERNMENT DONATED FOOD] FOOD ASSISTANCE

CHAPTER 160. STATE FOOD PURCHASE PROGRAM

§ 160.5. Eligibility of persons to participate.

(a) *Primary determinant.* If the county government, lead agency or emergency food provider administering the Program within a particular county has established procedures and guidelines for determining whether persons are eligible to participate in the Program, these procedures and guidelines shall be the sole determinant of eligibility.

(b) *Department guidelines.* In counties where the county government, lead agency or emergency food provider administering the Program does not have procedures and guidelines for determining the eligibility of persons to be Program participants, persons shall be eligible to be Program participants if their incomes do not exceed [150%] 185% of the poverty levels established by the USDA.

§ 160.13. Filing the grant agreement.

(a) *Place and time.* The grant agreement shall be completed by the county government, the lead agency or the appropriate emergency food provider and returned to the Department of Agriculture, Bureau of [Government Donated Food] Food Assistance, 2301 North Cameron Street, Room 401, Harrisburg, PA 17110-9408 by June 1 immediately preceding the start of the fiscal year, or 30 days prior to the commencement of the grant agreement if the grant agreement is to commence on a date other than the start of the fiscal year.

* * * * *



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

Via Electronic Email: shoffman@irrc.state.pa.us

February 18, 2022

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 160
State Food Purchase Program
I.D. No. 2-195
Proposed Rulemaking: 51 Pa. Bulletin 6399 (October 9, 2021)
Approved by Office of General Counsel: February 11, 2022

Dear Mr. Hoffman:

Please find enclosed a copy of the above-referenced final-form regulation (Face Sheet, Preamble and Annex A). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)).

The proposed rulemaking was published at 51 Pa. Bulletin 6399 (October 9, 2021). No objections, comments or recommendations were received from the public, the Independent Regulatory Review Commission or the General Assembly with respect to the proposed rulemaking. No changes were made to the final-form rulemaking by the Department.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Respectfully,

Jorge M. Augusto
Assistant Counsel

Enclosures

Augusto, Jorge M.

From: Zeiders, Destiny <DZeiders@pahouse.net>
Sent: Friday, February 18, 2022 10:38 AM
To: Augusto, Jorge M.
Cc: Long Earl, Caryn; Black, Angela M; Augusto, Jorge M.
Subject: Re: Department of Agriculture - Final Rulemaking #2-195 (State Food Purchase Program) - House Ag Minority Chair

Confirming and accepting receipt of the rule making.
Thanks
Destiny

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FEB 18 2022

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**Independent Regulatory
Review Commission**

From: Augusto, Jorge M. <jaugusto@pa.gov>
Sent: Friday, February 18, 2022 10:34:35 AM
To: Zeiders, Destiny <DZeiders@pahouse.net>
Cc: Long Earl, Caryn <cearl@pa.gov>; Black, Angela M <anblack@pa.gov>; Augusto, Jorge M. <jaugusto@pa.gov>
Subject: Department of Agriculture - Final Rulemaking #2-195 (State Food Purchase Program) - House Ag Minority Chair

Good Morning Destiny – Thank you for agreeing to receive this submission electronically.

On behalf of the Department of Agriculture, Bureau of Food Assistance, attached for final review is a complete regulatory package for the final-form rulemaking. As a summary, this regulation received no comments from the general public, the Agriculture and Rural Affairs Standing Committees or IRRC during the proposed rulemaking phase. The Department has made no change to the final form rulemaking.

Would you please confirm receipt of this rulemaking today so I may confirm this submission with IRRC.

Should you have any questions about this matter, please do not hesitate to contact me.

Thank you

Jorge M. Augusto | Assistant Counsel
Pennsylvania Department of Agriculture
Governor's Office of General Counsel
2301 North Cameron Street | Hbg PA 17110
Phone: 717.787.8744 | Fax: 717.787.1270
www.agriculture.pa.gov

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Augusto, Jorge M.

From: Kerry Golden <Kgolden@pahousegop.com>
Sent: Friday, February 18, 2022 10:51 AM
To: Augusto, Jorge M.
Cc: Long Earl, Caryn; Black, Angela M
Subject: Re: Department of Agriculture - Final Rulemaking #2-195 (State Food Purchase Program) - House Ag Majority Chair
Attachments: PDA-Final Rulemaking #2-195 Ag House Majority.pdf

Hello Jorge,

On behalf of Chairman Moul, I have received Final Rulemaking #2-95.

Cheers,
Kerry

*Ms. Kerry Golden, Executive Director
Agriculture and Rural Affairs Committee
and
Assistant Director, Republican Research Department
PA House of Representatives
717-787-3396*

Sent from my iPhone

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**Independent Regulatory
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On Feb 18, 2022, at 10:41 AM, Augusto, Jorge M. <jaugusto@pa.gov> wrote:

Good Morning Kerry – Thank you for agreeing to receive this submission electronically.

On behalf of the Department of Agriculture, Bureau of Food Assistance, attached for final review is a complete regulatory package for the final-form rulemaking. As a summary, this regulation received no comments from the general public, the Agriculture and Rural Affairs Standing Committees or IRRC during the proposed rulemaking phase. The Department has made no change to the final form rulemaking.

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Thank you

Jorge M. Augusto | Assistant Counsel
Pennsylvania Department of Agriculture
Governor's Office of General Counsel

2301 North Cameron Street | Hbg PA 17110
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Augusto, Jorge M.

From: Laudenslager, Cara <claudenslager@pasen.gov>
Sent: Friday, February 18, 2022 10:43 AM
To: Augusto, Jorge M.
Cc: Black, Angela M; Long Earl, Caryn
Subject: Re: Department of Agriculture - Final Rulemaking #2-195 (State Food Purchase Program) - Senate Ag Majority Chair
Attachments: PDA-Final Rulemaking #2-195 Ag Senate Majority.pdf

Received—thank you.

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FEB 18 2022

**Independent Regulatory
Review Commission**

On Feb 18, 2022, at 10:37 AM, Augusto, Jorge M. <jaugusto@pa.gov> wrote:

© CAUTION : External Email ©

Good Morning Cara – Thank you for agreeing to receive this submission electronically.

On behalf of the Department of Agriculture, Bureau of Food Assistance, attached for final review is a complete regulatory package for the final-form rulemaking. As a summary, this regulation received no comments from the general public, the Agriculture and Rural Affairs Standing Committees or IRRC during the proposed rulemaking phase. The Department has made no change to the final form rulemaking.

Would you please confirm receipt of this rulemaking today so I may confirm this submission with IRRC.

Should you have any questions about this matter, please do not hesitate to contact me.

Thank you

Jorge M. Augusto | Assistant Counsel
Pennsylvania Department of Agriculture
Governor's Office of General Counsel
2301 North Cameron Street | Hbg PA 17110
Phone: 717.787.8744 | Fax: 717.787.1270
www.agriculture.pa.gov<<http://www.agriculture.pa.gov>>

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Augusto, Jorge M.

From: Evans, William <William.Evans@pasenate.com>
Sent: Friday, February 18, 2022 10:44 AM
To: Augusto, Jorge M.
Cc: Long Earl, Caryn; Black, Angela M
Subject: RE: Department of Agriculture - Final Rulemaking #2-195 (State Food Purchase Program) - Senate Ag Minority Chair

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FEB 18 2022

**Independent Regulatory
Review Commission**

Rulemaking received today 2/18/22

Regards
Bill Evans

From: Augusto, Jorge M. <jaugusto@pa.gov>
Sent: Friday, February 18, 2022 10:37 AM
To: Evans, William <William.Evans@pasenate.com>
Cc: Long Earl, Caryn <cearl@pa.gov>; Black, Angela M <anblack@pa.gov>; Augusto, Jorge M. <jaugusto@pa.gov>
Subject: Department of Agriculture - Final Rulemaking #2-195 (State Food Purchase Program) - Senate Ag Minority Chair

■ EXTERNAL EMAIL ■

Good Morning Bill – Thank you for agreeing to receive this submission electronically.

On behalf of the Department of Agriculture, Bureau of Food Assistance, attached for final review is a complete regulatory package for the final-form rulemaking. As a summary, this regulation received no comments from the general public, the Agriculture and Rural Affairs Standing Committees or IRRC during the proposed rulemaking phase. The Department has made no change to the final form rulemaking.

Would you please confirm receipt of this rulemaking today so I may confirm this submission with IRRC.

Should you have any questions about this matter, please do not hesitate to contact me.

Thank you

Jorge M. Augusto | Assistant Counsel
Pennsylvania Department of Agriculture
Governor's Office of General Counsel
2301 North Cameron Street | Hbg PA 17110
Phone: 717.787.8744 | Fax: 717.787.1270
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