

<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</p> <p>RECEIVED</p> <p>SEP 29 2021</p> <p>Independent Regulatory Review Commission</p>		
<p>(1) Agency</p> <p>Pennsylvania Department of Agriculture</p>				
<p>(2) Agency Number: 2</p> <p>Identification Number: 195</p>		<p>IRRC Number: 3317</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> <table border="0"> <tr> <td> <input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation </td> <td> <input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General </td> </tr> </table>			<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General			
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>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 proposed 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>The proposed 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 would also 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.

The proposed 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.

The proposed 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.

The proposed 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.

The proposed 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.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

SEP 29 2021

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><small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Legislative Office of Attorney General, ou=Chief Deputy Attorney General, serialNumber=202107210211, email=amy.elliott@pa.gov, c=US</small></p> <p>BY: <u>Amy M. Elliott</u> (DEPUTY ATTORNEY GENERAL)</p> <p><u>7/21/2021</u> 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>2-25-2021</u></p> <p>BY: <u>Russell C. Redding</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>Marisa H. Z. Zehr</u></p> <p><u>June 22, 2021</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 PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE**

Title 7 - AGRICULTURE

7 Pa. Code, Chapter 160

STATE FOOD PURCHASE PROGRAM

Title 7 – AGRICULTURE

PENNSYLVANIA DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 160]

STATE FOOD PURCHASE PROGRAM REGULATIONS

The Pennsylvania Department of Agriculture (Department) proposes to amend Title 7 of the Pennsylvania Code, Chapter 160 (relating to the State Food Purchase Program), as set forth in Annex "A."

Statutory Authority

The proposed 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 proposed 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%. The proposed rulemaking will also amend the heading of Part VII of Title 7 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 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)), reduced-price school breakfasts and school lunches provided through the National School Lunch and Breakfast Programs (7 CFR 245(3)), and the WIC and Senior Farmers' Market Nutrition Programs (7 CFR 248.6(a)) and (7 CFR 249.6(a)(3)) within the Commonwealth.

Increasing the income eligibility threshold for the Program would also allow the Department to administratively raise Pennsylvania's income eligibility threshold for The Emergency Food Assistance Program (TEFAP). Pursuant to the USDA's regulations at 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. Currently, the income limit for TEFAP in Pennsylvania is kept commensurate with the Program and increasing it to 185% would bring Pennsylvania 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 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://www.feedingamericaaction.org/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, the proposed rulemaking would 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 rulemaking also seeks to formally amend the name "Bureau of Government Donated Food" as presently set forth in the heading of Part VII of Title 7 and in section 160.13 (regarding 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 pursuant to sections 212 and 709(b) of The Administrative Code of 1929 (71 P.S. §§ 72 & 249(b)).

In summary, the Department is satisfied there is a need for the proposed rulemaking and that it is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Fiscal Impact

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

Political Subdivisions. This proposed rulemaking will have no appreciable fiscal impact on political subdivisions of this Commonwealth.

Private Sector. This proposed rulemaking will not have a fiscal impact on the private sector other than for those who elect to participate in the Program as set forth above.

General Public. This proposed rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will have no impact on the paperwork handled by the Department.

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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request and is available on the Department's web site at www.agriculture.pa.gov.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations or objections raised prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin*. Public comments should be addressed to Caryn Long Earl, Director, Bureau of Food Assistance, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

Contact Person

The contact person for technical questions about this proposed rulemaking is Assistant Counsel, Jorge M. Augusto, at (717) 787-8744 or jaugusto@pa.gov.

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

September 29, 2021

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

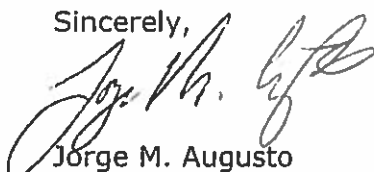
Dear Mr. Hoffman:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the October 9, 2021 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,



Jorge M. Augusto
Assistant Counsel

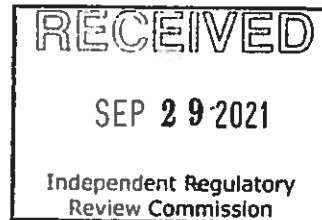
Enclosures

Augusto, Jorge M.

From: Laudenslager, Cara <claudenslager@pasen.gov>
Sent: Wednesday, September 29, 2021 11:22 AM
To: Augusto, Jorge M.
Cc: Black, Angela M; Long Earl, Caryn
Subject: RE: Proposed Rulemaking #2-195 (State Food Purchase Program) Senate Ag Majority Chair

Received by Senator Vogel's Office. Thank you.

Cara Laudenslager
Executive Director
Senate Agriculture and Rural Affairs Committee
Office of Senator Elder Vogel
Room 362, Main Capitol
717-787-3076
claudenslager@pasen.gov



From: Augusto, Jorge M. <jaugusto@pa.gov>
Sent: Wednesday, September 29, 2021 10:44 AM
To: Laudenslager, Cara <claudenslager@pasen.gov>
Cc: Black, Angela M <anblack@pa.gov>; Long Earl, Caryn <cearl@pa.gov>; Augusto, Jorge M. <jaugusto@pa.gov>
Subject: Proposed Rulemaking #2-195 (State Food Purchase Program) Senate Ag Majority Chair
Importance: High

Ⓢ CAUTION : External Email Ⓢ

Good Morning Cara:

On behalf of the Department of Agriculture, attached for review by Senate Agriculture and Rural Affairs Committee Majority Chair Vogel is a complete regulatory package for proposed rulemaking #2-195. Thank you for agreeing to receive this submission electronically. Would you please confirm receipt of this rulemaking today so I can confirm submission with IRRC.

Should you have any question about this matter, please advise.

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: Evans, William <William.Evans@pasenate.com>
Sent: Wednesday, September 29, 2021 11:19 AM
To: Augusto, Jorge M.
Cc: Black, Angela M; Long Earl, Caryn; Augusto, Jorge M.
Subject: Re: Proposed Rulemaking #2-195 (State Food Purchase Program) Senate Ag Minority Chair

Message received. Bill Evans

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From: Augusto, Jorge M. <jaugusto@pa.gov>
Sent: Wednesday, September 29, 2021 10:56:16 AM
To: Evans, William <william.evans@pasenate.com>
Cc: Black, Angela M <anblack@pa.gov>; Long Earl, Caryn <cearl@pa.gov>; Augusto, Jorge M. <jaugusto@pa.gov>
Subject: Proposed Rulemaking #2-195 (State Food Purchase Program) Senate Ag Minority Chair

■ EXTERNAL EMAIL ■

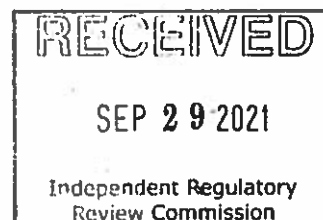
Mr. Williams:

On behalf of the Department of Agriculture, attached for review by House Agriculture and Rural Affairs Committee Minority Chair Schwank is a complete regulatory package for proposed rulemaking #2-195. Thank you for agreeing to receive this submission electronically. Would you please confirm receipt of this rulemaking today so I can confirm submission with IRR.

Should you have any question about this matter, please advise.

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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Augusto, Jorge M.

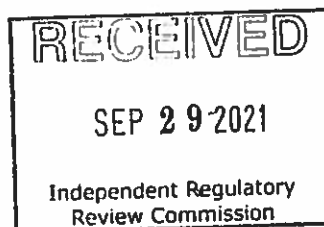
From: Kerry Golden <Kgolden@pahousegop.com>
Sent: Wednesday, September 29, 2021 11:43 AM
To: Augusto, Jorge M.
Cc: Black, Angela M; Long Earl, Caryn; Dan Moul
Subject: RE: PDA Proposed Rulemaking #2-195 (State Food Purchase Program Regulations) - House Ag Majority Chair

Good morning, Jorge,

On behalf of Chairman Moul, I am confirming receipt of proposed rulemaking #2-195.

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*



From: Augusto, Jorge M. <jaugusto@pa.gov>
Sent: Wednesday, September 29, 2021 10:29 AM
To: Kerry Golden <Kgolden@pahousegop.com>
Cc: Black, Angela M <anblack@pa.gov>; Long Earl, Caryn <cearl@pa.gov>; Augusto, Jorge M. <jaugusto@pa.gov>
Subject: PDA Proposed Rulemaking #2-195 (State Food Purchase Program Regulations) - House Ag Majority Chair

Kerry – good morning.

On behalf of the Department of Agriculture, attached for review by House Agriculture and Rural Affairs Committee Majority Chair Moul is a complete regulatory package for proposed rulemaking #2-195. Thank you for agreeing to receive this submission electronically. Would you please confirm receipt of this rulemaking today so I can confirm submission with IRRC.

Should you have any question about this matter, please advise.

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: Zeiders, Destiny <DZeiders@pahouse.net>
Sent: Wednesday, September 29, 2021 10:38 AM
To: Augusto, Jorge M.
Cc: Black, Angela M; Long Earl, Caryn
Subject: RE: PDA Proposed Rulemaking #2-195 (State Food Purchase Program Regulations) - House Ag Minority Chair

Thank you Jorge. This is excepted by Rep. Pashinski

Destiny Zeiders

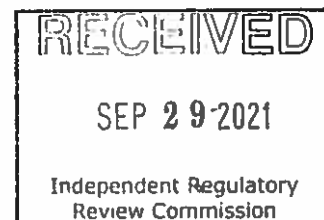
From: Augusto, Jorge M. <jaugusto@pa.gov>
Sent: Wednesday, September 29, 2021 10:19 AM
To: Zeiders, Destiny <DZeiders@pahouse.net>
Cc: Black, Angela M <anblack@pa.gov>; Long Earl, Caryn <cearl@pa.gov>; Augusto, Jorge M. <jaugusto@pa.gov>
Subject: PDA Proposed Rulemaking #2-195 (State Food Purchase Program Regulations) - House Ag Minority Chair
Importance: High

Destiny – On behalf of the Department of Agriculture, attached for review by House Agriculture and Rural Affairs Committee Minority Chair Pashinski is a complete regulatory package for proposed rulemaking #2-195. Thank you for agreeing to receive this submission electronically. Would you please confirm receipt of this rulemaking today so I can confirm submission with IRRC.

Should you have any question about this matter, please advise.

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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Augusto, Jorge M.

From: Bulletin <bulletin@palrb.us>
Sent: Wednesday, September 29, 2021 10:58 AM
To: Garonzi, Sophea
Cc: Augusto, Jorge M.; Long Earl, Caryn; Black, Angela M; Adeline E. Gaydosh
Subject: [External] Re: REQUEST TO PUBLISH NOTICE: Department of Agriculture - Notice of Proposed Rulemaking - 7 Pa. Code Chapter 160 - State Food Purchase Program - I.D. No. 2-195

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Good morning Sophea,

Thank you for sending this proposed rulemaking. It will be published in the 10/9 issue of the *Pennsylvania Bulletin*.

Have a terrific day!
Adeline

Adeline Gaydosh | Legal Assistant
agaydosh@palrb.us | 717.783.3984
Legislative Reference Bureau
Pennsylvania Code & Bulletin Office
647 Main Capitol Building
Harrisburg, PA 17120



From: Garonzi, Sophea <sgaronzi@pa.gov>
Sent: Wednesday, September 29, 2021 10:39 AM
To: Bulletin <bulletin@palrb.us>
Cc: Augusto, Jorge M. <jaugusto@pa.gov>; Long Earl, Caryn <cearl@pa.gov>; Black, Angela M <anblack@pa.gov>
Subject: REQUEST TO PUBLISH NOTICE: Department of Agriculture - Notice of Proposed Rulemaking - 7 Pa. Code Chapter 160 - State Food Purchase Program - I.D. No. 2-195

Good morning PA Bulletin Staff:

VIA ELECTRONIC DELIVERY ONLY
SENT ON BEHALF OF ASSISTANT COUNSEL JORGE M. AUGUSTO

Amy J. ("AJ") Mendelsohn, Director
Pennsylvania Code & Bulletin
Main Capitol Building, Room 647
Harrisburg, PA 17120-0033

RE: Notice of Proposed Rulemaking
Department of Agriculture
7 Pa. Code Chapter 160
State Food Purchase Program
I.D. No. 2-195