United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA
22302-1500

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SUBJECT: Service of Traditional Foods in Public Facilities

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Section 4033 of the Agricultural Act of 2014 (P.L. 113-79) (Farm Bill) directs the U.S. Department of Agriculture (USDA) and the Food and Drug Administration to allow the donation to and serving of traditional food through food service programs at public facilities and nonprofit facilities, including those operated by Indian tribes and facilities operated by tribal organizations, that primarily serve Indians. While this provision affects other food service programs this memorandum is intended to provide guidance relating to this provision for schools and institutions operating the USDA Child Nutrition Programs.

This provision of the Farm Bill was effective upon enactment in February 2014. We are providing basic information at this time to ensure that program operators may use it effectively as part of the USDA Child Nutrition Programs. Please note, under this Farm Bill provision, donated traditional foods are not considered USDA Foods.

What types of food service programs are affected?

This provision only applies to food service programs at public facilities and nonprofit facilities, including those operated by Indian tribes and tribal organizations that primarily serve Indians. This would include the USDA School Meal Programs, Child and Adult Care Food Program, and Summer Food Service Program. This provision does not apply to the Food Distribution Program on Indian Reservations.

What are traditional foods?

The Farm Bill defines traditional food for this purpose as "food that has traditionally been prepared and consumed by an Indian tribe" and specifically includes in that definition:

- wild game meat
- fish
- seafood
- marine mammals

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- plants, and
- berries.

What are the Applicable Food Service Programs?

As noted above, the USDA Child Nutrition Programs administered by stakeholders in various settings are food service programs eligible to accept and serve traditional food. Those include:

- Residential child care facilities licensed by the State;
- Food service at hospitals, clinics and long-term care facilities;
- Senior meal programs; and
- the Child Nutrition Programs:
    - the National School Lunch Program,
    - the Summer Food Service Program,
    - the Child and Adult Care Food Program,
    - the Special Milk Program, and
    - the School Breakfast Program.

What is the responsibility of the program operator or school food authority (SFA) accepting a donation of traditional food?

The Farm Bill provision requires that program operators that choose to accept the donation of traditional food must:

- ensure that the food is received whole, gutted, gilled, as quarters, or as a roast, without further processing;
- make a reasonable determination that
    - the animal was not diseased;
    - the food was appropriately butchered, dressed, transported, and stored to prevent contamination, undesirable microbial growth, or deterioration; and
    - the food will not cause a significant health hazard or potential for human illness;
- carry out any further preparation or processing of the food at a different time or in a different space from the preparation or processing of other food for the applicable program to prevent cross-contamination;
- clean and sanitize food-contact surfaces of equipment and utensils after processing the traditional food;
- label donated traditional food with the name of the food;
- store the traditional food separately from other food for the applicable program, including through storage in a separate freezer or refrigerator or in a separate compartment or shelf in the freezer or refrigerator;
- follow Federal, State, local, county, Tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities; and
- follow other such criteria as established by the Secretary of Agriculture and Commissioner of the U.S. Food and Drug Administration.

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As a Child Nutrition Program operator that is an Indian Tribe or a Tribal organization and that primarily serves Indians, may I purchase traditional foods?

Yes. However, while many traditional foods can certainly be purchased and served as part of a program meal service, purchased traditional foods are not covered under this provision. Section 4033 of the Farm Bill only applies to donated traditional foods that a program operator chooses to accept.

May States institute additional requirements or set standards that are more restrictive than the Farm Bill provision for program operators choosing to accept and use donated traditional foods?

Generally, Federal law preempts any State or local laws which might present a barrier to implementation of Farm Bill provisions. However, Section 4033(c)(7) of the Farm Bill specifically states that program operators choosing to accept donated traditional foods must "follow Federal, State, local, county, Tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities…." Therefore, States may establish additional standards for donated traditional foods.

How does the *Food Buying Guide for Child Nutrition Programs* (FBG) affect traditional food donations of game meat?

Traditional food donations made under this provision are accepted under the Child Nutrition Programs. The FBG currently includes a footnote which clarifies that game meat must be USDA inspected to be used as part of reimbursable meals served in the Child Nutrition Programs. The FBG footnote will be amended to reflect that donated game served by certain program operators which primarily serve Indians is creditable.

What is the role of the U.S. Food and Drug Administration (FDA)?

The types of foodservice establishments addressed in Section 4033 are likely to be regulated by State, local or Tribal regulatory agencies, which have specific legal authorities in this area. FDA publishes the Food Code, a model that assists food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail and food service segment of the industry (restaurants and grocery stores and institutions such as schools and nursing homes). Local, State, and Tribal regulators use the FDA Food Code as a model to develop or update their own food safety statutes and regulations for retail and foodservice operations and to be consistent with national food regulatory policy. This Federal provision maintains that foodservice establishments must follow Federal, State, local, county, Tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities.

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State agencies are reminded to distribute this memorandum to Program operators immediately. Local educational agencies, school food authorities, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office and FDA Offices.

Original Signed

Angela Kline
Director
Policy and Program Development Division
Child Nutrition Programs

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