

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 66, “Emergency Food Assistance Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6.

Purpose and Summary

Chapter 66 is proposed to be amended as part of the Department’s five-year rules review. As part of the review, the name of the Division of Financial, Health, and Work Supports has been updated throughout the rules to the Division of Financial, Food, and Work Supports. Additional information has been provided on The Emergency Food Assistance Program (TEFAP) as authorized by the Emergency Food Assistance Act of 1983 and amended through Public Law 107-249, October 23, 2002. The chapter is being updated to provide additional guidance to consumers on how eligibility is determined for TEFAP and how claims are established against TEFAP entities.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 2, 2022. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 66**, preamble, as follows:

PREAMBLE

This chapter sets forth the rules governing ~~the emergency food assistance program~~ The Emergency Food Assistance Program (TEFAP) in Iowa. The Iowa department of human services has been designated by the governor as the agency responsible for administration of the emergency food assistance program. The department is responsible for receiving, storing, distributing, and accounting for foods donated through the U.S. Department of Agriculture (USDA). The department contracts with food banks that provide services in the state for TEFAP.

For information about ~~the emergency food assistance program~~ TEFAP and other food distribution programs, contact the Iowa Department of Human Services, Division of Financial, ~~Health Food~~, and Work Supports, Food Distribution Program Manager, 1305 East Walnut Street, Des Moines, Iowa 50319-0114; telephone ~~(515)281-5410~~ (515)443-2736. Clarifications of federal policy may be obtained by referencing 7 CFR Part 251 and 7 CFR Part 250, when applicable.

ITEM 2. Amend rule **441—66.1(234)**, definitions of “Eligible recipient agency” and “Food distribution program,” as follows:

“*Eligible recipient agency*” means a charitable institution that has entered into a contract with the department for the receipt of commodities or administrative funds or has entered into an agreement with another eligible recipient agency that has signed such a contract with the department. Eligible recipient agencies may include food banks, food pantries, soup kitchens, hunger relief centers, hospitals, retirement homes, Nutrition Services Incentive Programs that operate congregate meals sites or provide home-delivered meals (to the extent that they serve predominately needy persons), summer camps for children or child nutrition programs providing food service, and disaster relief programs. An eligible recipient agency shall meet federal requirements as described at 7 CFR 251.3(d) and 7 CFR 251.5(a), ~~published on January 1, 2005~~ amended to May 2, 2022.

“*Food distribution program*” means the office in the department’s division of financial, ~~health food~~, and work supports that is responsible for administering the FNS food distribution programs.

ITEM 3. Amend rule 441—66.2(234) as follows:

441—66.2(234) Application to be a TEFAP contractor or subcontractor. An organization that seeks to be a TEFAP contractor shall submit a written request to the Iowa Department of Human Services, Division of Financial, ~~Health Food~~, and Work Supports, Food Distribution Program Manager, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The written request shall contain sufficient information about the applicant to enable the department to determine whether the applicant qualifies to be an eligible recipient agency as defined at 441—66.1(234). An organization that seeks to be a TEFAP subcontractor shall submit a written request to the food bank contracted with the department to administer TEFAP in the organization’s service area. The written request shall contain sufficient information about the applicant

to enable the food bank to determine whether the applicant qualifies to be an eligible recipient agency as defined at 441—66.1(234).

66.2(1) Determination of eligibility. Within ten days of receipt of an applicant's written request to be a TEFAP contractor, the program manager shall notify the applicant in writing of that the department's decision department has received the applicant's request. The department shall approve an applicant's request to be a TEFAP contractor only when ~~both~~ of the following are true:

a. The applicant qualifies to be an eligible recipient agency as defined at 441—66.1(234).

b. Priority is given to current food banks that service contiguous counties and food banks that are a Feeding America partner.

~~*b. c.*~~ A contract with the applicant, in addition to those eligible recipient agencies currently under contract with the department, will allow the department to distribute commodities in Iowa to needy individuals or households in the most cost-effective and comprehensive manner possible.

66.2(2) Administrative review of denial of eligibility.

a. When an applicant's request to be a TEFAP contractor is denied by the program manager, the applicant may request an administrative review by sending a letter requesting review of the denial to the administrator of the division of financial, ~~health food~~, and work supports. The applicant shall send the letter within five days of receipt of the letter of denial.

~~*a. (1)*~~ When more information is needed, the administrator shall request the information within five days of receipt of the request for review.

~~*b. (2)*~~ The administrator shall review the denial and shall issue a decision within ten days of the request for review or of the receipt of additional information, whichever is later.

~~*e. (3)*~~ When the division administrator reverses the denial, the applicant shall be given the opportunity to negotiate a TEFAP contract.

b. When an applicant's request to be a TEFAP subcontractor is denied by the food bank, the applicant may request an administrative review by sending a letter requesting review of the denial to the food distribution program manager. The applicant shall send the letter within five days of receipt of the letter of denial.

(1) When more information is needed, the program manager shall request the information within five days of receipt of the request for review.

(2) The program manager shall review the denial and shall issue a decision within ten days of the request for review or of the receipt of additional information, whichever is later.

(3) When the program manager reverses the denial, the applicant shall be given the opportunity to negotiate a TEFAP subcontract with the applicable food bank.

ITEM 4. Amend rule 441—66.4(234) as follows:

441—66.4(234) Distribution. The department is the agency responsible for food distribution in Iowa under TEFAP. TEFAP commodities and funds are allocated and delivered to Iowa by the USDA according to the USDA formula as defined at 7 CFR 251.3(h), as ~~published on January 1, 2005~~ amended to May 2, 2022.

66.4(1) No change.

66.4(2) Allocation to contractors. The department shall make commodities available for distribution to contractors in accordance with the provisions of 7 CFR Part 251, as ~~published on January 1, 2005~~ amended to May 2, 2022, and of 7 CFR Part 250, as ~~published on January 1, 2005~~ amended to May 2, 2022, when the provisions of Part 250 are not inconsistent with 7 CFR Part 251.

a. No change.

b. *Basis for allocation.* The allocation of commodities to each contractor is based on the percentage of the Iowa residents with income at or below 185 percent of the federal poverty level who live in the area that each contractor serves based on the formula identified in 7 CFR 251.3(h), as amended to May 2, 2022, for entitlement. Bonus items will be allocated using this same formula, unless agreed upon by the eligible recipient agencies with direct contracts with the department.

66.4(3) No change.

66.4(4) Special provisions for situations of disaster and distress. The department reserves the right to distribute commodities in situations of disaster, emergency, or distress to any affected area in Iowa. ~~In these situations, the department shall use commodities in the central warehouse first and shall then, if necessary, use commodities from the inventory of each contractor.~~ Federal regulations at 7 CFR 250.43 and 7 CFR 250.44, as ~~published on January 1, 2005~~ amended to May 2, 2022, shall apply in these situations.

ITEM 5. Amend paragraph **66.5(3)“c”** as follows:

c. Income exclusions. When calculating total household income for this program, all income shall be excluded that is specifically excluded for food assistance by federal statute, especially those sources listed in federal regulations at 7 CFR 273.9(c)(10) as ~~published on January 1, 2005~~ amended to May 2, 2022.

ITEM 6. Amend rule 441—66.6(234), introductory paragraph, as follows:

441—66.6(234) Reimbursement for allowable costs. To the extent that funds are available for payment, the department shall pay allowable costs to contractors as reimbursement for expenses attributable to the program. TEFAP payments by the department are subject to federal regulations at 7 CFR Part 251, as ~~published on January 1, 2005~~ amended to May 2, 2022, especially 7 CFR 251.8(e).

ITEM 7. Amend subrule 66.6(2) as follows:

66.6(2) Reimbursement request. Contractors must complete ~~Form 470-0298, Federal Emergency Assistance Food Distribution Report/Reimbursement Request,~~ the form provided by the department in order to file for reimbursement.

ITEM 8. Amend subrule 66.6(3) as follows:

66.6(3) Rate of reimbursement. The department shall reimburse each contractor at ~~a per gross pound rate to be determined by the department and included in the agreement with the contractor~~ the same rate as commodity allocations are determined pursuant to 7 CFR 251.3(h) as amended to May 2, 2022. In the event the department cannot maintain this level of reimbursement throughout the term of the contract, the reimbursement shall be adjusted based on the available funds remaining from the USDA grant.

ITEM 9. Amend subrule 66.7(3) as follows:

66.7(3) Determination of fault and claim procedures. The program manager shall investigate the commodity loss and determine who is at fault as described in FNS Instruction 410-1, Claims for Losses of Donated Foods and Related Administrative Losses — Procedures for the State Distributing Agency, published on December 29, 2010.

a. Losses ~~exceeding \$100~~ Value of loss does not exceed \$500. The department shall not initiate a claim action against an entity that has been determined to be at fault if the value of the accumulated commodity loss ~~exceeds \$100~~ does not exceed \$500. EXCEPTION: If there is evidence of violation of a federal or state statute, procedures in subrule 66.7(7) shall apply.

b. Losses ~~exceeding \$2,500~~ \$500. When the department believes that a claim exists against an entity and the value of the lost commodities ~~exceeds \$2,500~~ \$500, the department shall immediately refer the claim determination to the FNS regional office. When the department receives notice from FNS that a claim exists, the department shall immediately initiate the claim procedure.

c. and d. No change.

e. Late charge. Interest shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter, unless an extension has been granted. Interest shall be assessed at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.

ITEM 10. Amend subrule 66.7(5) as follows:

66.7(5) Administrative review of claim. An entity may request an administrative review of a claim by sending a letter requesting review of the claim and a copy of a demand letter to the administrator of the division of financial, ~~health~~ food, and work supports within 20 days of receipt of its first demand letter.

a. and b. No change.

ITEM 11. Amend rule 441—66.8(234), introductory paragraph, as follows:

441—66.8(234) State monitoring. The department shall annually review at least 25 percent of the TEFAP contractors and 10 percent of other eligible recipient agencies receiving commodities as subcontractors or 20 agencies, whichever is fewer. The department ~~may~~ shall not contract with another entity to carry out these activities.

ITEM 12. Adopt the following new paragraph **66.8(1)“h”**:

h. Civil rights.