

CHAPTER 66 EMERGENCY FOOD ASSISTANCE PROGRAM

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

PREAMBLE

This chapter sets forth the rules governing 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 TEFAP and other food distribution programs, contact the Iowa Department of Human Services, Division of Financial, Food, and Work Supports, Food Distribution Program Manager, 1305 East Walnut Street, Des Moines, Iowa 50319-0114; telephone (515)443-2736. Clarifications of federal policy may be obtained by referencing 7 CFR Part 251 and 7 CFR Part 250, when applicable. [ARC 6559C, IAB 10/5/22, effective 12/1/22]

441—66.1(234) Definitions.

“Bonus items” means USDA-donated commodities that are so designated by USDA, are offered by USDA to the states as a one-time offer, and are not charged or credited against a state’s entitlement.

“Charitable institution” means a facility that is public or private, nonprofit, and tax-exempt under the Internal Revenue Code as documented by a letter of exemption; is not a penal institution (including a correctional institution that conducts rehabilitation programs); and provides food assistance to needy persons.

“Commodities” means foods donated or available for donation by the USDA.

“Contract” means a formal, written agreement between the department and an eligible recipient agency regarding receiving, storing, handling, and distributing commodities.

“Contractor” means an eligible recipient agency that has entered into a contract with the department regarding storing, handling, and distributing commodities.

“Department” means the Iowa department of human services.

“Distribution site” means a location where an eligible recipient agency actually distributes commodities to needy persons for home consumption or serves prepared meals to needy persons.

“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), as amended to May 2, 2022.

“Emergency feeding organization” means an eligible recipient agency that provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, under an agreement with the department. Emergency feeding organizations can include food banks, food pantries, soup kitchens, emergency shelters, and hunger relief centers.

“FNS” means the Food and Nutrition Service, a division of the USDA that administers food assistance programs.

“Food bank” means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities or the products thereof to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to needy persons on a regular basis.

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

“Food pantry” means a public or private nonprofit organization that distributes food to low-income and unemployed households to relieve situations of emergency and distress.

“Household” means a single individual living alone or a group of related or nonrelated individuals who live together, who are not boarders or residents of an institution, and who purchase and prepare food for home consumption.

“Program manager” means a department employee who is assigned to fulfill department responsibilities for management of the USDA FNS food distribution programs.

“Soup kitchen” means a public or charitable institution that provides prepared food to needy homeless persons on a regular basis as a part of its normal activities.

“Subcontract” means a contract between a contractor, as defined in this chapter, and another eligible recipient agency.

“Subcontractor” means an eligible recipient agency that has entered into a subcontract with a contractor, as defined in this chapter.

“Subsidiary distributing organization” means an eligible recipient agency that holds a contract with the department and is also under subcontract with another eligible recipient agency for the distribution of federal commodities.

“TEFAP” means The Emergency Food Assistance Program as authorized by the Emergency Food Assistance Act of 1983 as amended through Public Law 107-249, enacted October 23, 2002.

“USDA” means the United States Department of Agriculture.

[ARC 6559C, IAB 10/5/22, effective 12/1/22]

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, 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 that the department has received the applicant’s request. The department shall approve an applicant’s request to be a TEFAP contractor only when 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.
- 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, food, and work supports. The applicant shall send the letter within five days of receipt of the letter of denial.

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

(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.

(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.

[ARC 6559C, IAB 10/5/22, effective 12/1/22]

441—66.3(234) Contracts. A contract between the department and an eligible recipient agency approved as described at subrule 66.2(1) shall cover receiving, storing, handling, and distributing commodities. A contract may also cover the issues of receiving, storing, handling, and distributing commodities through a subsidiary distributing organization that holds a subcontract with a contractor. A TEFAP contract shall include, but is not limited to, the following items:

66.3(1) Subcontractors subject to contract provisions. A contractor shall ensure that its subsidiary distributing organizations, if any, and other subcontractors that the organizations serve are subject to all the provisions of the contract between the department and the contractor.

66.3(2) Oversight. A contractor shall oversee each subcontractor that the contractor serves.

66.3(3) Program documentation. A contractor shall maintain a file on each subcontractor that the contractor serves, documenting the programs of the subcontractor and the procedures the subcontractor uses to determine household eligibility under the policies described at 441—66.5(234).

66.3(4) Issue rates. A contractor shall determine the issue rates for each subcontractor that the contractor serves, based on the subcontractor's:

- a. Ability to distribute without waste;
- b. Anticipated use based on inventory records and controls; and
- c. Ability to accept and store commodities.

66.3(5) Maintenance of expenditures. Each contractor and subcontractor shall maintain its normal expenditures for food with no reduction due to receipt of commodities.

66.3(6) Distribution to low-income households. A contractor or subcontractor that distributes commodities to households must limit the distribution of commodities to households that meet the eligibility criteria as described at 441—66.5(234).

66.3(7) Meal sites serving needy persons. A contractor or subcontractor that provides prepared meals must demonstrate that it serves predominantly needy persons. The agency is not required to employ a means test or to keep records solely for the purpose of demonstrating that its recipients are needy.

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 amended to May 2, 2022.

66.4(1) Distribution contractors. The department shall enter into a contract for distribution of commodities with a qualified eligible recipient agency approved as described at subrule 66.2(1) to distribute commodities in Iowa to needy individuals or households in the most cost-effective and comprehensive manner possible.

a. *Subcontractors.* TEFAP contractors may subcontract with other eligible recipient agencies for distribution of commodities.

b. *Emergency feeding organizations.* In the distribution of commodities, the department shall give priority to eligible recipient agencies that are emergency feeding organizations. If the need arises, the department shall implement a priority system to serve predominately needy persons.

c. *Use of subsidiary distributing organizations.* A contractor may furnish services through another eligible recipient agency as a subsidiary distributing organization, provided that the contractor has a written contract with the subsidiary distributing organization.

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 amended to May 2, 2022, and of 7 CFR Part 250, as amended to May 2, 2022, when the provisions of Part 250 are not inconsistent with 7 CFR Part 251.

a. Timing of allocation. To the extent possible, the department shall allocate commodities to the contractors each month.

b. Basis for allocation. The allocation of commodities to each contractor is based on the percentage of residents 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) *Variations in distribution.* The department may withhold or reduce the delivery of commodities to contractors under the following circumstances:

- a.* When commodities are not available or have not been transported to the state in time for delivery;
- b.* When the commodities inventory is not sufficient to meet all requests;
- c.* When an eligible recipient agency has commodities on hand in excess of the amount that could be used without waste in providing services for the number of needy persons served;
- d.* When the state's supply is depleted; or
- e.* When the department or USDA has issued orders restricting distribution of certain food items.

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. Federal regulations at 7 CFR 250.43 and 7 CFR 250.44, as amended to May 2, 2022, shall apply in these situations. [ARC 6559C, IAB 10/5/22, effective 12/1/22]

441—66.5(234) Household eligibility. Household eligibility is determined by residence, household size, and income.

66.5(1) *Residence.* Household members shall be residing in the state of Iowa.

66.5(2) *Household size.* Household size is determined by the number of people living in a dwelling, excluding boarders, as household is defined at 441—66.1(234).

66.5(3) *Income eligibility.* All earned and unearned income of the household shall be considered in determining eligibility.

a. Income defined. Income means all income received by an individual from sources identified by the U.S. Census Bureau in computing median income and includes:

- (1) Money wages or salary;
- (2) Net income from nonfarm self-employment;
- (3) Net income from farm self-employment;
- (4) Dividends;
- (5) Interest;
- (6) Income from estates or trusts;
- (7) Net rental income and royalties;
- (8) Public assistance or welfare payments;
- (9) Pensions and annuities;
- (10) Workers' compensation;
- (11) Alimony;
- (12) Child support;
- (13) Veterans' pensions;
- (14) Social security;
- (15) Railroad retirement;
- (16) Supplemental security income;
- (17) State or federal assistance;
- (18) Veterans' benefits;
- (19) Black lung benefits;
- (20) All disability pensions;
- (21) State supplementary assistance;

- (22) Unemployment compensation benefits; and
- (23) Income from minors under 16 years of age.
- b. Determination of income.* Earned or unearned income shall be the gross annual, monthly, or weekly income.
 - (1) Biweekly income shall be multiplied by 2.15 to determine monthly income.
 - (2) Adjusted gross self-employment income shall be averaged over a 12-month period.
 - (3) Income received from interest and dividends shall be averaged over a 12-month period.
 - (4) The amount of income that stops or starts during the month shall be estimated based on the best information available.
- 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 amended to May 2, 2022.
- d. Income guidelines.* Households are eligible for TEFAP when the countable household income is at or below 185 percent of the federal poverty guidelines. These federal guidelines are revised annually, effective every July 1. The department shall forward these income guidelines annually to contractors.
[ARC 6559C, IAB 10/5/22, effective 12/1/22]

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 amended to May 2, 2022, especially 7 CFR 251.8(e).

66.6(1) Allowable costs. “Allowable costs” are the direct costs incurred for intrastate storage and transportation of federal commodities. Allowable costs shall include:

- a.* Costs to rent, lease, operate, and maintain storage facilities and transportation equipment;
- b.* Costs to load, unload, distribute, and otherwise handle, account for, and manage the distribution of federal commodities;
- c.* Salary and support expenses of employees and operations necessary in the management, coordination, and accomplishment of TEFAP food distribution to the extent that expenses are directly attributed to the storage and distribution of federal commodities;
- d.* Costs associated with determinations of eligibility, verification, and documentation;
- e.* Costs of providing information to persons receiving commodities concerning the appropriate storage and preparation of such commodities; and
- f.* Costs of other administrative procedures required for participation in the program.

66.6(2) Reimbursement request. Contractors must complete the form provided by the department in order to file for reimbursement.

66.6(3) Rate of reimbursement. The department shall reimburse each contractor at 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.

66.6(4) No reimbursement for bonus items. The department shall not reimburse a contractor for bonus items received. The department cannot project the amount and items received as bonus items throughout the year. Each contractor or subcontractor shall have the option to refuse bonus items.

[ARC 6559C, IAB 10/5/22, effective 12/1/22]

441—66.7(234) Commodity losses and claims. Commodities which cannot be demonstrated by appropriate records or other satisfactory evidence to have been delivered to, or to be available in good condition for delivery to, eligible recipient agencies for which they were intended are considered to be lost commodities.

66.7(1) Circumstances of loss. Commodities may be lost through one or more of the following means:

- a.* Theft, damage, spoilage, or infestation in transit or in storage.
- b.* Improper distribution to institutions, families, or individuals or distributing above authorized rates.
- c.* Sale or exchange of commodities or diversion to an improper use.
- d.* Failure to deliver end products according to contracted yields under a processing agreement.

e. Other similar causes.

66.7(2) *Reporting commodity losses.* All commodity losses regardless of the dollar value shall be reported to the program manager by the responsible entity such as, but not limited to, contractors and subcontractors, warehouses, or carriers.

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. *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 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 \$500.* When the department believes that a claim exists against an entity and the value of the lost commodities exceeds \$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. *Losses occurring in transit.* A claim action must be initiated regardless of the value of the commodity losses if the commodity losses occur when in transit for delivery.

d. *Demand letters.* The department shall send up to three demand letters to the entity determined responsible for the loss.

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.

66.7(4) *Claims payment.* The claim shall be paid to the food distribution program.

a. Cash payment will be accepted.

b. Replacement with like items may be used in lieu of cash payment for losses with the approval of the program manager. Approval shall not be granted if the replacement in kind would result in further losses or if the inventory is already in excess. A claim for the loss of bonus items may not be paid through replacement in kind.

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, food, and work supports within 20 days of receipt of its first demand letter.

a. When more information is needed, the administrator shall request the information within 5 days of receipt of the request for review of the claim.

b. The administrator shall review the claim and issue a decision affirming, altering, or reversing the claim decision within 10 days of the request for the review or the receipt of additional information, whichever is later.

66.7(6) *Failure to make restitution.* Failure to make restitution when requested is cause for cancellation of the contract.

66.7(7) *Referral for violation of federal or state statute.* In instances of suspected violation of federal or state statute such as, but not limited to, embezzlement, misapplication, theft or fraud of any funds or commodities from the program, the department shall refer the case to the FNS.

[ARC 6559C, IAB 10/5/22, effective 12/1/22]

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 shall not contract with another entity to carry out these activities.

66.8(1) *Elements of review.* Reviews of contractors and subcontractors shall include a review of the following activities:

a. Eligibility determination.

b. Food ordering procedures.

c. Storage and warehousing practices.

- d. Inventory control.
- e. Approval of distribution sites.
- f. Reporting.
- g. Record-keeping compliance.
- h. Civil rights.

66.8(2) *Report of findings.* When a review of a contractor or subcontractor is completed, the department shall submit a report of findings to the agency that shall include:

- a. A description of each deficiency found and contributing factors.
- b. Any requirements for corrective action.
- c. A timetable for establishing and completing a corrective action plan.

66.8(3) *Monitoring of corrective action.* The department shall monitor the corrective action activities of each contractor or subcontractor that has a corrective action plan.

[ARC 6559C, IAB 10/5/22, effective 12/1/22]

441—66.9(234) Limits on unrelated activities. Contractors and subcontractors shall ensure that activities unrelated to the distribution of foods are conducted in a manner consistent with the limits in subrule 66.9(1).

66.9(1) *Allowable activities.* Activities unrelated to the distribution of foods may be conducted at distribution sites in the following circumstances:

a. *Not part of commodity distribution.* The persons conducting the activity shall make clear to commodity recipients that the activity is not part of commodity distribution and is not endorsed by the department.

(1) Impermissible activities include, but are not limited to, information not related to commodity distribution placed in or printed on bags, boxes, or other containers in which commodities are distributed.

(2) Recipes or information about commodities, dates of future distributions, hours of operations, or other federal, state, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the department.

b. *Cooperation not required for receipt of commodities.* The persons conducting the activity shall make clear to commodity recipients that cooperation is not a condition of the receipt of the commodities. Cooperation includes, but is not limited to, contributing money, signing petitions, or conversing with the person.

c. *Does not disrupt or interfere with the distribution of commodities.* The activity shall not be conducted in a manner that disrupts the distribution of the commodities.

66.9(2) *Termination of contract.* Except as provided in subrule 66.9(3), the department shall immediately terminate from further participation in commodity distribution any contractor or subcontractor that distributes or permits distribution of materials in a manner inconsistent with the provisions of subrule 66.9(1).

66.9(3) *Exception to termination of contract.* The department may withhold termination of a contract if the department cannot find another eligible recipient agency to operate the distribution in the area served by the violating organization. In these circumstances, the department shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

441—66.10(234) Complaints.

66.10(1) *Complaints regarding commodities.* Each contractor or subcontractor shall immediately advise the department in writing of any complaints regarding commodities. The contractor or subcontractor shall provide complete information pertaining to the product and reason for complaint so that the department or USDA can conduct a proper investigation.

66.10(2) *Complaints regarding eligible recipient agencies.* A contractor shall promptly investigate any complaints it receives about the contractor or its subcontractors. Within ten days of receipt of the complaint, the contractor shall forward to the department a written report of the findings and the action taken. The department reserves the right to conduct an investigation if deemed necessary.

These rules are intended to implement Iowa Code section 234.12.

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