



Food and Nutrition Service

1320 Braddock Place
Alexandria, VA 22314

DATE: May 22, 2020

POLICY NO: FD-149: The Emergency Food Assistance Program (TEFAP)

SUBJECT: Questions and Answers related to COVID-19 and the Emergency Food Assistance Program (TEFAP)¹

TO: Regional Directors
Special Nutrition Programs
MARO, MPRO, MWRO,
NERO, SERO, SWRO, and
WRO

State Directors
All TEFAP State Agencies

Issuing Agency/Office:	FNS/Supplemental Nutrition and Safety Programs
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Summary:	<i>This document is addressed to TEFAP State agencies and provides them with a series of questions and answers related to the COVID-19 public health emergency as it relates to administration of TEFAP.</i>
Disclaimer:	The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.
<i>Body of guidance document follows.</i>	

The Food and Nutrition Service is responding rapidly to the COVID19 pandemic with multiple waivers and flexibilities in its programs. The Families First Coronavirus Response Act requires the Food and Nutrition Service to collect specific data elements from States. The CARES Act provides funding, for which FNS will collect information in order to distribute funding. Please prepare the necessary data elements to collect and submit this data as described in this document. The public will be given the opportunity to comment on this data collection, including legislatively-mandated data collection through a future information collection process being submitted to the Office of Management and Budget.

¹ Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this memorandum as not a major rule, as defined by 5 U.S.C. § 804(2)

The Food and Nutrition Service (FNS) is grateful for your continued partnership in the administration of The Emergency Food Assistance Program (TEFAP) as we respond to the COVID-19 public health emergency. Together, we can ensure that those households in need of food assistance are able to access USDA Foods through our nation's expansive network of food banks, food pantries, and other TEFAP eligible recipient agencies (ERAs).

This memorandum includes questions and answers on flexibilities available to TEFAP State agencies on the operation of TEFAP. These flexibilities may assist State agencies that administer TEFAP in continuing to provide food to people in need during the novel COVID-19 public health emergency.

1. Did the Coronavirus Aid, Relief and Economic Security (CARES) Act and the Families First Coronavirus Response Act (FFCRA) provide waiver authority for TEFAP?

The CARES Act and FFCRA did not provide additional waiver authority for TEFAP. However, there are a number of existing flexibilities available to State agencies in the operation of TEFAP to support them in their COVID-19 response. These flexibilities are highlighted in this memorandum.

2. How can a State agency use inventories of TEFAP food to assist individuals impacted by COVID-19?

TEFAP is an important source of food for Americans in need of food assistance, especially during the current COVID-19 public health emergency. State agencies, food banks, food pantries, and other eligible recipient agencies play a key role in ensuring that the program continues to operate effectively during times of crisis.

3. How can ERAs distribute TEFAP foods for household distribution while adhering to social distancing guidelines?

There are several ways that ERAs can adhere to social distancing guidelines while distributing TEFAP foods. For example, ERAs can utilize a drive-through model in which recipients receive a box of TEFAP foods that is placed directly in their vehicle by staff or volunteers. ERAs may also consider delivering TEFAP foods to central pick-up locations or to participants' homes. We encourage States and ERAs to utilize creative solutions for TEFAP household distribution that protect ERA staff and TEFAP participants. Should State agencies have any questions about the allowability of a given procedure, they should contact their FNS Regional Office.

4. How can ERAs distribute TEFAP prepared meals while adhering to social distancing guidelines?

Those organizations approved to serve TEFAP foods to predominantly needy persons in the form of prepared meals (as per 7 CFR 251.5(a)(2)), may provide meals in take-out containers to facilitate social distancing.

5. Are State agencies able to waive signature requirements for TEFAP eligibility determinations and household distributions?

Yes. TEFAP regulations do not require a signature either when applying for TEFAP or when picking up TEFAP food. If a State agency currently has a signature policy in place, it can amend its State plan to permit self-attestation in lieu of signatures. This can be achieved simply by submitting a written explanation (i.e., State Plan amendment) to the USDA FNS Regional Office for expedited review and approval. Any changes to signature requirements must be applied statewide.

6. Are State agencies able to skip the collection of household addresses during TEFAP household distributions?

Per 7 CFR 251.10(a)(3), ERAs such as food banks and food pantries must collect the address of each household at the time of that household's application to receive TEFAP foods for home consumption. However, ERAs do not have to re-collect addresses at each distribution. States can institute a process whereby participants are asked to attest that their household is still eligible to receive TEFAP when they pick up food at future distributions. States can also have a policy whereby a household is assumed eligible at future distributions, but is required to immediately notify the ERA of any changes in eligibility. Additionally, States have the flexibility to collect addresses in a manner that accommodates social distancing such as over the phone, via text or e-mail, by photographing a written address as an individual maintains a safe distance, etc.

Any changes to address collection procedures must be applied statewide, and must be submitted to the USDA FNS Regional Office (via a State plan amendment) for expedited review and approval.

7. Are State agencies able to adjust income eligibility requirements in order to expand participant eligibility?

When necessary, TEFAP State agencies may adjust TEFAP income eligibility guidelines to expand participant eligibility for household distribution at any time, consistent with 7 CFR 251.6(b) and (c). State agencies can also establish categorical income eligibility procedures (e.g., establishing a policy that makes all SNAP or WIC participants eligible for TEFAP) to expedite household eligibility processes. However, per 7 CFR 251.5(b)(1), State TEFAP income guidelines must ensure to only allow those households in need of food assistance because of inadequate household income receive TEFAP foods.

Note that for those seeking prepared meals at a TEFAP meal site, no income verification is required. As per 7 CFR 251.5(a)(2), a State may only approve meal sites that are providing prepared meals to serve to predominately needy persons; thus, those accessing the meals are presumed to be needy.

Any changes to eligibility procedures must be applied statewide, and must be submitted to the USDA FNS Regional Office (via a State Plan amendment) for expedited review and approval.

8. Can a proxy system be utilized for household distribution of TEFAP foods?

Yes. There are no specific Federal requirements on proxies in TEFAP. Accordingly, the State may add a proxy provision (or alter an existing one) in their State plan to allow for proxies or to increase the number of households one proxy may serve.

Any changes to proxy procedures must be applied statewide, and must be submitted to the USDA FNS Regional Office (via a State Plan amendment) for expedited review and approval.

9. Can a State agency contract with a private, for-profit company to deliver TEFAP foods, particularly during the COVID-19 pandemic?

Yes. TEFAP State agencies have the discretion to procure, or allow ERAs to procure, delivery services from a for-profit company to provide home delivery of TEFAP foods for household consumption. First, consistent with 7 CFR 250.4(c) and (d), an agreement or contract must be in place between the company and the State or local agency which ensures that the delivery service adheres to all TEFAP program regulations. At a minimum, a contract or service agreement for these delivery services must require that the company provide:

1. Safe storage and transportation of the foods (to include refrigerated and frozen foods) in compliance with program regulations at 7 CFR 250;
2. All applicable records required by the State or ERA, including at minimum a list of households distributed to; and
3. An assurance that the privacy of participants will be maintained.

Additionally, applicable contracts or service agreements should include terms which ensure program integrity is maintained and participants ultimately receive program benefits.

If the State agency or ERA plans to use TEFAP administrative funds to procure this service, they must follow procedures outlined in 2 CFR 200, subpart E, and all applicable State and local procurement regulations. If the for-profit company is donating their services, the State or ERA does not need to follow procurement regulations, but must have a contract or service agreement in place, preferably a no-cost contract or agreement.

Note these service agreements would not be considered ERA agreements as described at 7 CFR 251.2(c)(2). For-profit companies do not meet the definition of ERA at 7 CFR 251.3(d) and so may not enter into ERA agreements to operate TEFAP. Employees of the for-profit delivery services may not collect participant information or make eligibility

determinations for new participants. Additionally, such employees may not be considered proxies for participants.

In order to allow deliveries by for-profit companies, a State Plan amendment must be submitted to the FNS Regional Office for expedited review and approval. Applicable contracts or agreements should include terms which ensure program integrity is maintained and participants ultimately receive program benefits.

State agencies should contact their respective FNS regional offices with any further questions.

/s/ Original Signature on File

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