

The Emergency Food Assistance Program (TEFAP)

New York State Plan

New York State Office of General Services

USDA Food Distribution

Effective January 5, 2022

<p>Eligible Recipient Agency (ERA)*</p>	<p>An organization that is:</p> <ul style="list-style-type: none"> • Public, or • Private, possessing tax exempt status pursuant to Final Rule, Sec. 251.5, and • Not a penal institution, and • Provides food assistance exclusively to needy persons for household consumption, pursuant to a means test, or predominantly to needy persons in the form of prepared meals, and • Has entered into an agreement with the designated State agency for the receipt of commodities and/or administrative funds, or receives commodities and/or administrative funds under an agreement with another ERA which has signed an agreement with the State agency, or another eligible ERA within the state, and • Falls into one of the following categories: emergency feeding organizations (EFO, including food banks, food pantries and soup kitchens); charitable institutions (CI, including hospitals and retirement homes); summer camps for children or child nutrition programs providing food service; nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and disaster relief programs.
<p>Emergency Feeding Organization (EFO)*</p>	<p>An ERA which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. EFOs have priority over other ERAs in the distribution of TEFAP.</p>

****Clarification:** EFOs are a subset of ERAs. An EFO is an ERA that provides food assistance to relieve situations of emergency and distress to needy persons, including the low-income and unemployed. The category of EFO excludes such agencies as hospitals, retirement homes, group homes, child and elderly nutrition programs, etc. EFOs do include food banks, food pantries, and soup kitchens. Since there does not exist enough food to meet the needs of all ERAs under the general category, the distinction between ERAs and EFOs and the two-tier priority system were developed to prioritize those most in need.*

<p>Food Bank</p>	<p>A public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their</p>
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	normal activities, provide meals or food to feed needy persons on a regular basis.
Food Pantry	A public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than USDA, to relieve situations of emergency and distress.
Formula	The formula used by the USDA to allocate among states the commodities and funding available under this part. The amount of such commodities and funds to be provided to each state will be based on each state's population of low-income and unemployed persons, as compared to national statistics. Each state's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the state. The surplus commodities will be allocated to states based on their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated based on their value (dollars). In instances in which a state determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other states based on the same formula used for the initial allocation.
State Agency	The State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture (USDA).
Soup Kitchen	A public or charitable institution that, as an integral part of their normal activities, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.
Value of Commodities Distributed	USDA's cost of acquiring commodities for distribution.

<i>Donation of Foods for use in the United States, its Territories and Possessions and Areas Under its Jurisdiction</i>	
Bonus Foods	Section 32, Section 416, and Section 709 donated foods, as defined in this section, which are purchased under surplus removal or price support authority, and provided to distributing agencies in addition to legislatively authorized levels of assistance.

Commodities	Foods donated or available for donation by the USDA, under any of the legislation pertaining to 7 CFR, Parts 250 & 251.
Distributing Agency	A State agency selected by the Governor of the State or the State legislature to distribute donated foods in the state, in accordance with an agreement with FNS, and with the requirements in this part and other Federal regulations, as applicable (e.g., a State agency distributing donated foods in the Commodity Supplemental Food Program (CSFP) must comply with requirements in 7 CFR part 247). Indian Tribal Organizations may act as a distributing agency in the distribution of donated foods on, or near, Indian reservations, as provided for in applicable Federal regulations (e.g., 7 CFR part 253 or 254 for FDPIR). A distributing agency may also be referred to as a State Distributing Agency (SDA)
Eligible Persons	New York residents in need of food assistance because of their: (1) Economic status; (2) Eligibility for a specific food assistance program; or (3) Eligibility as survivors of a disaster or a situation of distress.
Entitlement	The value of donated foods a distributing agency is authorized to receive in a specific program, in accordance with program legislation.
Federal Fiscal Year (FFY)	The 12-month period beginning October 1 of any calendar year and ending September 30 of the following calendar year.
Household	Household means any of the following individuals or groups of individuals, exclusive of boarders or residents of an institution: (1) An individual living alone; (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others; (3) A group of individuals living together who customarily purchase and prepare meals in common for home consumption; and (4) Other individuals or groups of individuals, as provided in FNS regulations specific to particular food assistance programs.
Nonprofit Organization	A private organization with tax-exempt status under the Internal Revenue Code. Nonprofit organizations operated exclusively for religious purposes are automatically tax-exempt under the Internal Revenue Code.
Recipients	Persons receiving donated foods, or a meal containing donated foods, provided by recipient agencies.

Contracts/Agreements (7CFR 251.2)

The New York State Office of General Services, Food Distribution Unit, has agreements with eight (8) regional food banks where USDA Foods are shipped directly and then redistributed to approximately 2,500 eligible sub recipient agencies (EFOs). As required by 7 CFR 251.2 each regional food bank that receives and distributes TEFAP donated foods and/or administrative funds must enter into an agreement with all eligible sub recipient agencies. The eight (8) regional New York State food banks are as follows:

Regional Food Banks by County		
Food Bank	Counties Served	Phone
Food Bank for New York City	Bronx, Kings, New York, Queens, Richmond	(718) 991-4300
Regional Food Bank of Northeastern New York	Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington	(518) 786-3691
FeedMore WNY	Cattaraugus, Chautauqua, Erie, Niagara	(716) 852-1305
Food Bank of Central New York	Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence	(315) 437-1899
FoodLink	Allegany, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates	(585) 328-3380
Long Island Cares	Nassau, Suffolk	(631) 582-3663
Food Bank of the Southern Tier	Broome, Chemung, Schuyler, Steuben, Tioga, Tompkins	(607) 796-6061
Feeding Westchester	Westchester	(914) 923-1100

USDA Two-tier Priority System Requirements

The Federal regulations contain a Two-tier Priority System in the allocation of TEFAP food to eligible recipient agencies (ERAs). ERAs that are emergency feeding organizations (EFOs) have priority in receiving TEFAP food over ERAs that are not EFOs. Therefore, the first priority will be given to emergency feeding organizations that provide nutrition assistance to relieve situations of distress, e.g. food banks, pantries, soup kitchens.

If, after 90 days, TEFAP commodities have been distributed in sufficient quantities to meet the needs of all emergency feeding organizations, commodities will then be made available to the second priority of eligible recipient agencies, e.g., other public and private non-profit organizations that serve needy people but do not relieve situations of emergency and distress. (7CFR 251.4 (h) (ii)).

If OGS Food Distribution cannot meet the commodity needs of all ERAs, priority in the allocation of USDA Foods must be given to EFOs. OGS Food Distribution may concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others (Final Rule, Sec. 251.4).

Allocations

OGS Food Distribution allocates to the eight (8) regional food banks based on an annual report from the New York State Office of Temporary Disability Assistance. The report lists the number of food stamp recipients in each county. Each food bank receives their proportionate share of administrative funding and USDA foods for the counties they serve. (Example: A food bank serves 10% of the eligible needy population, they will receive 10% of the food value and 10% of the administrative funding made available to all the food banks.)

Distribution Method

The New York State Office of General Services Food Distribution Unit utilizes a regional approach for the distribution of TEFAP commodities. There are eight (8) regional food banks in New York State that receive USDA Foods and distribute to qualified eligible recipient agencies (ERA) that are emergency feeding organizations (EFO). The distributing regional food bank is required to enter into an agreement with the ERA that receives and distributes TEFAP commodities. In addition, distributing regional food banks will ensure that all counties in their region have at least one distribution site and are equitably served.

The selected food banks will distribute TEFAP foods equitably and expeditiously in each county in their region. All TEFAP foods will be selected and ordered by a staff member of the food bank. All TEFAP foods will be delivered to the food banks which will store, allocate (in accordance with state approved allocations) and deliver the USDA foods to the qualified eligible recipient agencies as described in Title 7 (Agriculture) of the Code of Federal Regulations (CFR) specifically 7 CFR Part 250 – Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction and 7 CFR Part 251 – The Emergency Food Assistance Program.

In the event that there is an immediate and pressing need in a geographic location that a food bank serves, but insufficient means for an ERA or EFO to address that need, the food bank may host a mobile household distribution until a permanent ERA can be established. TEFAP household eligibility criteria must be followed.

In compliance with Section 202A(b)(6) of the Emergency Food Assistance Act (EFAA) that eligible recipient agencies (ERAs) provide input on commodity preferences and the needs of the ERA and EFO, food banks will annually provide the household catalog and at minimum perform one of the following:

- Distribute detailed surveys to ERAs to solicit commodity preferences (including pack sizes)
- Solicit ERA feedback during site visits and during delivery of commodities
- Conduct quarterly meetings/community gatherings to solicit commodity preference information
- Use an ordering system that allows ERAs to order commodities specific to the needs of households served from their regional food banks.

As part of this agreement, the following are the roles and responsibilities of distributing regional food banks. These distributing food banks must agree to and complete these responsibilities and actions.

Successful applicants will be required to provide the following deliverables:

- Is a public agency, or a private entity possessing tax exempt status pursuant to Section 501 (c)(3) of the Internal Revenue Code of 1986 (Non-profit organization);
- Is not a penal institution;
- Order, receipt, and distribute its pro-rata share of USDA TEFAP foods received by New York State;
- Pursuant to FNS Policy Memo FD-107, food banks and supported recipient agencies must use a first-expired-first-out (FEFO) system of inventory management;
- In accordance with Section 501 of the OMB's Uniform Guidance (2 CFR 200.502) agencies of State, Local or Tribal governments and nonprofits that exceed \$750,000 or more in Federal awards (inclusive of food value) in a given school or fiscal year must obtain an audit for that year. EFOs shall comply with the audit requirement in 2 CFR 200, as applicable;
- Establish and maintain agreements with sub-recipient agencies;
- Distribute donated TEFAP food to pantries, soup kitchens, and homeless shelters through delivery services or by recipient agency pick-up in accordance with the USDA policy of non-discrimination. No fees may be charged for the delivery of TEFAP products;
- Track financial expenditures, pounds of food distributed, inventory, and service data (number of individuals and households served by county) on a monthly basis and submit monthly reimbursement and program reports to the OGS Food Distribution Unit;
- Comply with all program rules, policies and procedures in accordance with TEFAP policies;
- Provide recipient agencies with invoices showing USDA food values monthly and annual USDA food values report;
- Provide annual training and technical assistance to all recipient agencies regarding program regulations and civil rights;
- Provide storage facilities and insurance for TEFAP products as outlined in 7 CFR 250.14;
- Submit required accurate reports on timely basis; and
- Monitor recipient agencies for program compliance. A minimum of 25 percent of all sites will be reviewed each year, and the largest five sites shall be reviewed annually. The food bank will submit to the SDA an annual listing of all sites, noting sites reviewed, at the end of their fiscal year or the end of the federal fiscal year, whichever is most applicable.
- The food bank agrees to maintain records to document the receipt, distribution, processing and inventory of USDA foods received in this program. The food bank must retain these records for three (3) years from the close of the Federal Fiscal Year to which they pertain, and must permit inspection of these records by concerned Federal and State personnel.

Eligible Recipient Agency (ERA) Commodity Allocation to Distribution Sites

Distributing regional food banks selected to provide TEFAP products must ensure that they distribute USDA Foods to their eligible recipient agency distribution sites in accordance with the requirements of the two-tier priority system. ERAs that are emergency feeding organizations (EFOs) have priority in receiving TEFAP food over ERAs that are not EFOs. Therefore, the first priority will be given to emergency feeding organizations that provide nutrition assistance to relieve situations of distress, e.g. food banks, pantries, soup kitchens.

If, after 90 days, TEFAP commodities have been distributed in sufficient quantities to meet the needs of all emergency feeding organizations, commodities will then be made available to the

second priority of eligible recipient agencies, e.g., other public and private non-profit organizations that serve needy people but do not relieve situations of emergency and distress. (7CFR 251.4 (h) (ii).

Program Eligibility Criteria

TEFAP commodities may be used in two ways. They may be used to prepare meals, which are served in a congregate setting or given to participants who take them home for use by their families. The New York State Office of General Services has established the eligibility criteria for individuals receiving TEFAP products for household distribution.

Eligibility for Prepared Meals

There are no federal standards or procedures for determining an individual's eligibility to receive prepared meals. They are presumed to be needy because they seek meals at an approved TEFAP site. Sites do not have to maintain records of the names of participants to whom they serve meals but must keep a count of the number of meals served. Prepared meals do not need to be consumed on site.

Eligibility Criteria for Household Distribution

In accordance with federal regulations 7 CFR 251.5(b) and 251.10 (a) (3), the New York State Office of General Services has established eligibility criteria which must be met for a household to qualify to receive TEFAP products. (**For the purposes of this program**, household is defined as any of the following individuals or groups of individuals, exclusive of boarders or residents of an institution:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
- (3) A group of individuals living together who customarily purchase and prepare meals in common for home consumption; and
- (4) Other individuals or groups of individuals, as provided in FNS regulations specific to particular food assistance programs.

The household must reside in New York. Length of residency is not used as an eligibility criterion.

And meet one of the following criteria:

- In order to be eligible to receive household TEFAP products, the total household income for all household members must be at or below 200% of federal poverty guidelines.
- Applicants who participate in one or more of the following programs – Supplemental Nutrition Assistance Program (SNAP), Women, Infants, and Children (WIC), Food Distribution Programs on Indian Reservations (FDPIR), Temporary Assistance to Needy Families (TANF), Medicaid, Free and Reduced School Meals or Supplemental Security Income (SSI) are automatically eligible for the TEFAP program.

Federal regulations do not require that an applicant household provide independent verification of income, for example, pay stubs. Therefore, the New York State Office of General Services does not impose stricter eligibility standards. However, in compliance with 7 CFR 251.10(a) (4), a TEFAP self-declaration or attestation form is to be used by eligible recipient agencies in determining TEFAP program eligibility.

Each household applicant is required to complete the self-declaration or attestation form at a minimum of once per year. This form includes the applicant's name, address, the number of persons in the household, type of eligibility provided, and the applicant's signature.

Eligible recipient agencies which conduct household distributions must keep a record of the names of all households for each day on which they distribute commodities. Recipient sites must retain these records for three (3) years from the close of the Federal Fiscal Year to which they pertain, and must permit inspection of these records by concerned Federal and State personnel.

Civil Rights

There must be no discrimination in the distribution of foods donated under this part because of race, color, national origin, sex, age, or disability (7 CFR, 251.10). In addition to the federally-protected classes, New York State Human Rights Law protects individuals from discrimination based on: race; color, national origin; religion; sex (including pregnancy, childbirth, and related medical conditions); disability (physical or mental); sexual orientation; age (18 and older); military status; arrest record; conviction record; domestic violence victim status and genetic characteristics. Every two years, or more frequently when deemed necessary, the distributing regional food bank must notify the public, including minority and grass roots organizations in their service area, of the availability of TEFAP distributions in their area and eligibility requirements for the program (FNS Instruction 113).

Changes in location of TEFAP distributions, times of service, or any significant program changes, as transmitted to the distributing regional food bank by the New York Office of General Services, must be transmitted to potential TEFAP participants as appropriate and in a timely manner. This can be done through media advertising, public service announcements, distribution sites, food bank website postings or directly to individuals (FNS Instruction 113).

Applications and agreements made by the distributing regional food bank with organizations or individuals for TEFAP distribution must contain a statement that the distribution site cannot discriminate in handing out TEFAP food (FNS Instruction 113).

ERA/EFO Responsibility

Pursuant to FNS Policy Memo FD-113, distributing regional food banks are responsible for providing their staff and volunteers that interact with clients and/or who handle personal information of clients with training on civil rights. The distributing regional food banks will also set up policies to ensure their sub-recipient agencies' staff and volunteers that interact with clients, and/or who handle personal information of clients, receive the same training. The New York State Office of General Services provides a training PowerPoint on its website for all agencies that distribute TEFAP product to use as a minimum standard for civil rights training.

Monitoring Procedures

An annual physical and storage facility review will be conducted for each distributing regional food bank that the New York State Office of General Services has entered into an agreement with to distribute TEFAP products (7CFR 251.10(e) and 251.10 (e) (2) (i) (ii)).

The New York State Office of General Services will also conduct an annual review of one-tenth or twenty (20), whichever is fewer, of all eligible recipient agencies that have an agreement with one of the distributing regional food banks, and receive TEFAP products and/or administrative funds.

Should conditions warrant, the New York State Office of General Services reserves the right to conduct more frequent monitoring reviews than described above.

A full program review of distributing regional food banks that the State has a direct contract with is required once every four years. This review will include (at a minimum):

- Eligibility determinations;
- Food ordering procedures;
- Storage and warehouse procedures (where appropriate);
- Delivery;
- Inventory controls (where appropriate);
- Approval of distribution sites;
- Reporting and record keeping procedure;
- Allowable cost determinations, and
- Civil rights.

Emergency Procedures

If a State of Emergency is declared by the Governor of the State of New York, OGS Food Distribution may enact an emergency procedure to address the situation. OGS Food Distribution will notify food banks of the procedure and identify the time period that the indicated procedure shall be in effect.

State of Emergency:

If a State of Emergency is declared by the Governor of the State of New York, OGS Food Distribution may temporarily increase the total household income threshold for all household members to be at or below 300% of the federal poverty guidelines in areas impacted by the State of Emergency.

Pandemic:

- A. OGS may waive the signature requirement for the annual attestation for those in affected areas. A verbal attestation, recorded by an intake person is acceptable. The intake person is required to record the name, address, and number in household. In place of the signature, the intake person may indicate an acronym provided by OGS in the signature section, i.e. COVID-19, after receiving the verbal attestation.
- B. OGS may allow temporary pop-up (tailgate) sites for the distribution of USDA Foods. These pop-up sites must be administered by the food bank as the food bank is the entity required to maintain recording-keeping of distributed USDA Food.
- C. OGS may allow food banks to break down cases at the food bank so that they can prepare household pandemic kits with enough food for an extended period.
- D. OGS may allow for soup kitchens and other congregate feeding sites to prepare and distribute to-go or take-out meals.

**Please note that the above procedures do not circumvent the normal TEFAP eligibility guidelines.*