

THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP) APPLICATION/AGREEMENT

Agreement between State Agency and TEFAP Agency for Reimbursement and foods furnished by the United States Department of Agriculture For Fiscal Year 2011

DEFINITIONS OF TERMS:

In accordance with the Agreement between the State of Michigan, Department of Education, and the United States Department of Agriculture, this Agency hereby makes application on behalf of itself to act as distributor for foods donated by the United States Department of Agriculture, (hereinafter referred to as USDA) to the Michigan Department of Education, Food and Nutrition Program (hereinafter referred to as the State Agency) for distribution to eligible recipients in a given area, and agrees to the following terms and conditions.

THE TEFAP AGENCY AGREES TO:

1. Accept the responsibility for the distribution of USDA donated foods provided through the State Agency at agreed upon distribution points. All such distribution activities will conform to USDA program regulations, 7CFR Parts 250 and 251, as amended.
2. Serve as a distributing agent to all eligible recipients and coordinate such distribution in the geographic areas served by the Agency.
3. Provide or cause to be provided proper facilities and arrangements for the acceptance, storage and handling of such food commodities in accordance with USDA program regulations. Agencies receiving direct USDA shipments must distribute the products within 3 months of date of receipt in a safe, sanitary manner.
4. Accept the responsibility for the proper management and control of all activities pertaining to the distribution of food commodities in the Agency's geographical service area. The designated Agency representatives shall be authorized to sign on behalf of the Agency, requests for commodities, reports and other documents necessary in the operation of the food distribution program, as approved by the State Agency.
5. Accept and provide safe storage for frozen and refrigerated product unless declined during the ordering process.
6. Provide USDA donated foods to eligible recipients at no cost to the recipients. The Agency understands that USDA donated food is available for use, only to the extent that eligible persons are served.
7. Maintain a system for inventory and distribution procedures that documents USDA donated food is provided only to eligible recipients.
8. Confine distribution of food commodities received from the State Agency to persons, groups, agencies or other recipients determined to be eligible in accordance with instructions issued by the State Agency.
9. Permit representatives of USDA and/or the State Agency to:
 - a. Inspect facilities and local sites utilized in the storage and distribution of USDA donated foods;
 - b. Review and copy records pertaining to storage and distribution activities; and
 - c. Conduct audits.
10. Submit the following reports by the dates indicated to the State Agency:
 - a. Food Receipt/Distribution Report (SM-4699),
 - b. Losses and Gains Report (SM-4742-A); and
 - c. Disposal Authorization (SM-4742-B) are **due by the 10th of the month following the distribution month and/or receipt of commodities.**
 - d. Cost Report (SM-4699-C) is **due by the 10th of the month following the end of each quarter.**
 - e. TEFAP Commodity Value Report due within 30 days of the end of the quarter being reported.
11. Distribute USDA food commodities in quantities and/or manner to discourage waste, deterioration or misuse.

12. Furnish proper storage and facilities to properly safeguard against theft, spoilage and other losses as recommended by the State Agency for all USDA commodities requested and accepted by the Agency. All storage facilities must be licensed by the Michigan Department of Agriculture. The Agency agrees to install thermometers, suitable ventilation, provide specific temperatures for commodities and use all product on the basis of the First In, First Out (FIFO) inventory system. If recommended storage is not available within the Agency's own buildings, it will be permissible to remove the commodities from their premises for the purpose of providing proper storage in local commercial storage facilities or with merchants who have such storage, provided the Agency makes arrangements with said facilities or merchants to maintain a current record of receipts, withdrawals and balances and be licensed by the Michigan Department of Agriculture. Under no circumstances may donated commodities be stored in private homes.
13. Maintain complete and accurate records pertaining to all transactions relating to the receipt, disposal and inventory of commodities, including records with respect to the receipt and disbursement of funds arising from operation of the distribution program. Such records shall be retained by the Agency for a period of three (3) years from the end of the fiscal year to which they pertain and shall be available for inspection by representatives of the State Agency and/or the USDA at a reasonable time or place.
14. Make available at any reasonable time to the State Agency and/or federal representatives of the USDA for audit purposes, all records, including financial records and reports pertaining to the distribution of commodities.
15. Assume liability for any losses or damage to a food commodity caused by fire, water, wind, theft, rodents, or infestation, **THROUGH FAULT OR NEGLIGENCE BY THE AGENCY**; or failure to provide proper storage, care of handling while in the warehouse, also incurred during transportation and distribution to recipients; for diversion to ineligible recipients; and will reimburse the State Agency or replace the lost food in kind, upon receipt of a statement indicating the value of the food commodity, which is furnished by USDA, as directed by MDE.

THE MICHIGAN DEPARTMENT OF EDUCATION, FOOD AND NUTRITION PROGRAM AGREES TO:

1. Provide appropriate and timely information, clarification and/or technical assistance in the following areas:
 - a. Eligibility requirements for recipients
 - b. Distribution methods and procedures
 - c. All amendments or information pertaining to USDA rules and regulations and the Michigan State Plan of Operation
 - d. Financial, inventory and distribution reporting requirements
 - e. Allowable costs
 - f. Reimbursement procedures
 - g. Accounting and audit requirements/exceptions.
2. Provide advance notice of type and amount of USDA foods which will be available for distribution by the Agency and provide timely information on changes in the notices.
3. Provide a suggested issuance rate for food to be distributed.
4. Provide reimbursement payments to the Agency. Reimbursement payments will be made quarterly. Payment rate will be established by the State Agency based on the funding formula approved by the State Board of Education. The formula utilizes county poverty and unemployment data to calculate a weighted average. All reimbursement payments will be the lessor of the costs reported by the agency and the maximum reimbursement rate.

OTHER:

1. Political Activity Prohibited: None of the funds, materials, property or services made available because of this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
2. Religious Activity Prohibited: There shall be no religious instruction or proselytizing as part of, or in connection with, the performance of this Agreement.
3. General Provisions:
 - a. Merger or Integration: This Agreement constitutes the entire Agreement between the State Agency and the Agency with respect to the subject matter hereof and there are no other or further written or oral understanding or agreements with respect hereto.

3. General Provisions: (Continued)

- b. Modification: No variation or modification of this Agreement, and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the State Agency and the Agency.
 - c. Assignment of Delegation: No assignment or delegation of this Agreement may be made, in whole or in part, without the written consent of the State Agency or the Agency;
 - d. Termination: The State Agency or the Agency may terminate this Agreement by giving thirty (30) days notice in writing to the other party. The State Agency may cancel this agreement immediately upon receipt of evidence that the terms and conditions thereof have not been fully complied with by the Agency. Subject to such notice of termination or cancellation of the Agreement, the Agency agrees to comply with the instructions of the State Agency, either to: 1) distribute all remaining inventories of USDA commodities in accordance with the provisions of this Agreement; or 2) release USDA commodities to the State Agency at no cost.
4. Indemnification: Both parties shall indemnify, defend and hold harmless each other against any and all expense and liability of any kind which the parties may sustain, incur or be required to pay arising out of this Agreement provided, however, that the provisions of this paragraph shall not apply to liabilities or expenses caused by, or resulting from, the acts or omissions of either party or any of their officers or employees.
5. Confidentiality: The use or disclosure of information concerning services, applicants, or recipients obtained in connection with the performance of this Agreement shall be restricted to purposes directly connected with the Administration of the services provided through this Agreement.
6. The Agency hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement. As provided in FNS Instruction 113-1, front line staff and volunteers must receive annual Civil Rights training.
7. Right to Know Act (Act 80 of 1986) – The “Right to Know Act” is intended to provide protection and information to employees who encounter hazardous substances in the workplace. The manufacturing industry must comply with requirements of labeling containers of hazardous materials, provide access to material safety data sheets, worker education, and training. Products having hazardous and/or potentially hazardous substances must be labeled accordingly.
8. Debarment and Suspension: Pursuant to 7 CFR 3019.13 and 3017, the Agency is responsible for ensuring that a contactor has not been debarred and suspended according to the Excluded Parties List System (EPLS) maintained by the General Services Administration which contains the names and other information about persons ineligible to participate in federal programs.
9. The following item shall be an addendum to this Agreement:

The Michigan TEFAP State Plan of Operation (available upon request)

TERM OF AGREEMENT:

The period of this Agreement is **October 1, 2010, to September 30, 2011 and any additional periods agreed to by the State Agency and the Agency.**