

**THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)
APPLICATION/AGREEMENT
Agreement between State Agency and TEFAP Agency
For Reimbursement and Receipt of Food Furnished by
the United States Department of Agriculture
For Fiscal Year 2016**

DEFINITION 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.

1. THE TEFAP AGENCY AGREES TO: Accept the responsibility for the distribution of USDA Foods provided through the State agency at agreed upon distribution points. All such distribution activities will conform to USDA program regulations, 7 CFR 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. Agency will provide the name and address of each certification, food distribution, and storage site under its jurisdiction.
3. Provide or cause to be provided proper facilities and arrangements for the acceptance, storage and handling of such USDA Foods in accordance with USDA program regulations. Agencies receiving direct USDA shipments must distribute the products within three 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 USDA Foods in a specified area and comply with all the fiscal and operational requirements prescribed by the State agency and as required by 7 CFR Parts 250 and 251. The designated Agency representatives shall be authorized to sign on behalf of the agency, requests for USDA Foods, reports, and other documents necessary in the operation of the food distribution program, as approved by the State agency. Agency staff will attend meetings and trainings designated by State agency.
5. Accept and provide safe storage for frozen and refrigerated product unless declined during the ordering process.
6. Provide USDA Foods to eligible recipients at no cost to the recipients. The Agency understands that USDA Foods are available for use, only to the extent that eligible persons are served.
7. Maintain a system for inventory and distribution procedures that documents USDA Foods are provided only to eligible recipients.
8. Significant changes to distribution practices require the approval of the State agency before being implemented by the Agency.
9. Confine distribution of USDA Foods 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.
10. Permit representatives of USDA and/or the State agency to:
 - a. Inspect facilities and local sites utilized in the storage and distribution of USDA Foods;

- b. Review and copy records pertaining to storage and distribution activities; and
 - c. Conduct audits.
11. Submit the following reports by the dates indicated to the State agency:
- a. Food Receipt/Distribution Report;
 - b. Losses and Gains Report;
 - c. Disposal Authorization are due by the 10th of the month following the distribution month and/or receipt of USDA Foods; and
 - d. TEFAP Commodity Value Report due within 30 days of the end of the quarter being reported.
12. All shipment receipts of USDA Foods are entered in the Web Based Supply Chain Management (WBSCM) system's Received Shipment Report within two business days of delivery. Any complaints regarding USDA product should be documented on the Recipient Agency Commodity Product Complaint form and submitted to the State agency within five days after receipt of product.
13. Submit program costs in the Michigan Nutrition Data (MiND) system on a monthly basis to receive reimbursement for these costs. The term "miscellaneous costs" or other like terms are not allowed for identifying or defining submitted costs.
14. Distribute USDA Foods in quantities and/or manner to discourage waste, deterioration, or misuse.
15. Pantries receiving USDA Foods for distribution must have a Pantry Agreement on file with the Agency.
16. USDA Foods provided to pantries must be accounted for by doing the following:
- a. Foods must be transferred to pantries using a Transfer Form that identifies the products and quantities given to the pantry for distribution.
 - b. Participant signatures are to be collected and reported back to the Agency in order to be reported as part of their quarterly distribution total.
17. Pantries that receive USDA Foods from an Agency must report all undistributed USDA donated food after 90 days of receipt for collection and redistribution or disposal by that Agency.
18. Furnish proper storage and facilities to properly safeguard against theft, spoilage, and other losses as recommended by the State agency for all USDA Foods requested and accepted by the Agency. All storage facilities must be licensed by the Michigan Department of Agriculture and Rural Development (MDARD). The Agency agrees to install thermometers, suitable ventilation, provide specific temperatures for USDA Foods and use all products 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 USDA Foods 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 MDARD. Under no circumstances may donated USDA Foods be stored in private homes.
19. Maintain complete and accurate records pertaining to all transactions relating to the receipt, disposal, and inventory of USDA Foods, 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 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.

20. Maintain a written Inter-Agency Agreement when an agreement exists to allow another agency to distribute CSFP in the TEFAP agency's area of service. This agreement must identify all areas of responsibility between the two agencies.
21. 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 USDA Foods.
22. 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 USDA food, which is furnished by USDA, as directed by the State agency.
23. The Agency hereby accepts the responsibility to obtain and have knowledge of the acts, regulations, reports, provisions, and/or policies referenced in the application/agreement document.
24. At least one Agency representative must be in attendance at the All Agency Staff meetings and/or trainings held by the State agency during the fiscal year.
25. Receive direct shipments from the vendor and review the Order Status Report provided by State agency monthly. Any updates needed or discrepancies found on this status report are to be reported to the State agency immediately for resolution.
26. Agency is responsible for reviewing its current inventory, upcoming shipments, and its availability of entitlement before submitting requisitions in WBSCM. The due date for requisitions will be set by the State agency once the catalog becomes available in WBSCM.
27. Bonus products may be made available during the fiscal year from the USDA. Agency will receive its fair share based upon its assigned households. Agency can choose to accept or decline these bonus offerings from the USDA.

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; and
 - 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 through the Michigan Nutrition Data (MiND) system. 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.

5. Provide Order Status Reports to the Agency on a monthly basis. Any updates or discrepancies submitted by the Agency will be resolved promptly by the State agency.
6. Informs the Agency when USDA opens the catalogs for entitlement and/or bonus offerings. The due date for submitting requisitions will be set by the State agency in advance of the WBSCM deadlines.
7. The Agency's requisitions will be reviewed before being submitted in WBSCM to the USDA to ensure the Agency is in compliance with USDA regulation and policy.
8. The Agency will be informed of any additions/deletions made to the requisitions. The Agency will be responsible for submitting any additional orders upon the State agency's request.

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 TEFAP agency with respect to the subject matter hereof and there are no other or further written or oral understanding or agreements with respect hereto.
 - 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 TEFAP 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 TEFAP agency;
 - d. Termination: The State agency or TEFAP agency may terminate this agreement by giving thirty 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 TEFAP agency. Subject to such notice of termination or cancellation of the agreement, TEFAP agency agrees to comply with the instructions of the State agency, either to: 1) distribute all remaining inventories of USDA Foods in accordance with the provisions of this agreement; or 2) release USDA Foods 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 program applicant 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, TEFAP agency is responsible for ensuring that a contractor 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. Automatic Revocation of Tax Exempt Status: Pursuant to Food Distribution Policy Memorandum FD-118, TEFAP agency is responsible for checking and documenting the tax exempt status of its distribution and pantry sites to ensure that these sites do not appear on the Internal Revenue Service (IRS) Automatic Revocation of Exemption List. This list should be checked and documented periodically, but no less frequently than annually.
10. The TEFAP State Plan of Operation shall be an addendum to this Agreement. (Available upon request)

TERMS OF AGREEMENT:

The period of this Agreement is October 1, 2015, to September 30, 2016, and any additional periods agreed to by the State agency and TEFAP agency.