

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Human Resources Administration (HRA) proposes to repeal the existing rule entitled “Distribution of Food and Administrative Funds to Emergency Food Providers” and replace it with a new rule entitled “Emergency Food Assistance Program.” The new rule will provide HRA greater flexibility in allocating food and administrative funds to emergency food providers, thereby enabling HRA to respond effectively to community food needs as they arise.

When and where is the hearing? HRA will hold a public hearing on the proposed rule. The public hearing will take place remotely via Zoom on Friday, August 12, 2022 at 10:00 am. Those wishing to attend the hearing may join by:

Zoom (video and audio):

<https://us02web.zoom.us/j/85469930699?pwd=-zCjaaw6YqJfZHeu51DXAulTkbCHgg.1>

Or go to www.zoom.us, click on “join a meeting” and enter meeting ID 854 6993 0699 (passcode: DSS)

Phone (audio only):

+1 646 876 9923 US (New York)
Meeting ID: 854 6993 0699

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to HRA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to NYCRules@hra.nyc.gov. Please include “Emergency Food Assistance Program” or “EFAP” in the subject line.
- **Mail.** You can mail comments to:

HRA Rules
c/o Office of Legal Affairs
150 Greenwich Street, 38th Floor
New York, NY 10007

Please make clear that you are commenting on the EFAP rule.

- **Fax.** You can fax comments to 917-639-0413. Please include “EFAP” in the subject line.
- **By speaking at the hearing.** You may sign up to speak at the hearing by calling 929-221-7220 or emailing NYCRules@hra.nyc.gov on or before the start of the hearing on August 12, 2022. Speakers will be called in the order that they signed up and will be able to speak for up to three minutes.

Is there a deadline to submit comments? The deadline to submit comments is midnight on August 12, 2022. Comments, including those sent by mail, must be received by HRA on or before August 12, 2022.

What if I need assistance to participate in the hearing? You must tell us if you need language interpretation services or a reasonable accommodation to participate in the hearing. You can tell us by email at NYCRules@HRA.nyc.gov or by telephone at 929-221-7220. Please tell us in advance to allow sufficient time to make arrangements. Please tell us by August 5, 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website <http://rules.cityofnewyork.us/>. Shortly after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of all oral comments concerning the proposed rule will be available to the public on HRA’s website.

What authorizes HRA to make this rule? Sections 603 and 1043 of the City Charter and Section 34 of the New York Social Services Law authorize HRA to make this proposed rule.

Where can I find HRA’s rules? HRA’s rules are in title 68 of the Rules of the City of New York.

Was the proposed rule included in HRA’S regulatory agenda? No. This rule was not contemplated when HRA issued its most recent regulatory agenda.

What laws govern the rulemaking process? HRA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The New York City Department of Social Services/Human Resources Administration (DSS/HRA) proposes repealing Chapter 4 of Title 68 of the Rules of the City of New York, currently entitled “Distribution of Food and Administrative Funds to Emergency Food Providers,” and replacing it with a new rule entitled “Emergency Food Assistance Program” (EFAP). The proposed rule provides HRA with greater flexibility in allocating food and administrative funds to emergency food providers, which will make HRA able to respond more effectively to community food needs as they arise.

Among other changes, the proposed rule replaces HRA’s current method for allocating funding to emergency food providers. The current method relies solely on the number of persons served in the prior year. The new method considers multiple factors, including current food needs in specific geographic areas or within specific populations. By updating the funding allocation method in this way, HRA will be able to make programmatic and funding changes that are responsive to provider feedback and the rapidly changing landscape of emergency food needs in the City. Additionally, the proposed rule formalizes HRA’s ability to reimburse not-for-profit organizations for infrastructure and operational costs and to create new emergency food programs that will seek EFAP funding or to expand the reach of existing emergency food programs.

This rule is proposed pursuant to the authority of the Commissioner of DSS under Sections 603 and 1043 of the New York City Charter and Section 34 of the New York Social Services Law.

Proposed Rule

Section one. Chapter 4 of Title 68 of the Rules of the City of New York, relating to distribution of food and administrative funds to emergency food providers, is REPEALED and a new Chapter 4 is enacted to read as follows:

CHAPTER 4 **EMERGENCY FOOD ASSISTANCE PROGRAM**

§ 4-01 Definitions. For the purposes of this chapter, the following terms have the following meanings:

- (a) “Commissioner” means the Commissioner of DSS or their designee.
- (b) “DOHMH” means the New York City Department of Health and Mental Hygiene.
- (c) “EFAP” means the Emergency Food Assistance Program described in this chapter.
- (d) “Emergency food program” means a program that provides food, from a stationary location or a mobile unit, to people based on their having inadequate income to meet their immediate need for food. An “emergency food program” may provide food in the form of meals to be consumed on- or off-site or food to be prepared and consumed off-site.
- (e) “Food provider” or “provider” means an organization that operates an emergency food program.
- (f) “HRA” means the New York City Human Resources Administration.

§ 4-02 Program Administration.

HRA shall administer an Emergency Food Assistance Program pursuant to this chapter to aid existing food providers by supplying them with food. Subject to the availability of funding, HRA may reimburse food providers for costs associated with distributing food supplied through EFAP and may make funds available to EFAP food providers, or other

nonprofit organizations intending to become EFAP food providers, in order to help them establish or expand their operational capacity, increase services, or otherwise provide emergency food to more people.

§ 4-03 EFAP Advisory Group.

The EFAP Program Administrator shall select an EFAP Advisory Group consisting of members active in or concerned with the operation of emergency food programs in New York City. EFAP Advisory Group members shall serve on a voluntary basis, without compensation, and at the pleasure of the EFAP Program Administrator. The EFAP Advisory Group shall convene at least every six months and shall advise HRA on the implementation of the Emergency Food Assistance Program, including regarding food items provided by and distribution services related to the program.

§ 4-04 Food Provider Certification.

(a) HRA shall maintain a list of certified EFAP food providers that are eligible to receive food allocations from HRA under this chapter.

(b) To be certified as an EFAP food provider, the provider must submit an application to HRA and meet the following requirements:

(1) The provider must have tax-exempt status under Internal Revenue Code § 501(c)(3).

(2) If the provider provides food for individual portion service directly to consumers, whether the food is consumed on- or off-site, the provider must have a valid DOHMH Food Establishment Permit authorizing such service.

(3) The provider must demonstrate to HRA its ability to meet the program requirements set forth in section 4-05, including by demonstrating that it already follows the requirements set forth in subdivisions (a) through (p) of section 4-05, as applicable, with respect to the food it receives from other sources.

(c) Applications to become an EFAP food provider shall be made at a time and in a manner designated by HRA. The application process shall include a site visit by HRA. HRA may in its discretion open or close the application process for providers serving specified geographic areas or specified populations.

(d) If the provider's application is approved, the provider shall sign a provider agreement in which the provider agrees to comply with the program requirements set forth in section 4-05. After receiving an approved provider's signed provider agreement, HRA shall certify the provider as an EFAP food provider.

§ 4-05 Program Requirements.

Providers must agree to and comply with the following program requirements:

(a) Food must be freely distributed without regard to race, color, national origin, religious affiliation/creed, sex, disability, age, alienage or citizenship status, marital or partnership status, pregnancy, veteran status, gender identity, sexual orientation, or any other protected class under applicable law.

(b) Food must be made available to the general public. Food distribution cannot be limited to an organization's constituents.

(c) Food must not be distributed in connection with any political or religious activity.

(d) The provider must operate its emergency food program on a regular and consistent schedule approved by HRA in writing.

(e) The provider must apply for and maintain food and funding from sources other than HRA.

(f) The provider must maintain resources (including food, supplies, volunteers, space, and distribution plans) adequate to facilitate the distribution of food in a manner that is courteous and efficient.

(g) The provider must make all reasonable efforts to provide balanced, nutritious meals and food packages, taking into consideration dietary restrictions and food allergies that

are communicated to the provider by individuals seeking food. To the extent possible, the provider should also consider the cultural preferences of the constituencies it serves.

(h) Food must be stored, prepared, served, and distributed at locations authorized by HRA and in accordance with DOHMH requirements.

(i) The provider must not store or distribute food in a private residence, home, or apartment, or in a motor vehicle unless the motor vehicle has a valid permit to operate as a mobile food service establishment pursuant to the New York State Sanitary Code.

(j) Prior to its expiration, food must be used solely to serve those in need, and must not be traded, sold, or otherwise disposed of.

(k) The provider must distribute food before its expiration and prioritize distribution according to expiration date. If the food includes fresh produce, the provider must distribute the fresh produce as it is received and before spoilage occurs. If any EFAP food is spoiled or expires, the provider must notify HRA before disposing of it.

(l) Food must not be sub-distributed to other organizations.

(m) Persons receiving food must not be requested to:

(1) Make a donation;

(2) Pay for food;

(3) Exchange services for food;

(4) Participate in a religious or political activity; or

(5) As a requirement to receive emergency food, provide documentation to prove their need.

(n) The provider must:

(1) Maintain records documenting the receipt and distribution of all EFAP food.

(2) Maintain receipts documenting all costs associated with the distribution of EFAP food.

- (3) Retain all records for three years from the end of the calendar year to which they pertain, and permit inspection of those records by HRA personnel.
- (4) Maintain a copy of food receipt and distribution records at the distribution site.
- (5) Notify local police and HRA in the event of theft, vandalism, or other emergency.
- (6) Maintain requisite permits and licenses to receive and distribute the EFAP food.
- (7) Maintain on file IRS verification of its Federal Employer Identification Number (EIN) and tax-exempt status.
- (o) The provider must have a means acceptable to HRA of accounting for the number of people served.
- (p) The provider must submit, in a form and manner specified by HRA, an accurate monthly statistical report including monthly data of the number of people served and such other statistical information as HRA may request.
- (q) The provider's days and hours of operation must be shared with 311, and the provider must service any person directed to the site by 311.
- (r) The provider must respond to any complaints against it that HRA receives and notifies the provider of.
- (s) The provider must permit site visits by HRA personnel as required under this chapter.
- (t) The provider must provide outreach in a form and manner acceptable to HRA concerning the Supplemental Nutrition Assistance Program (or any successor program).
- (u) The provider must notify and receive approval from HRA prior to any temporary or permanent closing or change to the days and hours of operation or the location where food will be stored or distributed. The provider must also inform HRA of any change in contact information in a timely manner.

(v) The provider must not use administrative funds received under this chapter towards expenditures already reimbursed in whole or in part by any other entity.

(w) The provider must not use food or funds received under this chapter to supplant funds provided through any government contract to provide meals to a specific population, such as at senior centers or nonresidential treatment programs.

(x) The provider must otherwise cooperate with HRA in its administration of the EFAP program.

§ 4-06 Food Allocations and Modifications.

(a) Subject to the availability of funding, at least once per year, HRA or its designee shall make food allocations to certified EFAP food providers, in the form of a line of credit, that the provider can use to access food from HRA contracted vendors. Factors that will be considered in determining each provider's food allocation will include community need, the provider's capacity, the provider's prior performance, and racial inclusion and equity.

(b) HRA may adjust food allocations based on factors including:

(1) Failure to submit monthly statistical reports;

(2) Submission of inaccurate monthly statistical reports;

(3) A change in the provider's EFAP status from active to on-hold or closed;

(4) The provider's request that its allocation be reduced;

(5) Emergency food needs beyond those meant to be routinely met by EFAP (e.g., needs caused by fire, state of emergency, or public health emergency);

(6) Reduction of EFAP funding; or

(7) Changing demographics, changed demographic projections, or changes in availability of food programs serving a specific area.

(c) Certification as an EFAP food provider does not guarantee receipt of a food allocation under this section.

§ 4-07 Reimbursement of Expenses Associated with Distributing Food.

Subject to the availability of funding, HRA may reimburse EFAP food providers for reasonable costs of providing food received through the EFAP program, provided that the provider was funded by EFAP when such costs were incurred, including utilities; equipment related to food distribution, storage, and preparation; food service products; repairs; and personnel. Food providers may apply for such reimbursement at a time and in a manner designated by HRA. Food providers may not request funding for expenses already covered by another funding source.

§ 4-08 Capacity-Building Grants.

Subject to the availability of funding, HRA may in its discretion provide grants to certified EFAP food providers seeking to expand their emergency food programs, or to non-profit organizations seeking to establish emergency food programs that will meet the requirements of this chapter.

§ 4-09 Food Provider Monitoring and Annual Recertification Review.

To maintain certification, certified EFAP food providers must remain in substantial compliance with program requirements and pass an HRA annual recertification review. The annual recertification review will include a minimum of one site visit per year to providers that are receiving food allocations under this chapter. If HRA determines that a provider is not in substantial compliance with program requirements, HRA may reduce, suspend, or terminate the provider's food allocation or rescind its EFAP food provider certification. Before reducing, suspending, or terminating a provider's food allocation or rescinding its EFAP food provider certification, HRA will provide notice to the provider and an opportunity for the provider to object in writing.

§ 4-10 Restoration of Rescinded Food Provider Certification.

A food provider whose EFAP food provider certification is rescinded pursuant to section 4-09 may apply for restoration of such certification by demonstrating, in a form and manner specified by HRA, that the provider will comply with program requirements if such certification is restored.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Rules Governing Emergency Food Assistance Program

REFERENCE NUMBER: 2021 RG 038

RULEMAKING AGENCY: Human Resources Administration

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 1, 2022

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rules Governing Emergency Food Assistance Program

REFERENCE NUMBER: HRA-31

RULEMAKING AGENCY: Human Resources Administration

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 2, 2022
Date