



Food and
Nutrition
Service

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DATE: May 7, 2020

POLICY NO: FD-148: The Food Distribution Program on Indian Reservations

SUBJECT: Questions and Answers related to COVID-19 and the Food Distribution Program on Indian Reservations (FDPIR)¹

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

Food Distribution Directors
All FDPIR Indian Tribal Organizations (ITOs) and State Agencies

Issuing Agency/Office:	FNS/Supplemental Nutrition and Safety Programs
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Summary:	<i>This document is addressed to Indian Tribal Organizations (ITOs) and State agencies that administer the Food Distribution Program on Indian Reservations. It provides them with a series of questions and answers related to the COVID-19 public health emergency as it relates to administration of FDPIR.</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.
Body of guidance document follows.	

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) appreciates your continued partnership in the administration of the Food Distribution Program on Indian Reservations (FDPIR) as we respond to the COVID-19 public health emergency. Together, we can ensure that food assistance is provided to those in need in an efficient and thoughtful manner.

This memorandum includes questions and answers on flexibilities available to Indian Tribal Organizations (ITOs) and State agencies (SAs) on the operations of FDPIR. These flexibilities may assist ITOs and SAs that administer FDPIR 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 FDPIR?

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

The CARES Act provides \$100,000,000 to the FDPIR to prevent, prepare for, and respond to coronavirus, of which \$50,000,000 shall be for facility improvements and equipment upgrades and \$50,000,000 shall be for costs relating to additional food purchases. FNS has provided information on the funds to be used for facility improvements and equipment upgrades in a separate [guidance](#)². Additional information will be provided on the remaining funds.

FFCRA contained no provisions related to FDPIR.

2. What changes can be made to the FDPIR application process for new applicants in light of COVID-19?

To support social distancing and to reduce the exchange of paper applications, new FDPIR applicants may use an authorized representative to file an application. FDPIR merit employees may act as authorized representatives if written approval is received from the Food Distribution Director or supervisor and if it is determined by each Food Distribution Program that no one else is available. Due to the nature of COVID-19, it would be acceptable for each Food Distribution Program to make this determination and allow FDPIR merit employees to act as authorized representatives to reduce the exchange of paper applications. Thus, FDPIR merit employees can help gather new applicant information over the telephone, by e-mail, mail, fax, or text, and then sign and submit an application on behalf of the new applicant. After the application is submitted, the

² See "[Food Distribution Program on Indian Reservations \(FDPIR\): Request for Funding for Facility Improvements and Equipment Upgrades to Prevent, Prepare For, and Respond to Coronavirus Challenges](#)," dated April 27, 2020.

required certification interview can be performed with the new applicant over the telephone. Any mandatory verifications, such as income, the child support deduction, the medical expense deduction, and the shelter and utility expense deduction, can be done by email, mail, fax, text and/or through a telephone collateral contact. Note that authorized representatives may represent one or more households.

3. Are there flexibilities available for household certification periods?

Per FDPIR regulations at 7 CFR 253.7(b)(2), a household shall be assigned a certification period for as long as the household's circumstances are expected to remain stable and must not exceed 12 months, unless all adult household members are elderly and/or disabled. The ITO/SA may extend existing certification periods following the guidance below. Please note: no household shall be interviewed by telephone for any two consecutive certifications without a face-to-face interview.

- *For households with a certification period less than 12 months (or less than 24 months if all adult members are elderly or disabled):* the ITO/SA can verbally confirm with the household that circumstances remain the same and extend their certification period additional months, provided that it does not exceed 12 months (or 24 months if applicable) from the start date of their certification. Households assigned 24 month certification periods must be contacted by the ITO/SA at least once every 12 months to determine if the household wishes to continue to participate in the program and whether there are any changes in household circumstances that would warrant a redetermination of eligibility or a change in benefit level. This contact cannot be done via an authorized representative, the ITO/SA must contact a household member.
- *For households with a 12 month certification period due during tribal or State stay at home orders due to the COVID-19 pandemic:* recertification is required. However, the ITO/SA has the option to conduct the recertification interview over the telephone. If new verification is required (e.g., pay stubs), then any documentation may be exchanged via email, mail, fax, text or through a collateral telephone contact.
- *For households where all adult members are elderly and/or disabled and their 24 month certification period is due in the current or subsequent month:* recertification is required. As above, the recertification interview may be conducted over the telephone and any mandatory verifications may be exchanged electronically by email, mail, fax, text or through a collateral telephone contact.

4. Can an ITO/SA extend a pending certification longer than 30 days?

No. Pending households are defined as expedited service households. These households are in pending status for 30 days due to immediate need. Mandatory verifications must be completed before subsequent benefits may be released. FDPIR regulations at 7 CFR 253.7(a)(9) require the ITO/SA to complete the verification for households certified on

an expedited basis prior to the distribution of USDA Foods to the household for any subsequent month. The ITO/SA can explore performing the mandatory verification requirements through email, mail, fax, text or through a telephone collateral contact to verify the information.

5. Is it permissible for the ITO/SA to only do food distribution and not certification, recertification or nutrition education at tailgate sites?

Yes. Per FDPIR regulation at 7 CFR 253.7(a)(3), “Each household has the right to file an application form the same day it contacts the certification office during office hours on the reservation where the household resides”. It is permissible to not conduct certification or recertification at tailgate sites, as these are not certification offices. However, the ITO/SA may conduct certification and recertification over the telephone. While not required, FNS encourages ITOs/SAs to ensure that certification offices are open during tailgate times to enable new households to access benefits. Nutrition education activities at the tailgate sites may also be postponed.

6. Can ITOs/SAs waive income standards in FDPIR eligibility?

No. Income standards for FDPIR cannot be waived.

7. How can FDPIR distribution models better conform to social distancing?

FDPIR distribution procedures can be adjusted to limit physical contact between those involved. For example, participants can communicate their food orders via telephone, email, mail, fax, or text; and deliveries can be made through home delivery or another arrangement at the food distribution facility. Pick-up of FDPIR food packages can be done by appointment, with food packages placed for pick-up at a distance. The ITO/SA can also implement a drive-through model in which food packages are placed directly into participants’ vehicles. ITOs/SAs may also explore adding or changing tailgate locations to better serve the community. Implementing this last flexibility can be achieved by the ITO/SA submitting a written explanation via email (i.e., amendment to their FDPIR Plan of Operation) to the USDA FNS Regional Office for expedited review and approval.

8. Can ITOs/SAs forego the requirement that participants sign an issuance receipt card to indicate receipt of FDPIR benefits?

No. However, the ITO/SA can use electronic signatures (e.g., email or text) in lieu of written signatures to indicate receipt of benefits, as long as the electronic signature can be saved to the casefile. At the request of the participant, it would also be acceptable for FDPIR merit employees to sign on behalf of the participant at the time of benefit issuance.

9. Is a two-month FDPIR food package distribution allowed?

No. Only one-month distributions for FDPIR are allowed.

10. Can ITOs/SAs do a retroactive FDPIR food package distribution?

No. FDPIR benefits may not be issued retroactively. However, there are other temporary changes that ITOs/SAs can consider making to their distribution process to address concerns. For example, ITOs/SAs can prepare food packages in advance by calling program participants and making arrangements for pick-up of a pre-packed box at a set time. Pick-up time-frames can be spread out across different days and times during the day and week (on a temporary basis). Another option for ITOs/SAs, if time and staffing allows, is to explore doing more home deliveries to and for households that have expressed concern about coming into the food distribution facility.

11. Does participation in Pandemic EBT (P-EBT) disqualify a household from FDPIR?

No. P-EBT is intended to ensure that children eligible for free/reduced-price school meals continue to have access to nutritious meals when schools are unexpectedly closed. FDPIR eligibility is not impacted for households in receipt of P-EBT.

12. Will FDPIR see an increase in the size of the FDPIR Food Package to mirror an increase in SNAP benefits for the months of April 2020 through May 2020?

No. The increase in SNAP benefits for the months of the COVID-19 Public Health Emergency are emergency allotments authorized under Sec. 2302 of the Families First Coronavirus Response Act (P.L. 116-127, FFCRA) and are supplements to a household's SNAP benefits. These supplements are added on to a household's monthly SNAP benefit so the total household benefit amount may equal up to the maximum benefit amount for their household size. SNAP households that already receive the maximum benefit for their household size may not receive an additional emergency allotment. The FFCRA did not provide a similar increase in allotment for FDPIR. In FDPIR, all eligible households already receive the maximum food package allotment based on household size.

13. How are individual economic impact payments (e.g., \$1,200 received from the Internal Revenue Service (IRS)) authorized under section 2201(a) of the Coronavirus Aid, Relief and Economic Security Act (P.L. 116-136, CARES Act) treated for the purposes of FDPIR?

Pursuant to 26 U.S.C. § 6409, these payments are excluded from consideration as income in the month of receipt for FDPIR purposes. A household would not be considered to have exceeded the income limit due to these payments.

14. Do the extra \$600 of unemployment payments that were authorized under the CARES Act impact FDPIR eligibility?

7 CFR 253.6(d)(2)(ii)(B) requires that unemployment compensation be counted as unearned income. Pandemic unemployment assistance payments, pandemic unemployment compensation, and pandemic emergency unemployment compensation

authorized under CARES Act are considered unearned income for the purposes of determining a household's FDPIR eligibility. Therefore, unemployment benefits, including the extra \$600 of unemployment payments, are treated consistently with non-pandemic unemployment benefits and must be counted as unearned income when determining FDPIR eligibility.

15. How do ITOs/SAs apply to operate a disaster household distribution for COVID-19?

ITOs/SAs administering FDPIR may contact their FNS Regional Office to receive information about how to apply for disaster assistance, including receiving a standard template application form. The ITO/SA application must include required regulatory information including but not limited to, a description of the disaster/need, the number of people requiring assistance, the period of time the program will operate, the quantity and types of foods needed, and the number and location of sites. In addition, ITOs/SAs must ensure that they adhere to weekly and final reporting requirements which include providing the number of people served and amount of food issued under the disaster household distribution.

State agencies should contact their respective FNS Regional Offices with any further questions.



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