



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Community, Trade and Economic Devel.

- Permanent Rule
- Emergency Rule

(1) Date of adoption: May 9, 1995

(2) Purpose: Changes in the Emergency Food Assistance Program.
To update and clarify some terminology, and to allow for a reorganization of the program.

(3) Citation of existing rules affected by this order:

- Repealed: 365-140-045
- Amended: 365-140-030, 365-140-040, 365-140-050, 365-140-060
- Suspended:

(4) Authority for adoption:

Statute: RCW43.63A.060
Other Authority:

(5.1) **PERMANENT RULE ONLY**

Pursuant to notice filed as WSR 95-07-100 on May 9, 1995 (date). *Mar 17, 1995*

Describe any changes other than editing from proposed to adopted version:

None

(5.2) **EMERGENCY RULE ONLY**

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

Emergency Rules

- 31 days after filing
- Other (specify) 7/1/95 *
- Immediately
- Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

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STATE OF WASHINGTON
FILED

MAY 24 1995

TIME: 4:43
WSR: 1512-002

NAME (TYPE OR PRINT)

Andrew Lofton

SIGNATURE

Andrew Lofton

Deputy Director

DATE

5-23-95

AMENDATORY SECTION (Amending WSR 94-18-073, filed 9/2/94, effective 10/3/94)

WAC 365-140-030 Definitions. (1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of the department of community, trade, and economic development.

(3) "Food bank" means an emergency food program that distributes unprepared food (~~and other products~~) on a regular basis without a charge.

(4) "Food distributor" means a food distribution agency that collects, warehouses, and distributes food (~~and other products~~) to emergency food programs and other charities on a county, regional, or state-wide basis.

(5) "Commodity program" means a program that primarily distributes USDA surplus commodities to clients (TEFAP).

(6) "Emergency food assistance program" means the ~~((multifaceted))~~ state-wide ~~((administrative))~~ activities ~~((carried out within))~~ of the department ~~((to allocate, award, and monitor state funds appropriated))~~ to assist local ~~((food banks and food distributors, tribes or tribal organizations, and other food programs))~~ emergency food programs by allocating and awarding state funds.

(7) "Applicant" means a public or private nonprofit organization, tribe or tribal organization which applies for state emergency food assistance.

(8) "Contractor" means an applicant which has been awarded state funds under the emergency food assistance program, and which has entered into a contract with the department of community, trade, and economic development to provide emergency food assistance to individuals.

(9) "Lead agency contractor" means a contractor which may subcontract with one or more local ~~((organizations))~~ food banks to provide emergency food assistance to individuals, and with food distributors to provide food to food banks.

(10) "Tribal food voucher program" means the state-wide ~~((administrative))~~ activities ~~((carried out within))~~ of the department ~~((to))~~ which allocate~~((r))~~ and award~~((, and monitor))~~ state funds ~~((appropriated))~~ to ~~((assist))~~ tribes ~~((or))~~ and tribal organizations ~~((in issuing))~~ that issue food vouchers to clients.

(11) "Religious service" means any sectarian or nondenominational service, rite, or meeting that involves worship of a higher being.

(12) "Participating ~~((agency))~~ food bank" means a local public or private nonprofit ~~((organization))~~ food bank which enters into a subcontract with a lead agency contractor to provide emergency food ~~((program services))~~ assistance to individuals.

(13) "Emergency food" means food that is given to clients who do not have the means to acquire that food themselves, so that they will not go hungry.

(14) "Special dietary needs" mean funds to purchase food that meets the nutritional needs of special needs population.

(15) "In-kind" means the value of volunteer services or donated goods such as staff time, rent, food, supplies and transportation.

(16) "Administrative costs" mean management and general expenses, including membership dues, that cannot be readily identified with a particular program or direct services.

(17) "Operational expenses" mean those costs clearly identifiable with providing direct services to eligible clients, or distribution services to food banks such as staff time, transportation costs, and equipment rental.

AMENDATORY SECTION (Amending Order 93-06, filed 8/25/93, effective 9/25/93)

WAC 365-140-040 Contractor funding allocation and award of contracts. At least ~~((sixty five))~~ seventy percent of the total allocation appropriated by the legislature shall be contracted ~~((for food banks and food distributors))~~ to lead agency contractors. These funds shall be for the purpose of funding the activities of food banks and food distributors, the purchase of special dietary needs foods, and providing special dietary needs training. The specific appropriation for ~~((timber dependent))~~ timber and salmon dependent communities shall be contracted to food banks in those communities. Of the remainder of the total allocation, not including department ~~((administration))~~ administrative costs, allocations shall be contracted to a discretionary program if the department elects to award such contracts, the tribal food voucher program, ((special dietary needs foods,)) and additional special dietary needs training ((and a discretionary program)). Allocations for each county shall be contracted to ~~((food banks and food distributors))~~ lead agency contractors on the following basis:

~~(1) ((Sixty percent of funds allocated for food banks and food distributors shall be provided by county to a public or private nonprofit organization for food banks.~~

~~(2) Forty percent of funds allocated for food banks and food distributors shall be provided by county to a public or private nonprofit organization for food distribution centers.~~

~~(3))~~ A formula for distributing the funds in proportion to need shall be established by the department in consultation with a committee appointed by the director or the director's designee. The formula shall address the following:

(a) Poverty population in each county; and

(b) Unemployed population in each county.

~~((4))~~ (2) The department shall award the lead agency contract to an eligible contractor as defined by the department, that is supported by a least two-thirds of the participating food banks in a county.

(3) The department may award the combined allocation for two or more counties to a single applicant.

~~((5))~~ (4) The department shall award a contract to no more than one ((food bank)) lead agency contractor in each county, with the exception of ((Pierce County, where there may be two food bank

~~lead agency contractors, and)) King County, where there may be ((five food bank)) three lead agency contractors, to administer subcontracts with one or more ((local providers of emergency)) participating food banks ((services)) and food distributors.~~

~~((6)) The department shall award contracts to food distributors which are designated jointly by the emergency food assistance program and the food bank lead agency contractors.~~

~~(7))~~ (5) Tribes that have signed the Centennial Accord may apply to the department directly for the food bank program without having to subcontract with the lead agency. They must meet all the same criteria and requirements as lead agencies.

(6) Within each lead agency service area, except for the additional funds specifically allocated for food banks in timber and salmon dependent communities, funds shall be allocated between food distributors, food banks, and special dietary needs foods and training based on a two-thirds vote of all participating food banks and the lead agency.

(7) The additional funds specifically allocated for food banks in timber and salmon dependent communities shall remain in the amounts identified by the legislature.

(8) If participating food banks designate funds for food distribution, they shall elect with a two-thirds vote of the participating food banks and the lead agency, an eligible distributor as defined by the department. They may choose more than one distributor with which to subcontract. The lead agency contractor shall be responsible for subcontracting with the food distributor(s).

(9) A formula for distributing the funds to each tribe and tribal organization participating in the tribal food voucher program in proportion to need shall be established by the department in consultation with a committee appointed by the director or the director's designee. The formula shall address the following:

(a) Poverty population in each tribe; and

(b) Unemployment population in each tribe.

(10) The department shall pay for services provided under the emergency food assistance program after the contractor submits a monthly report of expenditures incurred and a request for reimbursement.

~~((8))~~ (11) Tribes may apply for either food bank funds or tribal food voucher funds, but not for both. A tribe's allocation for either the tribal food voucher program or the food bank program shall be the amount that the tribe would receive as a participant in the tribal voucher program. (E.g., should a tribe participate in the food bank program, its allocation will not be computed from the county's total food bank funds available, but from the tribal food voucher program's total funds available.)

(12) In the event that funds are not claimed by an eligible organization in a county or that a portion of the funds allocated to a county remains unspent, the lead agency contractor may request authorization from the department to reallocate funds, within its service area, to an area of unmet need.

(13) In the event that a portion of the funds allocated to a subcontracting tribe within a tribal contractor's contract remains unspent or unclaimed, the tribal contractor may request authorization from the department to reallocate funds to one of its other subcontracting tribes with unmet needs.

WAC 365-140-050 Applicant eligibility criteria. (1) The applicant must have a certified form from the IRS stating nonprofit status under section 501(c)3, or be a public nonprofit agency, be a recognized tribe, a tribal organization with 501(c)3 status, or an unrecognized tribe with 501(c)3 status.

~~(2) The applicant ((must not require participation in a religious service as a condition of receiving emergency food or a food voucher-~~

~~(3) The applicant must provide food or food vouchers to individuals in an emergency, regardless of residency.~~

~~(4) The applicant must practice nondiscrimination in providing services and employment.~~

~~(5) The applicant must not deny food or food vouchers to an individual because of his or her inability to pay.~~

~~(6) Applicants for funding as participating agency or food distributor must have had a food bank program or food distribution center in operation for one year prior to the beginning date of the contract year.~~

~~(7) The applicant for food bank lead agency contractor may or may not actually provide emergency food program services)) for funding as lead agency must have been operating as a public nonprofit or private nonprofit with 501(c)3 status for one year prior to the beginning date of the contract.~~

(3) The applicant for funding as a participating food bank must have been operating as a public nonprofit or private nonprofit with 501(c)3 status food bank for one year prior to the beginning date of the subcontract. Participating private nonprofit food banks without 501(c)3 status may also be sponsored by a local public nonprofit agency or private nonprofit agency with 501(c)3 status.

(4) The applicant for funding as a food distributor must have been operating as a public nonprofit or a private nonprofit with 501(c)3 status food distributor for one year prior to the beginning date of the contract.

(5) The applicant for lead agency or tribal contractor may or may not actually provide emergency food program services.

(6) The applicant must practice nondiscrimination in providing services and employment.

(7) The applicant must not require participation in a religious service as a condition of receiving emergency food or a food voucher.

(8) Applicants within a county or multicounty region, or tribes with established parameters for service, may define their service area boundaries for the purpose of equitably allocating resources. The department encourages the provider to serve the client no matter what service areas the client resides in. If appropriate, the provider may then refer the client to the agency servicing the area in which the client resides, or to the tribe which has established jurisdiction over the individual, for further assistance. Providers must practice nondiscrimination when applying their service area policies.

(9) The applicant may not charge for food or food vouchers given to a client.

WAC 365-140-060 Financial support application process. (1)

Potential applicants will be notified by the department that in order to be considered for state emergency food financial assistance, an application must be submitted to the department.

(2) An applicant must make formal application using forms issued and procedures established by the department. Such application shall be for the period indicated on the contract face sheet. Failure of an applicant to make application in a timely manner, as specified by the department, may result in denial of the funding request.

(3) Department funds may not supplant other existing funding sources.

~~(4) ((The total funds received by a food bank or food distributor contractor from the department for the emergency food assistance program must be equally matched by funds from other sources during the fiscal year. No more than fifty percent of that match may be documented in-kind contributions; other emergency food assistance contractors are not required to meet such a match.~~

~~(5) Administrative costs for food bank and food distributor contractors under this program are limited to ten percent of the total contract award. Administrative costs for food bank lead agency contractors who also provide direct emergency food assistance services are limited to ten percent of the contractor's allocation for providing direct services as a participating food bank, and ten percent of the total contract award as food bank lead agency contractor; total administrative costs, however, may not exceed fifteen percent of the total contract award.~~

~~(6) Of their total contract award, tribal contractors may not spend more than ten percent on administrative costs and five percent on operational expenditures. The balance of funds is to be used for food vouchers issued to clients.~~

~~(7)) Department funds may not be used to defray costs of distributing USDA commodities under the commodity program.~~

(5) The department shall notify successful applicants and shall provide to each of them a contract for signature. This contract must be signed by an official with authority to bind the applicant and must be returned to the department prior to the award of any funds under this program.

~~((8) Department funds may not be used to defray costs of distributing USDA commodities under the commodity program.)) (6) Applicants that receive food bank or food distribution funds are subject to the following fiscal requirements:~~

(a) The total funds from the department received by a lead agency contractor, participating food bank or food distributor subcontractor for the emergency food assistance program must be equally matched by funds from other sources during the fiscal year. No more than fifty percent of that match may be documented in-kind contributions.

(b) Administrative costs for food bank and food distributor subcontractors under this program are limited to ten percent of their total contract award. Administrative costs for lead agency contractors who also provide direct emergency food assistance services are limited to ten percent of the contractor's allocation for providing direct services as a participating food bank, and ten

percent of the total contract award as food bank lead agency contractor; total administrative costs, however, may not exceed fifteen percent of the total contract award. Administrative costs for agencies who are lead agency contractors only are limited to ten percent of their total contract award.

(7) Applicants that receive tribal food voucher funds are subject to the following fiscal requirements:

(a) Tribal contractors and subcontractors must match thirty-five percent of the funds received by the department for the emergency food assistance program. No more than fifty percent of that match may be documented in-kind contributions.

(b) Of their total contract award, tribal contractors may not spend more than ten percent on administrative costs, and five percent on operational expenditures. The balance of funds is to be used for food vouchers issued to clients.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 365-140-045

Pilot project for consolidated emergency food assistance program.