



# RULE-MAKING ORDER

ORIGINAL

CR-103 (7/10/97)

(RCW 34.05.360)

Agency: CTED

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: 7/15/99

(2) Purpose: To revise sections to help with the administration of the program, increase participation, allow for greater flexibility of tribes, and update RCW references.

(3) Citation of existing rules affected by this order: 365-140

Repealed: none  
 Amended: 365-140-010, 030,040,050, & 060  
 Suspended: none

(4) Statutory authority for adoption: 43.330.040

Other Authority:

### PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 99-10-114 on 5/5/99 (date).  
 Describe any changes other than editing from proposed to adopted version: none

### EMERGENCY RULE ONLY

Under 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:

### EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date)

(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:

#### Emergency Rules

#### Permanent Rules or Expedited Repeal

- 31 days after filing
- Other (specify) \_\_\_\_\_\*
- Immediately
- Later (specify)

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

Name (Type or Print)

Jean Ameluxen

Signature

*Jean Ameluxen*

Title

Director of Intergovernmental Relations

Date

7/16/99

#### CODE REVISER USE ONLY

STATE OF WASHINGTON  
 FILED

JUL 16 1999

TIME 1:37 PM

WSR 99-15-062

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of nongovernmental entity:**

	New	<u>0</u>	Amended	<u>3</u>	Repealed	<u>0</u>
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**The number of sections adopted in the agency's own initiative:**

	New	<u>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>0</u>	Amended	<u>5</u>	Repealed	<u>0</u>

AMENDATORY SECTION (Amending Order 87-11, filed 9/18/87)

**WAC 365-140-010 Authority.** These rules are adopted under the authority of RCW (~~(43.63A.060)~~) 43.330.040 (2)(g) which provides that the director shall (~~(make such rules and regulations and do all other things)~~) adopt rules necessary (and proper) to carry out the purposes of the chapter (~~(43.63A RCW)~~). RCW (~~(43.63A.065(2))~~) 43.330.130 provides that among its functions and responsibilities the department shall (~~(administer state and federal grants and programs which are assigned to the department by the governor or the legislature)~~) coordinate services to communities that are directed to the poor and disadvantaged, including emergency food assistance.

AMENDATORY SECTION (Amending WSR 95-12-002, filed 5/24/95, effective 7/1/95)

**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 (~~(on a regular basis without a charge)~~) without charge to its clients, is open a fixed number of hours and days each week or month, and such hours and days are publicly posted.

(4) "Food distributor" means a food distribution agency that collects, warehouses, and distributes food 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 state-wide activities of the department to assist local 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 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 activities of the department which allocate and award state funds to tribes and tribal organizations 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 food bank" means a local public or private nonprofit food bank which enters into a subcontract with a lead agency contractor to provide emergency food 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 WSR 95-12-002, filed 5/24/95, effective 7/1/95)

**WAC 365-140-040 Contractor funding allocation and award of contracts.** At least seventy percent of the total allocation appropriated by the legislature shall be contracted 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 and salmon dependent communities shall be contracted to food banks in those communities. Of the remainder of the total allocation, not including department administrative costs, allocations shall be contracted to a discretionary program if the department elects to award such contracts, the tribal food voucher program, and additional special dietary needs training. Allocations for each county shall be contracted to lead agency contractors on the

following basis:

(1) 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.))~~ This formula may only be changed at the beginning of a biennial contract period.

(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.

(4) The department shall award a contract to no more than one lead agency contractor in each county, with the exception of King County, where there may be three lead agency contractors, to administer subcontracts with one or more participating food banks and food distributors.

(5) Federally recognized 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))~~ emergency food assistance 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))~~ consisting of representatives from all tribes participating in the program. This formula may only be changed at the beginning of a biennial contract period.

(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.

(11) Tribes may apply for ~~((either))~~ the food bank funds or ~~((tribal))~~ the food voucher funds ~~((, but not for))~~ or 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.))~~ Tribes will receive the same amount of funds whether they participate in one or both programs, computed as their share of the allocated EFAP tribal funds. It will be up to the discretion of each participating tribe how it allocates the EFAP funds.

(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.

AMENDATORY SECTION (Amending WSR 95-12-002, filed 5/24/95, effective 7/1/95)

**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 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.

AMENDATORY SECTION (Amending WSR 95-12-002, filed 5/24/95, effective 7/1/95)

**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) 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.

(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 nontribal lead agency contractor (~~(, participating food bank)~~) or a food (~~(distributor)~~) distribution 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. Nontribal participating food banks receiving funds from the department have two options for matching funds: They may equally match the EFAP funds, with no more than fifty percent being documented in-kind contributions; if they do not have at least one-half of their minimum match as cash, they may match their department funds by at least two hundred percent in in-kind contributions from other sources.

(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 a lead agency contractor (~~(s)~~) who also provides direct emergency food assistance services as a participating food bank and/or services as a food distributor are limited to ten percent of the contractor's allocation for providing direct services (~~(as a participating food bank, and)~~), ten percent of the contractor's allocation for providing direct services, ten percent of the contractor's allocation for providing food distributor services, 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) Tribal 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)~~) a contract award allocated to the tribal food voucher program, 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. Of funds allocated to the food bank program, tribal contractors are subject to the same spending requirements as nontribal food bank contractors as per WAC 365-140-060 (6)(b).