

**PART VII. BUREAU OF GOVERNMENT
DONATED FOOD**

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CHAPTER 160. STATE FOOD PURCHASE PROGRAM

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Authority

The provisions of this Chapter 160 issued under sections 3 and 9 of the State Food Purchase Program Act (62 P. S. §§ 4043 and 4049), unless otherwise noted.

Source

The provisions of this Chapter 160 adopted October 28, 1994, effective October 29, 1994, 24 Pa.B. 5412, unless otherwise noted.

§ 160.1. Authority and purpose.

This chapter is established by the Department under the act. The Program provides grant funds to county governments, regional food banks or emergency food providers for the purchase, transportation, storage and distribution of food to needy individuals who qualify as Program participants. The funds may also be used to repackage or process food for distribution to Program participants. This Program is intended to supplement the efforts of food pantries, soup kitchens,

regional food banks, feeding programs, shelters for the homeless and similar organizations to reduce hunger.

§ 160.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The State Food Purchase Program Act (62 P. S. §§ 4041—4049).

Administrative and incidental costs—Costs which are authorized by the act and which are necessary to the operation of the Program, but are not food purchase costs. The term includes costs of transporting, storing, distributing, processing and repackaging food for Program participants.

Advisory Committee—The Emergency Food Assistance Advisory Committee established under section 6 of the act (62 P. S. § 4046).

County government—The county which contracts with the Department to administer the Program.

Department—The Department of Agriculture of the Commonwealth.

Emergency food provider—A nonprofit organization which operates a food pantry, soup kitchen, food bank or other program to relieve hunger, undernutrition and food shortages among needy individuals and families, homeless people and victims of domestic violence.

Fiscal year—The period from July 1 of a particular year through June 30 of the succeeding calendar year.

Food purchase costs—Costs which are authorized by the act and which are incurred by a county government, a lead agency or an emergency food provider administering the Program within a particular county when it expends grant funds to obtain ownership of food. The term includes expenditures of grant funds to obtain ownership of food in transactions which qualify as exceptions to the restrictions on the transfer of contributed property under 26 CFR 1.170A-4A(b)(3)(ii) (relating to special rule for the deduction of certain charitable contributions of inventory and other property) such as transactions where the subject food had been donated to the vendor—such as a regional food bank or other entity—and where the purchase price for that donated food is a fee charged by the vendor for its storage, handling or other administrative costs.

Grant agreement—The written contract defining the rights and responsibilities of the Department and a county government or other entity, or both, that agrees to administer the Program in a particular county and expend the grant funds allocated to that county in accordance with the act and this chapter.

Grant funds—A sum of money that is the subject of a grant agreement which is to be used for purposes consistent with the act.

Lead agency—The emergency food provider or regional food bank designated by the county to participate in the Program on its behalf.

Program—The State Food Purchase Program.

Program participant—An individual or household that is in need of food assistance to supplement the diet of economically depressed persons to prevent hunger or undernutrition and that meets Program eligibility requirements as described in § 160.5 (relating to eligibility of persons to participate).

Regional food bank—A nonprofit charitable organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) which maintains an established operation involving the provision of food to nonprofit food pantries, soup kitchens, shelters or feeding centers that provide food packages or meals to people in need of food assistance. A regional food bank is an emergency food provider.

Secretary—The Secretary of the Department.

USDA—The United States Department of Agriculture.

USDA commodity programs—The food which is available through programs administered by the USDA.

§ 160.3. Grant agreement.

(a) *General requirement.* Grant funds will not be committed or expended by the Department, a county government, a lead agency or an emergency food provider administering the Program within a particular county in the absence of a grant agreement authorizing the commitment or expenditure.

(b) *Lead agency.* With the approval of the Department, a county government may subcontract with an emergency food provider to be a lead agency and administer the Program within that county.

(c) *Nonparticipating county government.* The Department will attempt to contract with county governments, or their designated lead agencies, for operation of the Program. If a county government chooses not to administer the Program and does not designate an emergency food provider to be its lead agency by the 90th day of the fiscal year (September 28), the Department will immediately attempt to enter into a grant agreement with an emergency food provider to administer the Program within that county.

(d) *Provisions.* The grant agreement shall contain provisions and address subjects reasonably necessary for the efficient administration of the Program in accordance with the act and this chapter.

§ 160.4. Permitted uses of grant funds.

(a) *General.* Grant funds may be used for food purchase costs or administrative and incidental costs.

(b) *Administrative and incidental costs.* The Department will establish a maximum percentage of grant funds that a county government, lead agency or emergency food provider administering the Program within a particular county may apply toward administrative and incidental costs. This maximum percentage will be set forth in the grant agreement and will be the same for all grant agree-

ments in effect during a particular fiscal year. The Department will seek the advice and counsel of the Advisory Committee in establishing this maximum percentage.

§ 160.5. Eligibility of persons to participate.

(a) *Primary determinant.* If the county government, lead agency or emergency food provider administering the Program within a particular county has established procedures and guidelines for determining whether persons are eligible to participate in the Program, these procedures and guidelines shall be the sole determinant of eligibility.

(b) *Department guidelines.* In counties where the county government, lead agency or emergency food provider administering the Program does not have procedures and guidelines for determining the eligibility of persons to be Program participants, persons shall be eligible to be Program participants if their incomes do not exceed 150% of the poverty levels established by the USDA.

Cross References

This section cited in 7 Pa. Code § 160.2 (relating to definitions).

§ 160.6. Charges or contributions for food.

A county government, lead agency, emergency food provider or other entity may not charge a Program participant for food obtained under the act or this chapter, or encourage a Program participant to contribute money in order to receive the food.

§ 160.7. For-profit activity prohibited.

Officials and employees of county governments, lead agencies and emergency food providers may not profit from contracting with the Department to administer the Program, or from providing services which these entities or persons are obligated to provide under a grant agreement with the Department.

§ 160.8. Food purchases.

(a) *Portions.* Food purchased with grant funds shall be procured in household or soup kitchen proportions, depending upon the intended usage.

(b) *Price.* Food purchased with grant funds shall be purchased at wholesale, competitive bid prices, or better.

(c) *Redundancy.* Food purchased with grant funds may not duplicate food items available to the county government, lead agency or emergency food provider under USDA commodity programs or through private donations unless the quantities available through these sources are insufficient to meet the needs of the county government, lead agency or emergency food provider for a particular food product.

§ 160.9. Wholesomeness of food.

County governments, lead agencies and emergency food providers administering the Program shall combine food purchased with grant funds with food available from other sources as necessary to compose a wholesome food package or meal for the Program participants. The USDA publications relating to the “Food Guide Pyramid” and “Dietary Guidelines For Americans” are recommended as a basis upon which county governments, lead agencies and emergency food providers can determine the wholesomeness of food packages or meals. The Department will provide grant recipients with copies of these guidelines.

§ 160.10. Information and assistance.

The Department will provide technical assistance and information to the entities with which it contracts to administer the Program. This assistance will include nutrition information, information relating to the establishment and operation of an emergency food provider and information regarding other Federal or State nutrition programs.

§ 160.11. Obtaining a grant agreement.

The Department will prepare a grant agreement and mail it to each county government in this Commonwealth at least 3 months prior to the start of the fiscal year or other period during which the grant agreement would be effective. If a county government chooses not to administer the Program and does not designate an emergency food provider to be its lead agency, the Department will prepare grant agreements and distribute them to emergency food providers as necessary to ensure the administration of the Program in that particular county and to ensure compliance with the act and this chapter.

§ 160.12. Plan of operation.

(a) *Plan of operation required.* The county government, lead agency or emergency food provider entering into a grant agreement with the Department shall prepare and submit to the Department a plan of operation for administering the Program.

(b) *Contents.* The plan of operation shall set forth the following:

(1) The designation of the county government, lead agency or emergency food provider which shall administer the Program under the terms of the grant agreement.

(2) The names, addresses and positions of those legally responsible under the grant agreement, if other than the county government.

(3) A description of the food distribution system that shall be used to allocate food to emergency food providers and Program participants.

(4) A description of the system that shall be used to allocate grant funds to emergency food providers, if applicable.

(5) The procedures or guidelines which shall be used for determining the eligibility of persons to be Program participants.

(6) A description of the procedures that shall be utilized to collect and assemble the data required in the annual report described in section 7(b) of the act (62 P. S. § 4047(b)).

(7) A statement that grant funds may not be used with respect to “Foods of Minimal Nutritional Value,” as those foods have been most recently defined by the USDA at 7 CFR Part 210, Appendix B (relating to categories of foods of minimal nutritional value), and a description of the measures which shall be taken to enforce this prohibition.

(8) The procedures or guidelines which shall be used to prevent the expenditure of grant funds to duplicate food items that are otherwise available to the county government, lead agency or emergency food provider under USDA commodity programs or through private donations of food to the emergency food providers—such as regional food banks and similar entities—unless the expenditures are permitted under section 3(b)(3) of the act (62 P. S. § 4043(b)(3)).

(9) Other information as the Department may require in furtherance of the provisions of the act or this chapter.

(c) *Filing.* The original of the plan of operation, plus three copies, shall be forwarded to the Department in the same manner and at the same time as the grant agreement. See § 160.13 (relating to filing the grant agreement).

§ 160.13. Filing the grant agreement.

(a) *Place and time.* The grant agreement shall be completed by the county government, the lead agency or the appropriate emergency food provider and returned to the Department of Agriculture, Bureau of Government Donated Food, 2301 North Cameron Street, Room 401, Harrisburg, PA 17110-9408 by June 1 immediately preceding the start of the fiscal year, or 30 days prior to the commencement of the grant agreement if the grant agreement is to commence on a date other than the start of the fiscal year.

(b) *Incomplete or inaccurate material.* The Department will review each grant agreement and plan of operation for completeness and accuracy within 20 days of receipt. If a grant agreement or plan of operation is found to be incomplete or inaccurate, the Department will issue notice to the appropriate county government, lead agency or emergency food provider within that 20-day period, may request additional documentation and may discontinue further processing until the required information is received.

Cross References

This section cited in 7 Pa. Code § 160.12 (relating to plan of operation).

§ 160.14. Commencement and termination of grant agreement.

The Department may terminate a grant agreement if funds are not available for the subject grant. A grant agreement will not commence until funds are available for the subject grant. The Department may immediately terminate a grant agreement, by written notice, if any of the terms of the grant agreement, the act or this chapter are violated by a party to the grant agreement. If the termination is not related to a violation of the terms of the grant agreement, the act or this chapter by a party to the grant agreement, the Department will give at least 30 days advance written notice of the termination date of a grant agreement. A written notice of grant agreement termination will set forth the reason for termination.

§ 160.15. Allocation of grant funds.

(a) *Formula.* The Department will, in consultation with the Advisory Committee, determine the formula which will be used in a particular fiscal year in allocating grant funds among the entities administering the Program in each county. In determining this formula, the Department will consider county unemployment statistics, provided annually by the Department of Labor and Industry, county food stamp and Medical Assistance statistics, provided annually by the Department of Public Welfare, Federal income poverty guidelines, provided annually by the USDA, and other relevant information.

(b) *Disbursement.* The Department will not disburse grant funds with respect to the Program in a particular county before a grant agreement is in effect. Thereafter, grant funds for a particular fiscal year will be disbursed in equal, or nearly equal, quarterly installments. If the term of a grant agreement is less than 1 fiscal year, the grant agreement may prescribe a different schedule of disbursement.

§ 160.16. Deadline for expenditures.

Grant funds may not be committed or expended in a fiscal year other than the particular fiscal year specified in the grant agreement. Grant funds which remain uncommitted or unexpended at the conclusion of the particular fiscal year specified in the grant agreement shall be immediately returned to the Department, unless otherwise agreed to, in writing, by the Department.

§ 160.17. Advisory Committee.

(a) *Purpose.* The Advisory Committee shall offer advice and recommendations to the Department on the administration of the Program.

(b) *Composition.* The Advisory Committee will be appointed by the Secretary and consist of between 10 and 15 members, no more than 3 of whom are employees of the Commonwealth. The membership of the Advisory Committee will be as follows:

- (1) The Secretary, or a designee.

- (2) The Program Administrator.
- (3) A representative of the Governor's Office.
- (4) Two regional food bank representatives.
- (5) At least two but no more than five county government/emergency food provider representatives.
- (6) At least two but no more than four food and nutrition advocate representatives.
- (7) One dietician, nutritionist or other person trained in nutrition.

(c) *Terms of appointees.* Advisory Committee members described in subsection (b)(1), (2) or (3) shall be *ex officio* members. The terms of the initial appointees of the Secretary under subsection (b)(4)—(7) will be determined by the Secretary and staggered so that the terms of no more than 1/3 of the initial appointees expire in each of the first 3 years of the Advisory Committee's existence. Thereafter, the term of each of these appointees shall be 3 years. The term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Persons may not be appointed to successive terms, except that a person appointed to replace another member whose term has not expired may be appointed to a successive term.

(d) *Chairperson; meetings.* The Advisory Committee shall elect a chairperson at the first meeting of each calendar year. The chairperson shall call and conduct a meeting at least twice each year, and may call other meetings when appropriate.

(e) *Reimbursement.* Members of the Advisory Committee are not entitled to compensation for services, but are entitled to reimbursement for travel expenses incurred in connection with the performance of duties at the current rates set by the Commonwealth.

§ 160.18. Annual report.

(a) *Program administrators.* The entity with whom the Department has contracted to administer the Program in a particular county shall submit an annual report to the Department no later than 90 days from the end of the fiscal year (September 28). This annual report shall account for or specify the expenditure of grant funds, the number of individuals served, the number of households served, the types of food purchased and the cost and weight of food purchased, in pounds and by type of food, and other information as the Department may reasonably require.

(b) *Department.* The Department will submit an annual Program report to the Secretary of the Senate and the Chief Clerk of the House of Representatives no later than 180 days from the end of the fiscal year (December 27). This annual Program report will address, but will not be limited to, a summary of the meetings and activities of the Advisory Committee, the allocation and expenditure of

grant funds, the number of individuals served, the number of households served, the quantity of food distributed—by type of food—and the total and per-pound cost of the food purchased.

§ 160.19. Audit.

Program activity shall be subject to review and audit at reasonable times by the Department, the Auditor General of the Commonwealth, and individuals authorized by the Department to determine compliance with statutes, regulations and policies. Contractors, subcontractors or approved agencies receiving funds or food under the Program shall be subject to review and audit at reasonable times by the Department, the Auditor General of the Commonwealth, and individuals authorized by the Department to determine proper operation and compliance with statutes, regulations and policies.

§ 160.20. Deficits.

The Department's financial obligation will be limited to the amount of the grant. The Department will not be responsible for funding a deficit incurred by county government, lead agency or emergency food provider.

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(398092) No. 542 Jan. 20

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