Coronavirus (COVID-19) Pandemic: Purchase and Distribution of Food Eligible for Public Assistance

FEMA Policy FP 104-010-03

BACKGROUND

Under the President's March 13, 2020, COVID-19 emergency declaration[1] and subsequent major disaster declarations for COVID-19, state, local, tribal, and territorial (SLTT) government entities and certain private non-profit (PNP) organizations are eligible to apply for assistance under the FEMA Public Assistance (PA) Program. This policy is applicable to eligible PA applicants only and is exclusive to emergency and major disaster declarations for the COVID-19 pandemic.

As of April 9, 2020, 51 states and territories had "stay at home" orders in place.[2] The population at high-risk for severe illness from COVID-19 includes people 65 years and older and people of any age who have serious underlying medical conditions, including people with chronic lung disease or moderate to severe asthma, people with serious heart conditions, people who are immunocompromised (e.g., those undergoing cancer treatment, smokers, those with HIV or AIDs), and people with severe obesity, diabetes, or liver disease, and people undergoing kidney dialysis.[3] Due to the impact of the COVID-19 pandemic, there may be areas where it will be necessary as an emergency protective measure to provide food to meet the immediate needs of those who do not have access to food as a result of COVID-19 and to protect the public from the spread of the virus.

PURPOSE

This policy defines the framework, policy details, and requirements for determining eligible work and costs for the purchase and distribution of food in response to the COVID-19 Public Health Emergency to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations. Except where specifically stated otherwise in this policy, assistance is subject to PA Program requirements as defined in Version 3.1 of the Public Assistance Program and Policy Guide (PAPPG).[4]

[1] Proclamation 9994 of March 13, 85 FR 15337 (Mar. 18, 2020); *see also* www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration.
[2] https://www.nga.org/coronavirus/#states
[3] https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html.
[4] The current version of the Public Assistance Program and Policy Guide (PAPPG), Version 3.1, is available on the FEMA website at www.fema.gov/media-library/assets/documents/111781.

PRINCIPLES

A. FEMA will provide flexibility to applicants to protect the health and safety of impacted communities in response to the COVID-19 Public Health Emergency through the purchase and distribution of food.

B. FEMA will responsibly implement this policy and any assistance provided in a consistent manner through informed decision-making and accountable documentation.

C. FEMA will engage with interagency partners, including the U.S. Department of Agriculture (USDA), the U.S. Department of Health and Human Services (HHS), and U.S. Department of Housing and Urban Development (HUD), to ensure this assistance does not duplicate other available assistance. Engagement with USDA will include coordination with USDA's efforts on food bank response.

REQUIREMENTS

A. APPLICABILITY

Outcome: To establish the parameters of this policy and ensure it is implemented in a manner consistent with program authorities and appropriate to the needs of the COVID-19 Public Health Emergency.

1. This policy applies to:

    a. All Presidential emergency and major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, issued for the COVID-19 Public Health Emergency.

    b. Eligible PA applicants under the COVID-19 emergency declaration or any subsequent COVID-19 major disaster declaration.

    c. This policy does not apply to any other emergency or major disaster declaration.

B. GENERAL ELIGIBILITY CONSIDERATIONS

Outcome: To define the overarching eligibility framework for purchasing and distributing food in response to COVID-19 declarations.

1. Legal Responsibility.

    a. To be eligible for PA, an item of work must be the legal responsibility of an eligible applicant.[5] Measures to protect life, public health, and safety are generally the responsibility of state, local, tribal, and territorial (SLTT) governments.

[5] 44 CFR §206.223.

b. Legally responsible SLTT governments may enter into formal agreements or contracts with private organizations, including private nonprofit (PNP) organizations such as food banks, to purchase and distribute food when necessary as an emergency protective measure in response to the COVID-19 Public Health Emergency. In these cases, PA funding is provided to the legally responsible government entity, which would then reimburse the private organization for the cost of providing those services under the agreement or contract.

2. Work Eligibility.

   a. In accordance with sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"), emergency protective measures necessary to save lives and protect public health and safety, including the purchase and distribution of food, may be reimbursed under the PA program.

   b. When necessary as an emergency protective measure, eligible work related to the purchase and distribution of food in response to the COVID-19 pandemic includes:
      i. Purchasing, packaging, and/or preparing food, including food commodities, fresh foods, shelf-stable food products, and prepared meals;
      ii. Delivering food, including hot and cold meals if necessary, to distribution points and/or individuals, when conditions constitute a level of severity that food is not easily accessible for purchase; and
      i. Leasing distribution and storage space, vehicles, and necessary equipment.

   c. Several indicators may demonstrate the need to purchase and distribute food in response to the COVID-19 pandemic:
      i. Reduced mobility of people in need due to government-imposed restrictions, including "stay-at-home" orders, which prevent certain populations from accessing food;
      ii. Marked increase or atypical demand for feeding resources; or
      iii. Disruptions to the typical food supply chain within a given jurisdiction.

   d. Populations in an impacted community that may need the provision of food as a lifesaving and life-sustaining commodity, may include:
      i. Those who test positive for COVID-19 or have been exposed to COVID-19, but who do not require hospitalization;[6]
      ii. High-risk individuals, such as people over 65 or with certain underlying health conditions;[7] and

[6] Any collection or handling of information with regard to the health status of individuals must be compliance with applicable privacy laws, including the Health Insurance Portability and Accountability Act of 1996. FEMA will not be collecting any health information.

[7] The distribution of supplies and other relief and assistance activities shall be accomplished without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status. Section 308 of the Stafford Act, 42 U.S.C. § 5151, as amended.

iii. Other populations based on the direction or guidance of the appropriate public health official.

3. Cost Eligibility.

a. All claimed costs must be necessary and reasonable in order to respond to the COVID-19 Public Health Emergency and are subject to standard program eligibility and other Federal requirements, including the prevailing cost-share for the respective declaration.[8]

b. Applicants must follow applicable cost principles and procurement requirements.[9]

i. Costs claimed by SLTT governments must be reasonable pursuant to Federal regulations and Federal cost principles.[10] A cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

ii. States and territorial governments are required to follow their own procurement procedures, comply with 2 CFR §200.322, and include any clauses required by 2 CFR §200.326. Local and tribal governments must follow their own procedures and comply with 2 CFR §200.318.

iii. In accordance with the March 17, 2020, memorandum from David Bibo, Acting Associate Administrator for the Office of Response and Recovery, and Bridget E. Bean, Assistant Administrator for the Grants Program Directorate, for the duration of the Public Health Emergency, as determined by U.S. Department of Health and Human Services (HHS), local governments, tribal governments, PNPs, and other non-state entities may proceed with new and existing non-competitively procured contracts. The March 17, 2020 memorandum and other information related to procurement specific to COVID-19 declarations are available on the FEMA website at www.fema.gov/media-library/assets/documents/186350.

c. Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same costs.[11]

[8] In certain circumstances, the Regional Administrator may require the submission of an internal control plan, pursuant to 2 CFR §200.303, in particular when the SLTT government is implementing residential delivery of meals to targeted groups of individuals who are need of such assistance.
[9] *See. COVID-19 Guidance: Procurements Under Grants During Periods of Exigent or Emergency Circumstances,* March 17, 2020. (https://www.fema.gov/media-library/assets/documents/186350.)
[10] 2 CFR §200.404; OMB Circular 87.
[11] 42 U.S.C. § 5155.

4. Time Limitations.

    a. FEMA may provide funding for an initial 30-day time period.

    b. SLTT governments may request a 30-day time extension from the Regional Administrator (RA) with documentation showing continued need.

    c. Work may not extend beyond the duration of the COVID-19 Public Health Emergency, as determined by HHS.

Keith Turi
Assistant Administrator, Recovery Directorate

April 11, 2020
Date

ADDITIONAL INFORMATION

REVIEW CYCLE

This policy will be reviewed periodically during the COVID-19 Public Health Emergency. The Assistant Administrator of Recovery is responsible for authorizing any changes or updates. This policy will sunset with the closure of the national emergency for COVID-19 and any subsequent major disaster declarations for COVID-19.

AUTHORITIES and REFERENCES

Authorities

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended
- Title 44 of the Code of Federal Regulations, Part 206, Subparts G and H

References

- Public Assistance Program and Policy Guide, Version 3.1

MONITORING AND EVALUATION

FEMA will closely monitor the implementation of this policy through close coordination with regional and field staff, as appropriate, as well as interagency partners and SLTT stakeholders. Various planning calls are conducted daily related to COVID-19 declarations. Additionally, FEMA has set up a mailbox for COVID-19 questions and concerns at covid19paoperations@fema.dhs.gov.

QUESTIONS

Direct questions to covid19paoperations@fema.dhs.gov.