

as amended; section 709 of the Food and Agricultural Act of 1963, as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, by section 1304 of the Food and Agriculture Act of 1977, may be made available under part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(d) *Food distribution program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of commodities made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to Food Stamp Program benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the four food groups: Meat, Vegetable-Fruit, Milk, and Bread-Cereal. FCS shall periodically notify State agencies of the kinds of commodities it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed commodities cannot be delivered, the Department shall arrange for delivery of a similar commodity within the same food group.

§253.4 Administration.

(a) *Federal administration.* Within the Department of Agriculture, the Food and Consumer Service (FCS) shall be responsible for the Food Distribution Program. FCS shall have the power to determine the amount of any claim and to settle and adjust any claim.

(b) *State agency administration.* (1) If FCS determines that the ITO is capable of effective and efficient administration, the ITO shall administer the Food Distribution Program on all or part of the reservation. If FCS determines that the ITO is not capable of effective and efficient administration of the Food Distribution Program, the appropriate agency of the State government shall be responsible for the Food Distribu-

tion Program on all or part of the Indian reservation. In addition, the appropriate agency of the State government may administer the Program on behalf of an otherwise capable tribe if agreed to in writing by both parties.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and appropriate State agencies may jointly request FCS approval that a single State agency administer the Food Distribution Program on all or part of the Indian reservation.

(3) An agency of State government responsible for administering the Food Distribution Program may contract Program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials, commodity issuance, determination of food preferences of households, publicizing uses of commodities, and transportation and on-site delivery services. The State agency may also use the ITO in prescreening translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations with an ITO that has been determined incapable of administering the Food Distribution Program. In all cases the State agency shall retain full responsibility for program administration.

(c) *Qualification as a reservation.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FCS determines that such area(s) does not qualify as a reservation as that term is defined in these regulations. For purposes of this part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FCS.

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this part, must show to FCS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians;

(ii) A clear and precise description of the boundaries of such geographic area(s).

(d) *Application by an ITO.* Any ITO which desires to participate in the Food Distribution Program shall file an application with the FCS Regional Office serving the State or States in which the reservation is located. The ITO shall specify if it is requesting the Food Distribution Program alone or concurrently with the Food Stamp Program. The ITO shall also specify whether it wants either or both programs on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). Additionally, if the ITO wishes to serve areas near the reservation, the ITO shall describe the geographic boundaries of the near area(s) for FCS review and approval. Any urban place inside a reservation can be served by the Food Distribution Program. Any urban place outside reservation boundaries may not be served. However, an ITO or State agency can request the Department to change those limitations with justification. The ITO application shall also provide other information requested by FCS, including but not limited to, that the ITO serves an established reservation or a reservation otherwise qualified as described in paragraph (c) of this section. Properly addressed applications shall be acknowledged by the FCS Regional Office in writing within five working days of receipt.

(e) *Tribal capability.* (1) In determining whether the ITO on a given reservation is potentially capable of effectively and efficiently administering a Food Distribution Program, allowing for fulfillment of that potential through training and technical assistance, FCS shall consult with other sources, such as the BIA, and shall consider the ITO's experience, if any, in

operating other government programs and its management and fiscal capabilities. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(i) Order and properly store commodities,

(ii) Certify eligible households,

(iii) Arrange for physical issuance of commodities,

(iv) Keep appropriate records and submit required reports,

(v) Budget and account for administrative funds,

(vi) Determine the food preferences of households, and

(vii) Conduct on-site reviews of certification and distribution procedures and practices.

(2) The Food and Consumer Service (FCS) shall make a determination of potential Indian Tribal Organization (ITO) capability within 30 days of receipt of a completed application for the Food Distribution Program. FCS shall promptly advise ITOs of the need for additional information if an incomplete application is received.

(3) FCS shall, if requested by an ITO which has been determined by FCS to be potentially capable of administering a Food Distribution Program, provide the ITO's designees with appropriate training and technical assistance to prepare the ITO to take over program administration. In determining what training and technical assistance are necessary, FCS shall consult with the ITO and other sources, such as the BIA.

[44 FR 35928, June 19, 1979, as amended by Amdt. 163, 45 FR 14006, Mar. 4, 1980. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

§253.5 State agency requirements.

(a) *Plan of operation.* (1) The State agency which assumes responsibility for the Food Distribution Program shall submit an annual plan of operation for approval by FCS. Approval of the annual plan by FCS shall be a prerequisite to the donation of commodities available for use by households under §253.9 of this part. No amendment to the plan of operation of any State agency shall be effective without prior approval of FCS, and FCS may require amendment of any plan as a condition of continuing approval. If the