

Food and Nutrition Service, USDA

§ 280.1

may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the designated reviewer in accordance with § 279.5(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the agency whose order is being attacked shall be sent by using any delivery method as long as the method provides evidence of delivery to the person in charge of the applicable regional office of FNS.

(c) *Trial de novo.* The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable

for the value of any sales lost during the disqualification period.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994; 64 FR 23174, Apr. 30, 1999. Redesignated and amended at 68 FR 41053, July 10, 2003; Amdt. 397, 70 FR 72354, Dec. 5, 2005]

§ 279.8 Implementation of amendments relating to administrative and judicial review.

(a) *Amendment No. 257.* The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(b) *Amendment No. 274.* The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

(c) *Amendment No. 334.* The program changes made to part 279 by this amendment are effective February 1, 1992.

[Amdt. 257, 49 FR 32539, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 334, 57 FR 3913, Feb. 3, 1992. Redesignated at 68 FR 41053, July 10, 2003]

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 280 are contained in § 271.8.

§ 280.1 Interim disaster procedures.

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of Title 5 of the

United States Code. In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size. The Secretary may also approve alternate methods for issuing food stamp benefits during a disaster when reliance on Electronic Benefits Transfer (EBT) systems is impracticable.

[Amdt. 192, 46 FR 8922, Jan. 27, 1981, as amended by Amdt. 338, 56 FR 63617, Dec. 4, 1991; Amdt. 397, 70 FR 72354, Dec. 5, 2005]

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

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AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: 44 FR 35925, June 19, 1979, unless otherwise noted.

§ 281.1 General purpose and scope.

(a) These regulations govern the operation of the Food Stamp Program on Indian reservations either separately or concurrently with the Food distribution program. In order to assure that the Food Stamp Program is responsive to the needs of Indians on reservations, State agencies are required to consult with Indian tribal organizations about the implementation and operation of the Food Stamp Program on reservations. Also, under certain specified conditions Indian tribal organizations on reservations can administer the Food Stamp Program. The Act authorizes the Secretary to pay such amounts for administrative costs as are determined

to be necessary for the effective operation of the Food Stamp Program on Indian reservations.

(b) The operation of the Food Stamp Program on Indian reservations is governed by all of the terms and conditions set forth in the Food Stamp Act of 1977 as amended and the regulations of this chapter.

(c) Additionally, under no circumstances shall any household participate simultaneously in the Food Stamp Program and the Food Distribution Program. Policy governing this prohibition is found in § 283.7(e).

§ 281.2 Administration.

(a) *Qualification.* (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 FNS 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 FNS:

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

(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).

(3) Otherwise qualified areas for which the responsible ITO has requested operation of the Food Distribution Program alone in accordance with § 283.4, rather than concurrent operation with the Food Stamp Program, shall be exempt from the requirements of this part, and shall not be considered