

§ 281.3

7 CFR Ch. II (1–1–15 Edition)

State agency's certification office which would otherwise service the area. Otherwise qualified areas for which the responsible ITO has requested operation of the food distribution Program concurrently with SNAP or areas within the reservation where FNS has determined that concurrent operation is necessary in accordance with § 283.3(b)(2) shall be subject to all requirements of this part and subchapter.

(b) *State plan.* In addition to the public comment requirements in § 272.2, the State agency shall submit for comment its service plans, and all other portions of the State plan that directly pertain to the operation of the Program for residents on the reservation to the responsible ITO for reservations that qualify under paragraph (a) of this section. The ITO shall have 30 days to provide comments in writing to the State agency. The State agency shall, if appropriate and to the extent practicable, incorporate into its plans any suggestions made by the ITO. Additionally, the State agency shall administer SNAP in a manner that is responsive to the needs of the Indians on the reservation, as determined by ongoing consultation with the ITO and by other means, regarding such areas of program operation as project area designation, operating procedures, locations and hours of certification and issuance, staffing and corrective action plans. The State agency shall maintain records of consultations on State plans and ongoing consultations held with ITO's for review by FNS. FNS shall study these records as part of reviews in accord with § 281.3 and Management Evaluation Reviews of the State agency.

(c) *Project area designation.* (1) An Indian reservation shall be designated as a separate project area or areas for the purpose of improving the accessibility of program services to Indians on the reservation unless:

(i) The State agency demonstrates to FNS that the size or population of the reservation does not warrant such designation;

(ii) The State agency demonstrates to FNS that the tribe can be adequately served by the existing or a planned project area because of the lo-

cation of certification and issuance offices;

(iii) The State agency demonstrates to FNS that such designation would reduce the availability of certification and issuance offices; or

(iv) The State agency otherwise demonstrates to FNS that such designation would impair its Statewide administration of the Program.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and the appropriate State agencies may jointly request FNS approval that a single State agency administer SNAP on all or part of the Indian reservation. A single agency of the State government would have to administer the Program under the same terms and conditions applied to all other political subdivisions within its jurisdiction. An ITO designated as a State agency pursuant to § 281.4(d) would have to administer the Program under the same terms and conditions on all areas of the reservation.

(d) *Contracts with an Indian tribal organization.* The State agency may contract program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials on issuance. 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. In all cases, the State agency shall retain full responsibility for program administration.

[44 FR 35925, June 19, 1979, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982]

§ 281.3 Determination of failure.

(a) *Request for determination of State government agency failure.* FNS shall examine State agency administration of SNAP on all or part of a reservation when requested by the ITO, the State agency or at FNS' discretion. When FNS determines that a deficiency in a State agency operation of SNAP on all or part of an Indian reservation may be serious enough to warrant a review, FNS shall advise the State agency and the ITO in writing of the alleged deficiencies and of its plans to conduct the

review and document deficiencies, if any are found. Subsequent to October 1, 1979 FNS shall complete these reviews within 90 days from receipt of an ITO's or State agency's request except under unusual circumstances such as the receipt of a large number of simultaneous requests.

(b) *Review*—(1) *Content of the review for State agency performance.* The review shall be designed to determine whether or not the State agency is properly administering SNAP on a specific reservation. When an agency of State government is administering the Program on a reservation, FNS shall as a part of the review consult with the ITO about the operation of the Program on the reservation. The review should, depending on the nature of the complaint, include but not be limited to, an analysis of some or all of the following data:

(i) The records of State agency consultation with the ITO required under § 281.2(a);

(ii) The estimated percentage of all eligible Indians on the reservation who are participating the Program;

(iii) The nature and extent of violations, if any, of the 30-day and other processing standards for Indians;

(iv) The percentage of errors made in determining eligibility and/or the amount of benefits overissued or underissued;

(v) Compliance with standards for location and hours of certification and issuance offices as required in § 272.5;

(vi) Compliance with bilingual requirements of this regulation, where appropriate;

(vii) Compliance with nondiscrimination requirements of this regulation;

(viii) Compliance with other significant program requirements;

(ix) Comparison with services provided in all other areas of the State; and

(x) Any other relevant information that becomes available during the course of reviews including information received through contacts with the Indian tribe.

(2) *Finding of no or of minor deficiencies.* If after the review FNS determines either that deficiencies do not exist or that only minor deficiencies exist, FNS shall issue a report documenting its findings to both the State

agency and the ITO and shall work closely with the State agency to achieve corrective action.

(c) *Formal warning.* After the review is completed, if FNS determines that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal under part 276. If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FNS shall notify the State, with a copy to the ITO, that the warning for those deficiencies is satisfied.

(d) *Determination of failure and sanctions.* If at any time after the formal warning period, or during or after the corrective action period, FNS determines that major deficiencies still exist which the State agency has not satisfactorily addressed or is not satisfactorily addressing, FNS shall determine State failure and may impose appropriate Federal sanctions on the State agency as specified in part 276.

(e) *ITO operations.* If FNS has determined State failure and FNS has also determined that the ITO is capable of administering a SNAP in accordance with the terms and requirements for participating State agencies as established in the Act and regulations, then the ITO shall assume administration of SNAP on the reservation. The State agency shall continue to administer SNAP on the reservation until an effective termination and transition arrangement has been completed in accordance with § 281.8.

§ 281.4 Determining Indian tribal organization capability.

(a) *Determining capability of ITO.* If the ITO wishes to administer its own SNAP on the reservation FNS shall determine the ITO's potential capability for administering SNAP in accordance with the criteria listed in § 281.4(b). FNS shall begin to evaluate the ITO's capability for all aspects of SNAP administration, allowing for fulfillment of that potential through necessary