

Food and Nutrition Service, USDA

§ 281.9

(1) *State plans.* The ITO shall prepare and submit to FNS a Plan of Operation as provided in §272.2. In completing the Plan of Operation the ITO shall affirm that it will comply with the Civil Rights assurances detailed in (b)(1)(vi) of this section.

(2) *Proposed budget.* As part of the Plan of Operation, the ITO shall annually submit to FNS a proposed statement which shall provide a summary of program information and amounts budgeted to carry out the various program functions. This information shall be submitted to FNS for approval prior to the commitment of any Federal funds for administrative costs for that year. FNS shall provide the ITO any technical assistance which is necessary to prepare this information.

(3) *Termination and transition arrangement.* An effective termination and transition arrangement shall be established as required in §281.8.

§281.5 Responsibilities of an Indian tribal organization designated as State agency.

An ITO administering SNAP on a reservation shall adhere to the Food and Nutrition Act of 2008, all subsequent amendments, and all regulations issued pursuant to that law in the same manner as any other State agency. The ITO may contract certain administrative functions to private organizations as provided in parts 274 and 277. The ITO may not, however, contract responsibility for certification activities such as interviews or eligibility determinations. The ITO shall retain full responsibility for program administration.

§281.6 Liabilities and sanctions.

An ITO administering SNAP on a reservation is subject to the same liabilities and Federal sanctions as is any other State agency. FNS shall monitor administration of the Program and conduct reviews through the Performance Reporting System described in part 275. When necessary, warning procedures and other Federal sanctions prescribed in part 276 will be implemented.

§281.7 Indian tribal organization failure.

When Performance Reporting System reviews indicate that continuing deficiencies exist and corrective action proposals (including training and technical assistance to overcome these deficiencies), and/or appropriate sanctions have not, in the opinion of FNS, resulted in a sufficient degree of improvement, FNS will conduct a review to determine if the ITO has failed to properly administer SNAP. FNS shall examine the relevant factors specified in §281.3(b)(1) and shall follow the notification and determination procedures set forth in §281.3 (c) and (d). If ITO failure is determined, FNS shall require the appropriate agency of the State government to resume administration of the Program on the reservation in accordance with an approved termination and transition arrangement.

§281.8 Transfer of program administration.

The transfer of program administration from an agency of the State government to an ITO pursuant to a determination of failure as provided for in §281.3, or from an ITO to an agency of the State government pursuant to §281.7, shall be contingent on the establishment of an effective termination and transition arrangement and an approved Plan of Operation from the State agency assuming program administration. Grant closeout procedures shall be followed in accordance with part 277. FNS shall approve the transition plan, monitor its implementation and resolve any issues which may arise during the transition and after the transfer of program administration.

§281.9 Funding.

(a) *Agency of State government.* From the funds available to carry out this provision beginning July 1, 1979, FNS may pay to each agency of State government administering a SNAP on a reservation, 75 percent of all approved administrative costs, such as: Certification, issuance, outreach, fair hearings and quality control, incurred on the reservation for residents of the reservation and approved by FNS to meet

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standards set by the Food and Nutrition Act of 2008. FNS may pay each agency of State government administering a SNAP on a reservation 75 percent of all approved administrative costs incurred off the reservation for activities begun after the effective date of these regulations that are primarily directed at providing better services for Indians on the reservation, such as hiring an interpreter or an Indian outreach worker, or moving a certification or issuance center closer to a reservation. The provisions of part 277 apply to any funds received under this section.

(b) *Indian tribal organization acting as State agency.* From the funds available to carry out the provisions of this part beginning October 1, 1979, FNS is authorized to pay to each ITO acting as a State agency and administering a SNAP on a reservation 75 percent of all administrative costs approved by FNS as needed for operation of a SNAP on a reservation. Any approval for payment of funds in excess of 75 percent must be based on compelling justification that such additional amounts are necessary for the effective operation of SNAP on the reservation. The provisions of part 277 apply to any funds received under this section.

§281.10 Appeals.

(a) *Failure/capability.* (1) Any State agency or ITO may appeal the determination made by FNS on:

(i) Whether or not the reservation definition is met;

(ii) The failure or absence of failure of an agency of State government to properly administer SNAP;

(iii) The capability or incapability of an ITO to administer SNAP;

(iv) The failure of an ITO to properly administer SNAP;

(v) The Federal matching percentage level of administrative funding made available by FNS. To prevail the State agency must show a compelling justification that additional funding is needed for the effective administration of the Program on the reservation.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determina-

tions, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph (b)(2) of this section.

(b) *Procedures—(1) Time limit.* Any State agency or ITO which wants to appeal an initial FNS determination under paragraph (a) of this section must notify the Administrator of FNS, in writing within 15 days from the date of the determination and must advise FNS if it wishes a meeting or a review of the record.

(2) *Acknowledgment.* Within five days of receipt by the Administrator of FNS of a request for review, FNS shall provide the State agency or ITO by certified mail, return receipt requested, with a written acknowledgement of the request. The acknowledgment shall include the name and address of the official designated by the Administrator to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten day of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(3) *Scheduling a meeting.* If the Administrator, FNS, grants a meeting FNS shall advise the State agency or ITO by certified mail, return receipt requested, of the time, date and location of the meeting at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (b)(2) of this section.

(4) *Review.* If no meeting is conducted, the official designated by the Administrator, FNS, shall review information presented by a State agency or ITO which requests a review, and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph