Rules and Regulations

Federal Register

Vol. 77, No. 164

Thursday, August 23, 2012

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2010–0020]

RIN 0584–AD85

Food Distribution Program on Indian Reservations: Administrative Funding Allocations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking establishes the requirements regarding the allocation of administrative funds for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, both of which are referred to as ''FDPIR'' in this rulemaking. The rulemaking amends FDPIR regulations to ensure that administrative funding is allocated in a fair and equitable manner. The final rule also revises FDPIR regulations to clarify current program requirements relative to the distribution of administrative funds to Indian Tribal Organizations (ITOs) and State agencies.

DATES: *Effective Date:* This rule is effective September 24, 2012.

FOR FURTHER INFORMATION CONTACT: Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866, ''Regulatory Planning and Review''

This final rule has been determined to be not significant for purposes of Executive Order 12866. Therefore it was not reviewed by the Office of Management and Budget (OMB).

B. Title 5, United States Code 601–612, ''Regulatory Flexibility Act''

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The administrator of the Food and Nutrition Service certified that this action will not have a significant impact on a substantial number of small entities. While ITOs and State agencies that administer FDPIR will be affected by this rulemaking, the economic effect will not be significant.

C. Public Law 104–4, ''Unfunded Mandates Reform Act of 1995'' (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of Sections 202 and 205 of the UMRA.

D. Executive Order 12372, ''Intergovernmental Review of Federal Programs''

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29115 on June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

E. Executive Order 13132, ''Federalism''

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

1. Prior Consultation With State and Local Officials

This rulemaking makes regulatory changes regarding the allocation of FDPIR administrative funds to the FNS Regional Offices for further allocation to the ITOs and State agencies that administer FDPIR. The programs that receive FDPIR administrative funding from FNS' Regional Offices are all Tribal or State-administered, federally-funded programs. On an ongoing basis, the FNS National and Regional Offices have formal and informal discussions related to FDPIR with Tribal and State officials. FNS meets regularly with the Board and the membership of the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR), an association of Tribal and State-appointed FDPIR Program Directors, to discuss issues relating to the program. Section F, *Tribal Impact Statement,* below, provides additional information on FNS' efforts to work directly with ITOs and State agencies in the development of the funding methodology specified in this rule.

2. Nature of Concerns and the Need To Issue This Rule

For many years, the FNS National Office used fixed percentages to allocate FDPIR administrative funds to each of the FNS Regional Offices, which in turn allocated the available funding to FDPIR ITOs and State agencies. However, this funding methodology did not account for any administrative cost drivers, such as the number of ITOs and State agencies within each Region or the number of individuals served by each ITO/State agency. ITOs and State agencies expressed concern that the methodology did not allocate funds equitably to the FNS Regional Offices, which negatively impacted the capacity of certain agencies to adequately administer the program.

3. Extent to Which we Address Those Concerns

FNS has considered the impact of the final rule on FDPIR ITOs and State agencies. FNS does not expect the provisions of this rule to conflict with any State or local laws, regulations, or policies. The intent of this rule is to respond to the concerns of ITOs and State agencies by ensuring that funds are allocated to the FNS Regional Offices as fairly as possible; and to ensure that related program requirements with regard to the allocation of administrative funds to ITOs and State agencies, as well as ITO and State agency matching requirements, are clear and easy to understand.

F. Executive Order 13175, ''Tribal Impact Statement''

This rulemaking makes regulatory changes regarding the allocation of FDPIR administrative funds to the FNS Regional Offices, which further allocate the funds to the ITOs and State agencies that administer FDPIR. The changes are intended to ensure that FDPIR administrative funding is allocated to the FNS Regional Offices in a fair and equitable manner. The final rule also revises FDPIR regulations to clarify current program requirements relative to the allocation of administrative funds to ITOs and State agencies.

During the course of developing the proposed and final rules, FNS took numerous actions to ensure meaningful and timely input by elected Tribal leaders. In 2005, FNS convened a work group comprised of FNS staff and Tribal and State-appointed FDPIR Program Directors representing NAFDPIR and its membership. The work group was asked to develop a proposal(s) for a new funding methodology for the allocation of FDPIR federal administrative funds. The work group conducted its deliberations via 33 conference calls and six face-to-face meetings from May 2005 through October 2007. Discussions were also held at the annual meetings of the membership of NAFDPIR, in which some elected Tribal leaders took part. The work group and FNS solicited written comments from elected Tribal leaders and State officials at various stages of the development of the funding methodology. In addition to the requests for written comments, FNS hosted public meetings that were held in January 2007 at four locations throughout the country. Elected Tribal leaders and State officials were invited to discuss the proposal to develop a funding methodology at those public meetings. Discussion from the public meetings and written comments submitted to the work group were considered in presenting recommendations for a funding methodology to the FNS Administrator.

In fiscal year 2008, FNS implemented the funding methodology on a trial basis. FNS solicited comments from elected Tribal leaders and State officials on the impact of the funding methodology in fiscal year 2008 for consideration in determining the funding methodology to be used in fiscal year 2009, pending the development of proposed rulemaking.

A rule which proposed to formalize the funding methodology and clarify other related program requirements was published in the **Federal Register** (75 FR 54530) on September 8, 2010. The proposed rule referenced the written comments received on the pilot after implementation, and solicited further comments from elected Tribal leaders, State officials, and other interested members of the public. A summary of public comments received on the September 8, 2010 proposed rule and the agency's responses to comments received are discussed in section II of the preamble.

G. Executive Order 12988, ''Civil Justice Reform''

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Although the provisions of this rule are not expected to conflict with any State or local laws, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

H. Department Regulation 4300–4, ''Civil Rights Impact Analysis''

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods on the basis of an individual's or group's race, color, national origin, sex, age, political beliefs, religious creed, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

I. Title 44, United States Code, Chapter 35, ''Paperwork Reduction Act''

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This final rule does not contain any new information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act of 1995. However, previous burdens for 7 CFR part 253 information collections associated with this rule have been approved under OMB control number 0584–0293.

J. Public Law 107–347, ''E-Government Act Compliance''

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background and Discussion of the Final Rule

A. Prior Administrative Funding Allocation Methodology

Prior to this final rulemaking, FDPIR regulations at 7 CFR part 253 did not specify a methodology for the allocation of administrative funds. Under the traditional practice, the FNS National Office allocated funds to the FNS Regional Offices using fixed percentages. These funding percentages varied from one Region to the next, did not change for many years prior to fiscal year 2008, and did not reflect cost drivers such as each Region's share of national program participation and current number of ITOs and State agencies. Regional Offices then allocated to each ITO or State agency its share of administrative funds based on negotiations with such entity. Because FNS Regional Offices received funding without regard to the effect of cost drivers, similar ITOs and State agencies in different Regions could have received significantly different funding levels. Consequently, this method of allocating funds had the potential to negatively impact program operations and result in inconsistent or uneven service to participants.

B. FDPIR Funding Methodology Work Group and Pilot

To address concerns raised by FDPIR ITOs and State agencies over potential FDPIR administrative funding inequities, a funding methodology work group was convened by FNS in 2005. The work group, which was comprised of FDPIR program representatives, including NAFDPIR officers, and FNS staff, was charged with developing a new methodology for the distribution of FDPIR administrative funds that would be fair, objective, and easy to understand.

Based on the work group's proposals, FNS developed an administrative funding allocation methodology which was initially implemented on a pilot basis in fiscal year 2008, and has continued as a pilot up to the present time. This funding methodology allocates funds to the Regional Offices based on two weighted components: Each Region's share of the total number of participants nationally, and each Region's share of the total current number of ITOs and State agencies administering the program nationally. Proportionally more weight was given to the first element, program participation, since FNS believes this to be the major cost driver in the administration of FDPIR. By using these two factors, FNS intended to design a funding methodology that would provide each FNS Regional Office with adequate funding to support the operational costs of all of its programs, including both larger programs with high participation and smaller programs with certain basic administrative costs.

FNS sought comments regarding the impact of the piloted methodology on the program. The comments received were considered in the development of the proposed rule. Further details on the proceedings of the work group in developing proposals for a funding methodology and the implementation of the pilot may be found in the preamble of the proposed rule.

C. Proposed Rule and Analysis of Comments Received

In a proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54530), FNS proposed to include in 7 CFR part 253 the administrative funding methodology that was implemented on a pilot basis, and that was based on the work group proposal. In accordance with that methodology, sixty-five percent of all administrative funds available nationally are allocated to FNS Regional Offices in proportion to their share of the number of participants nationally, averaged over the three previous fiscal years. FNS believes program participation to be the major cost driver. However, in order to recognize the fixed costs common to programs of all participation levels, the remaining 35 percent of all administrative funds available nationally are allocated to each FNS Regional Office in proportion to its share of the total current number of ITOs and State agencies administering the program nationally. By using these two factors, FNS intended to design a funding methodology that would provide each FNS Regional Office with the funding to support the operational costs of all of its programs, both large and small.

Comments were solicited through December 7, 2010, on the provisions of the proposed rulemaking. These comments are discussed below and are available for review at *www.regulations.gov.* To view the comments received, select ''Public Submissions'' from the dropdown menu entitled ''Select Document Type,'' and enter ''FNS–2010–0020'' in the box under ''Enter Keyword or ID.'' Then click on ''Search.''

FNS received written comments from two elected Tribal leaders, five FDPIR program administrators, one Tribal nutrition services administrator, and one private citizen regarding the proposed funding methodology. Six commenters supported the funding allocation methodology, while three commenters opposed it. Of the six commenters supporting the methodology, five specifically cited support for the funding allocation factors proposed, i.e., each Region's proportionate share of national program participation and number of programs. Four of the six commenters cited equity or fairness as another factor in their support of the methodology. Four of the six commenters also specified that the funding methodology is simple, straightforward, and easy to understand. Three supporting commenters cited the fact that the piloted and proposed provisions, in conjunction with increased funding from Congress, provided the resources needed for their programs. Finally three commenters expressed support for the consultation process prior to pilot implementation.

One commenter stated three key objections to the proposed funding methodology: (1) FNS did not consult with the Tribes and State agencies; (2) the funding methodology represents a ''one-size fits all'' approach that does not recognize each Tribe as a government with unique needs; and (3) the funding methodology is more beneficial to Tribes with greater participation rates, and minimizes services to Tribes with lower participation rates. Regarding the third objection, the commenter further stated that small Tribes should be considered for supplemental funding.

FNS consulted with elected Tribal leaders and State officials on multiple occasions prior to piloting the funding allocation methodology, as outlined in the proposed rule. The decision to pilot the methodology was made in response to the Congressional expectation that FNS address funding inequities with the additional funds provided in fiscal year 2008. In addition to meeting the intent of Congress, the pilot permitted FNS to continue consultations with elected Tribal leaders and State officials. While we acknowledge that there are varying perspectives regarding what constitutes consultation, we believe that there was adequate consultation.

Regarding the commenter's objections in reference to the funding methodology's ''one-size-fits-all'' approach, and its failure to meet the needs of smaller programs, each FNS Regional Office continues to negotiate budgets directly with each FDPIR ITO and State agency, once the funds are allocated to the Regions. This permits each FNS Regional Office the flexibility to meet the special needs of each ITO and State agency within its share of the total administrative funds available, including smaller ITOs.

In reference to the commenter's objection that the funding methodology is more beneficial to Tribes with greater participation rates, FNS believes that program participation is the major cost driver. However, FNS also recognizes that there are fixed costs common to programs of all participation levels. For that reason, the funding methodology provides 35 percent of all administrative funds available nationally to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally. The establishment of this second factor in allocation offers a proper balance by providing each FNS Regional Office with funding to support the operational costs of all programs, regardless of participation levels.

Another commenter objected to the use of program participation as a factor in the funding methodology, stating that the factor is flawed because increased Supplemental Nutrition Assistance Program (SNAP) benefits led to a decline in FDPIR participation. However, while FDPIR did experience a decline in participation, the decline did not have a disproportionate negative impact in a specific Region, nor did it affect the total administrative funding available to the program. On the contrary, such funding increased after fiscal year 2008.

One commenter stated that the proposed funding methodology will not work without: (1) Increasing the FDPIR income limit and changing the standard earned income deduction, (2) increasing the resource limits for the program, (3) providing more food, including fresh produce, in FDPIR, and (4) making all Social Security recipients categorically eligible for FDPIR. However, these changes would, for the most part, impact program eligibility and benefits, and would not affect the methodology of allocating administrative funds, which is the subject of this rule. In a proposed rule published in the **Federal Register** on January 11, 2012 (77 FR 1642), FNS proposed to eliminate the requirement that household resources be considered in determining program eligibility, and proposed to include additional income deductions. These changes, if implemented, would simplify program administration, and make it easier for applicants to qualify for program benefits.

Another commenter stated that the higher incidence of Native American health conditions (e.g., diabetes, obesity, heart conditions) should be the impetus that drives funding in FDPIR. FNS recognizes the need to contribute positively to the health of participants in all of its nutrition assistance programs, including FDPIR. Since 2008, FNS has made $1 million available on an annual basis for FDPIR nutrition education, with the goal of enhancing the nutrition knowledge of FDPIR participants and fostering positive lifestyle changes. These funds are allocated separately from program administrative funds.

D. Regulatory Revisions, 7 CFR 253.11

For the purposes of this rule, FDPIR State agencies include both ITOs and agencies of state government. In 7 CFR 253.11 of the proposed rule, we proposed to remove paragraph (a) and redesignate paragraphs (b) through (h), and to include, in new paragraphs (a), (b), and (c):

(1) The methodology for allocating administrative funds to FNS Regional Offices, as described above, which has been implemented on a pilot basis;

(2) Clarification of the requirement for State agencies to submit budgets to FNS Regional Offices, and subsequent allocation to State agencies of funds required to meet 75 percent of approved administrative costs; and

(3) Clarification of the requirement for State agencies to match administrative funds allocated to them by covering 25 percent of approved administrative costs, unless a waiver is submitted and approved to reduce the matching requirement.

1. Funding Methodology

In 7 CFR 253.11(a) of the proposed rule, we proposed to allocate administrative funds to the FNS Regional Offices, to the extent practicable, in the following manner: Sixty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and thirty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

As an outcome of the pilot implementation, FNS identified the need to include regulatory language to ensure that funding is available to support participation of new State agencies for which prior participation data is not available, and that would permit FNS some limited flexibility to meet individual State agency administrative funding needs not reflected under the two weighted factors. Consequently, we proposed to allocate funds to FNS Regional Offices, in accordance with the funding methodology described above, ''to the extent practicable * * *.'' Based on the comments discussed above, most of which were in support of the proposals, the proposed funding methodology is included without change in 7 CFR 253.11(a) of this final rule.

2. State Agency Budget Submissions and Allocations

In 7 CFR 253.11(b) of the proposed rule, we proposed to include the requirement, in current 7 CFR 253.11(b), that State agencies submit annual budgets to FNS for approval, and that only administrative costs that are allowable under 7 CFR part 277 may be included. We proposed to clarify that the budget request must be sent to the FNS Regional Office for approval, which is consistent with directives in FNS Instruction 700–1, Rev. 2. Finally, we proposed to include the provision in current 7 CFR 253.11(a) which specifies that, within funding limitations, FNS provides State agencies with administrative funds necessary to meet 75 percent of approved administrative costs, with the clarification that FNS Regional Offices provide the administrative funds to State agencies. No comments were received on these proposed provisions. Thus, the proposed changes are retained in 7 CFR 253.11(b) of this final rule.

3. State Agency Matching Requirement

In 7 CFR 253.11(c) of the proposed rule, we proposed to set forth the State agency matching requirements. In 7 CFR 253.11(c)(1), we proposed to indicate that the State agency must contribute 25 percent of approved administrative costs, and that both cash and non-cash contributions may be used to meet the matching requirement. This is currently required via FNS Instruction 716–4, Rev. 1. For the sake of clarity, we proposed to include in paragraph (c)(1) the criteria for allowable cash and non-cash contributions, similar to what is currently provided in 7 CFR part 277. No comments were received on these proposed provisions. Thus, the proposed changes are retained in 7 CFR 253.11(c)(1) of this final rule. We have also added the provision, in current 7 CFR 253.11(b), that the value of services rendered by volunteers may be used to meet the matching requirement.

In 7 CFR 253.11(c)(2), we proposed to permit the State agency to request a waiver to reduce the matching requirement to less than 25 percent of approved administrative costs. In essence, this clarifies the provision, in current 7 CFR 253.11(a), regarding requests for payment of Federal funds in excess of 75 percent of administrative costs. We proposed to retain the requirement that the State agency provide compelling justification for meeting less than the 25 percent match and receiving additional administrative funds. Furthermore, we proposed to add a provision which gives the FNS Regional Office the discretion to provide additional administrative funds beyond 75 percent. This is consistent with current program practice. No comments were received on these proposed provisions. Thus, the proposed changes are retained in 7 CFR 253.11(c) of this final rule.

4. Allowable Costs

In this final rule, we are redesignating current 7 CFR 253.11(c) through (h) as 7 CFR 253.11(e) through (j), in order to include a new paragraph (d) to clarify requirements in current 7 CFR 253.11(b) regarding allowable costs in the use of administrative funds. Such costs must be used only for costs that are allowable under 7 CFR part 277, and that are incurred in operating FDPIR, and may not be used to pay costs that are, or may be, paid with funds provided from other Federal sources.

We also proposed to revise the heading of 7 CFR 253.11 to ''Administrative funds'' to more clearly describe the provisions in the section, as proposed. As we did not receive any comments relating to this proposal, this final rule revises the section heading as proposed.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

■ 1. The authority citation for 7 CFR part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

■ 2. In § 253.11:
■ a. Revise the section heading;
■ b. Remove paragraphs (a) and (b);
■ c. Redesignate paragraphs (c) through (h) as paragraphs (e) through (j); and
■ d. Add new paragraphs (a) through (d).

The revisions and additions read as follows:

§ 253.11 Administrative funds.

(a) *Allocation of administrative funds to FNS Regional Offices.* Each fiscal year, after enactment of a program appropriation for the full fiscal year and apportionment of funds by the Office of Management and Budget, administrative funds will be allocated to each FNS Regional Office for further allocation to State agencies. To the extent practicable, administrative funds will be allocated to FNS Regional Offices in the following manner:

(1) 65 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and

(2) 35 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

(b) *Allocation of administrative funds to State agencies.* Prior to receiving administrative funds, State agencies must submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. Planned administrative costs must be allowable under part 277 of this chapter. To the extent that funding levels permit, the FNS Regional Office allocates to each State agency administrative funds necessary to cover 75 percent of approved administrative costs.

(c) *State agency matching requirement.* State agencies must match administrative funds allocated to them as follows:

(1) Unless Federal administrative funding is approved at a rate higher than 75 percent of approved administrative costs, in accordance with paragraph (c)(2) of this section, each State agency must contribute 25 percent of its total approved administrative costs. Cash or non-cash contributions, including third party in-kind contributions, and the value of services rendered by volunteers, may be used to meet the State agency matching requirement. In accordance with part 277 of this chapter, such contributions must:

(i) Be verifiable;

(ii) Not be contributed for another federally-assisted program, unless authorized by Federal legislation;

(iii) Be necessary and reasonable to accomplish program objectives;

(iv) Be allowable under Part 277 of this chapter;

(v) Not be paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(vi) Be included in the approved budget.

(2) The State agency may request a waiver to reduce its matching requirement below 25 percent of approved administrative costs. In its proposed budget, the State agency must submit compelling justification to the appropriate FNS Regional Office that it is unable to meet the 25 percent matching requirement and that additional administrative funds are necessary for the effective operation of the program. The FNS Regional Office may, at its discretion, approve a reduction of the matching requirement and provide additional administrative funds to cover more than 75 percent of approved administrative costs to a State agency that provides compelling justification. In its compelling justification submission, the State agency must include a summary statement and recent financial documents, in accordance with FNS instructions. Compelling justification may include but is not limited to:

(i) The need for additional administrative funding for startup costs during the first year of program operation; or

(ii) The need to prevent a reduction in the level of necessary and reasonable program services provided.

(d) *Use of funds by State agencies.* Any funds received under this section shall be used only for costs that are allowable under part 277 of this chapter, and that are incurred in operating the food distribution program. Such funds may not be used to pay costs that are, or may be, paid with funds provided from other Federal sources.

* * * * *

Dated: August 13, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–20377 Filed 8–22–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0842; Amendment No. 71–44

RIN 2120–AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9W, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: These regulations are effective September 15, 2012, through September 15, 2013. The incorporation by reference of FAA Order 7400.9W is approved by the Director of the Federal Register as of September 15, 2012, through September 15, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence