

## Food and Nutrition Service, USDA

## § 281.2

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 SNAP 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 SNAP ON INDIAN RESERVATIONS

Sec.

- 281.1 General purpose and scope.
- 281.2 Administration.
- 281.3 Determination of failure.
- 281.4 Determining Indian tribal organization capability.
- 281.5 Responsibilities of an Indian tribal organization designated as State agency.
- 281.6 Liabilities and sanctions.
- 281.7 Indian tribal organization failure.
- 281.8 Transfer of program administration.
- 281.9 Funding.
- 281.10 Appeals.

AUTHORITY: 7 U.S.C. 2011–2036.

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

EDITORIAL NOTE: Nomenclature changes to part 281 appear at 78 FR 11972, Feb. 21, 2013.

#### § 281.1 General purpose and scope.

(a) These regulations govern the operation of SNAP on Indian reservations either separately or concurrently with the Food distribution program. In order to assure that SNAP 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 SNAP on reservations. Also, under certain specified conditions Indian tribal organizations on reservations can administer SNAP. The Act

authorizes the Secretary to pay such amounts for administrative costs as are determined to be necessary for the effective operation of SNAP on Indian reservations.

(b) The operation of SNAP on Indian reservations is governed by all of the terms and conditions set forth in the Food and Nutrition Act of 2008 as amended and the regulations of this chapter.

(c) Additionally, under no circumstances shall any household participate simultaneously in SNAP and the Food Distribution Program. Policy governing this prohibition is found in § 253.7(e).

[44 FR 35925, June 19, 1979, as amended at 78 FR 11972, Feb. 21, 2013]

#### § 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

## § 281.2

## 7 CFR Ch. II (1–1–23 Edition)

§ 283.4, rather than concurrent operation with SNAP, shall be exempt from the requirements of this part, and shall not be considered SNAP areas for any other purposes of this subchapter. Indian tribal households (households in which at least one adult member is recognized by the appropriate ITO as a tribal member) resident in these areas shall be ineligible for SNAP benefits. However, non-Indian tribal households resident in these areas may apply and be certified for SNAP benefits at the 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 pertains 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 location 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]