

§ 309.40

45 CFR Ch. III (10–1–06 Edition)

make to its IV-D plan, consistent with the requirements of applicable statutes and regulations.

(f) The effective date of a plan or plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan or plan amendment is submitted.

§ 309.40 What is the basis for disapproval of a Tribal IV-D program application, plan or plan amendment?

(a) A IV-D application, plan, or plan amendment will be disapproved if:

(1) The Secretary determines that the application, plan, or plan amendment fails to meet or no longer meets one or more of the requirements set forth in this part or any other applicable Federal regulations, statutes and implementing instructions;

(2) The Secretary determines that required Tribal laws, code, regulations, and procedures are not in effect; and/or

(3) The Secretary determines that the application, plan, or plan amendment is not complete, after the Tribe or Tribal organization has had the opportunity to submit the necessary information.

(b)(1) Except as provided in paragraph (b)(2) of this section and § 309.45(h) of this part, a written Notice of Disapproval of the Tribal IV-D program application, plan, or plan amendment, as applicable, will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of paragraph (a) of this section apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

(2) Where the Secretary believes an approved Tribal IV-D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan.

(c) If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination to approve or disapprove, the Secretary will request the necessary information.

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

(a) Except as specified under paragraphs (g) and (h) of this section, a Tribe or Tribal organization may re-

quest reconsideration of the disapproval of a Tribal IV-D application, plan or plan amendment by filing a written Request for Reconsideration to the Secretary within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application, plan or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application, plan or plan amendment conforms to the requirements for approval specified in applicable Federal statutes, regulations and office issuances; and

(3) Whether or not the Tribe or Tribal organization requests a meeting or conference call with the Secretary.

(c) After receiving a Request for Reconsideration that includes a request for a conference call or meeting, OCSE will determine whether to hold a conference call or a meeting with the Tribe or Tribal organization to discuss the reasons for disapproval of the application, plan, or plan amendment as well as the Tribe or Tribal organization's response. The Secretary will notify the Tribe or Tribal organization of the date and time of the conference call or meeting.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless both parties agree in writing to another time.

(e) The Secretary will make a written determination affirming, modifying, or reversing disapproval of a Tribal IV-D program application, plan, or plan amendment within 60 days after the conference call or meeting is held, or within 60 days after the request for reconsideration that does not include a request for a meeting. This determination shall be the final decision of the Secretary.

(f) The Secretary's determination that a Tribal IV-D application, new

plan or plan amendment is not approvable remains in effect pending the reconsideration under this part.

(g) Disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal.

(h) Where the Secretary believes an approved Tribal IV-D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan. If the Tribe waives its right to reconsideration under this section, the Tribe may request a pre-decision hearing with 60 days of the date of the Notice of Intent to Disapprove the plan. The hearing will utilize the procedures at 45 CFR part 213.

§ 309.50 What are the consequences of disapproval of a Tribal IV-D program application, plan or plan amendment?

(a) If an application or plan submitted pursuant to § 309.15 is disapproved, the Tribe or Tribal organization will receive no funding under § 309.65(a) or this part until a new application or plan is submitted and approved.

(b) If a IV-D plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application, plan or plan amendment has been disapproved may re-apply at any time.

Subpart C—Tribal IV-D Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal IV-D plan provisions that are required to demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV-D of the Act and these regulations, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is responsible for administration of the Tribal IV-D program under the Tribal IV-D plan?

(a) Under the Tribal IV-D plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal IV-D plan. That agency shall be referred to as the Tribal IV-D agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV-D program. Except where otherwise provided in this part, the Tribal IV-D agency need not perform all the functions of the Tribal IV-D program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal IV-D program to another Tribe, a State, and/or another agency or entity pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal IV-D plan by such Tribe, State, agency or entity. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV-D plan any agreements, contracts, or Tribal resolutions between the Tribal IV-D agency and a Tribe, State, other agency or entity.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal IV-D plan in order to demonstrate capacity to operate a Tribal IV-D program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal IV-D program meeting the objectives of title IV-D of the Act and these regulations by submission of a Tribal IV-D plan which contains the required elements listed in paragraphs (a)(1) through (14) of this section:

(1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for IV-D