

evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (e)(4)(H) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 13, 2016.

**Jonathan R. Cantor**,  
*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2016-30457 Filed 12-19-16; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 251, 271, 272 and 277

[FNS-2016-0028]

RIN: 0584-AE44

#### Supplemental Nutrition Assistance Program Promotion

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Section 4018 of the Agricultural Act of 2014. Section 4018 created new limitations on the use of Federal funds authorized in the Food and Nutrition Act of 2008, as amended (FNA), for the Supplemental Nutrition Assistance Program (SNAP) promotion and outreach activities. Specifically, Section 4018 of the 2014 Farm Bill prohibits the use of Federal funds appropriated in the FNA from being used for: recruitment activities designed to persuade an individual to apply for SNAP benefits; television, radio, or billboard advertisements that are designed to promote SNAP benefits and enrollment; or agreements with foreign governments designed to promote SNAP benefits and enrollment. The prohibition on using funds appropriated under the FNA for television, radio, or billboard advertisements does not apply to Disaster SNAP.

Section 4018 also prohibits any entity that receives funds under the FNA from compensating any person engaged in outreach or recruitment activities based on the number of individuals who apply to receive SNAP benefits. Lastly, Section 4018 modifies Section 16(a)(4) of the FNA to prohibit the Federal government from paying administrative costs associated with recruitment activities designed to persuade an individual to apply for program benefits or that promote the program through television, radio, or billboard advertisements.

This final rule also impacts the Food Distribution Program on Indian Reservations (FDPIR) and The Emergency Food Assistance Program (TEFAP), both of which receive funding and/or foods authorized under the FNA.

**DATES:** This final rule is effective January 19, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mary Rose Conroy, Chief, Program Development Division, Program Design Branch, Food and Nutrition Services, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302, or by phone at (703) 305-2803, or by email at [Maryrose.conroy@fns.usda.gov](mailto:Maryrose.conroy@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Comments and the Final Rule
- III. Procedural Matters

#### I. Background

This rule implements Section 4018 of the Agricultural Act of 2014 (Pub L. 113-79, 2014 Farm Bill). Section 4018 of the 2014 Farm Bill creates new limitations on the use of Federal funds authorized in the Food and Nutrition Act of 2008 (FNA) for Supplemental Nutrition Assistance Program (SNAP) promotion and recruitment activities. Specifically, Section 4018:

- Amends Section 16(a)(4) of the FNA to prohibit Federal reimbursement for activities that are designed to persuade an individual to apply for program benefits or that promote the program through television, radio, or billboard advertisements.

- Amends the end of Section 18 of the FNA to prohibit the use of Federal funds authorized to be appropriated under the FNA from being used for:

- (1) Recruitment activities designed to persuade an individual to apply for SNAP benefits;

- (2) Television, radio, or billboard advertisements that are designed to promote SNAP benefits and enrollment. This provision does not apply to Disaster SNAP; or

- (3) Any agreements with foreign governments designed to promote SNAP benefits and enrollment.

- Amends the end of Section 18 of the FNA to require the Secretary of Agriculture to issue regulations that prohibit entities that receive funds under the FNA from compensating any person engaged in outreach or recruitment activities based on the number of individuals who apply to receive SNAP benefits.

#### II. Discussion of Comments and the Final Rule

##### General Comments

On March 14, 2016, the Department published a proposed rule to implement the changes made by Section 4018. See Supplemental Nutrition Assistance Program Promotion, 81 FR 13290 (Mar.

14, 2016). The Department received 94 comments on the proposed rule published on March 14, 2016 and open for public comments for 60 days. Commenters included 17 private individuals, one anonymous commenter, 23 food banks or food bank coalitions, two county governments, one university association, one member of a university, and 49 other not-for-profit organizations. Sixty-six of the comments received were variations of two form letters, and 28 comments were unique comments.

Overall, comments were very supportive of the proposed rule. Commenters, however, did point to specific areas in need of clarification. The Department has reviewed these comments and in many cases has made the suggested recommendations, as discussed below. The Department appreciates the efforts of community partners and concerned members of the public to offer insightful comments that have enhanced the final regulations.

#### *Definition of Recruitment Activities Designed To Persuade*

The Agricultural Act of 2014 prohibits the use of funds appropriated under the FNA from being used for recruitment activities that are designed to persuade an individual to apply for SNAP benefits.

In the proposed rule, prohibited recruitment activities were defined as those designed to persuade an individual to apply for SNAP benefits through the use of persuasive practices. Persuasive practices constitute coercing or pressuring an individual to apply, or providing incentives to fill out an application. Communicating factual information pertaining to SNAP is not a recruitment activity designed to persuade an individual to apply for SNAP benefits.

Overall, the definition of recruitment activities that would be prohibited in the proposed rule were supported by commenters, with the specific exceptions discussed below. Commenter support focused on the importance of providing factual information through SNAP outreach (n = 78), and the importance of outreach to clear up myths or misconceptions about SNAP (n = 71). Commenters appreciated that the definition in the proposed rule supported these important outreach activities.

However, commenters felt two components of the definition of recruitment activities designed to persuade were in need of clarification. First, a large number of commenters (n = 73) felt the rule should state that individuals are allowed to make an

“informed choice” about whether or not to apply for SNAP benefits and that this phrase should be added to the regulatory definition of recruitment activities designed to persuade. These commenters explained that long-standing FNS regulations clearly state that prohibited recruitment activities are those that persuade an individual who has made an *informed choice* not to apply for SNAP to change his or her mind and apply for benefits. Some commenters also pointed to floor statements made by Members of Congress during consideration of the conference report on the 2014 Farm Bill. In these floor statements, Members explained that the statute made no change with respect to the role of the applicant to make an “informed choice” on whether or not to apply for benefits. These commenters recommended that the Department’s final rule explicitly incorporate the long-standing “informed choice” standard in the regulatory definition of activities designed to persuade.

Second, a majority of commenters (n = 68) felt that the rule needed to be clarified to explain that outreach workers should be allowed to ask follow-up questions to potential SNAP applicants to clear-up misinformation. Some commenters pointed to a specific example in the preamble of the proposed rule in which a food pantry visitor comes by a SNAP informational table and expresses disinterest in learning more about SNAP. In this example, the Department explained continuing to discuss SNAP with the visitor would constitute a persuasive practice because the visitor had clearly expressed a lack of interest and should not be pressured to apply. These commenters felt that frequently a follow-up question about why an individual is not interested is necessary in order to determine whether or not he or she has accurate information about the program, and should not be considered a persuasive practice. If the individual responds to the follow-up question in such a way as to show he or she is misinformed about SNAP, the outreach worker then has an opportunity to clarify his or her misunderstanding, so that he or she can then make a well-informed choice about applying.

The Department agrees with the commenters that it is important that potential SNAP applicants have the necessary information to make an informed choice about whether or not to apply for benefits, and that outreach is an important tool to ensure that SNAP applicants can make this informed choice. The Department also

understands that it was not the intent of Congress to prohibit informational activities that provide basic program information to potentially eligible individuals, as specifically authorized in Section 11(e)(1) of the FNA. Basic program information allows individuals to make a well-informed decision about whether or not to apply based on accurate information, rather than myths or other types of misinformation.

Pursuant to these comments the Department has clarified the regulations at a new 7 CFR 277.4(b)(5). As in the proposed rule, the Federal reimbursement rate shall not include recruitment activities designed to persuade an individual to apply for SNAP benefits through the use of persuasive practices. Persuasive practices constitute coercing or pressuring an individual to apply, or providing incentives to fill out an application for SNAP benefits. However, in the final rule the Department has added the “informed choice” standard to the third sentence: communicating factual information so that an individual can make an informed choice pertaining to SNAP is not a recruitment activity designed to persuade an individual to apply for SNAP benefits. As a result, prohibited recruitment activities would not include providing accurate program information to dispel misinformation, answering questions about SNAP, providing assistance in filling out forms or obtaining verification documents, or providing basic information about SNAP availability, application procedures, eligibility requirements, and the benefits of the program, as specifically permitted by Section 11(e)(1) of the FNA.

To conform to this change from the proposed rule, the Department is clarifying one of the examples from the preamble of the proposed rule to make a distinction between persuasive practices and asking appropriate follow-up questions to ensure an individual has made an informed choice. The revised example is as follows:

A worker funded by SNAP funds is staffing a SNAP informational table at a food pantry. A food pantry visitor comes to the table, but soon replies that he is not interested in learning more. The worker may ask a follow-up question about why the visitor is not interested in learning more. If the visitor’s answer demonstrates a lack of accurate information about SNAP, the worker may correct the misunderstanding, thus helping the visitor make an informed choice about applying. However, if the visitor responds to the follow-up questions with a further expression of disinterest, continuing to question the visitor would be pressuring the individual to apply and therefore constitutes a persuasive practice.

Similarly, the Department is hereby clarifying one of the examples from the preamble of the proposed rule about allowable informational activities:

An outreach worker is talking to a senior citizen who explains that he does not think he is eligible because he owns his own home. The worker would be allowed to correct this misconception, including asking any necessary follow-up questions to ensure the senior citizen makes an informed choice about whether or not to apply.

#### *Application of Recruitment Activities Designed To Persuade to Written Materials*

The preamble to the proposed rule explained that written materials would also be expected to comply with the designation of allowable and unallowable activities that are described in the above definition of recruitment activities designed to persuade an individual to apply for SNAP benefits through coercion, pressure, or incentives. One commenter sought clarification on what information may be included in written outreach materials. This commenter suggested that FNS expand the list of permissible written outreach materials to include additional examples in the preamble.

The Department has reviewed the commenter's request and feels that the original language in the preamble was sufficiently clear that it was not intended to be an exhaustive list, and that written outreach materials are permissible, so long as they are not recruitment activities designed to persuade, as defined in 277.4(b)(5)(i).

#### *Specialized Services*

The Manager's Statement to the Conference Report, H.R. Rep. 113-333 stated that the changes in Section 4018 of the Agricultural Act of 2014 do not preclude specialized services for eligible SNAP applicants, including application assistance for vulnerable populations. The Manager's Statement explained that specialized services are particularly important for vulnerable populations, including the elderly, homeless, and individuals with disabilities, to ensure they receive the food assistance they need. Consequently, the proposed rule would not have prohibited specialized services that provide vulnerable populations (including the elderly, homeless, and individuals with disabilities) with application assistance or basic program information, including information about rights, program rules, client responsibilities, and benefits.

A majority of commenters (n = 63) supported the language in the proposed rule, agreeing that Congressional intent was never to prohibit specialized or

targeted services to vulnerable populations. However, commenters (n = 65) also argued that neither the Act nor the Manager's Statement in the Conference Report, H.R. Rep. 113-333, limit application assistance and specialized services to these vulnerable populations only. These commenters felt that the Department should clarify that application assistance and specialized services can be provided to all individuals, not just so-called vulnerable populations cited in the preamble. For example, these commenters explained, targeted SNAP outreach can be important for limited English proficient populations, pregnant women receiving WIC only benefits, recently unemployed families in a factory town that has lost its primary business, or a community that has suffered severe weather and power outages that do not rise to the level of a Presidentially declared disaster.

The Department considers specialized services to be a subset of all activities provided under informational activities, as defined in 7 CFR 272.5(c). Specialized services are informational activities targeted to specific populations based on their specific needs. For example, a community outreach partner may develop a SNAP Web site targeted to households who have become recently unemployed, informing those households of available SNAP Employment and Training activities. The Web site is a specialized service provided to a targeted group to provide information about SNAP based on their needs and available local resources. Therefore, the Department agrees with the commenters and concludes that specialized services, as a subset of allowable informational activities in 7 CFR 272.5(c), can be targeted to any particular group to meet the specific needs of that population. However, the Department does not believe any changes are needed to the regulatory text to address that clarification.

#### *Incentives*

As discussed above, the proposed rule prohibited recruitment activities that are designed to persuade an individual to apply for SNAP benefits through the use of persuasive practices. Providing an incentive to fill out an application was defined as one type of persuasive practice. The preamble to the proposed rule also included an example where a worker funded by SNAP funds at a community-based organization explained to a group of likely eligible SNAP applicants, that every person who applied that day for SNAP would be allowed to stay for a free parenting

class. The preamble to the proposed rule explained that this practice would be prohibited if only those who filled out the SNAP application were allowed to attend the parenting class. However, if everyone was allowed to participate in the parenting class, regardless of whether or not they completed an application, the practice would be allowable.

While no comments were received that directly supported the incentive language in the proposed rule, some commenters (n = 19) felt the incentive language in the definition of recruitment activities designed to persuade needed to be clarified. For example, some of the commenters explained that providing information about the ancillary benefits of participating in SNAP and offering outreach reinforcement items that are *not* dependent on the recipient submitting a SNAP application should be clarified as permissible reimbursable outreach activities. Commenters explained that the Department's longstanding State Outreach Plan Guidance allows for reimbursement of appropriate outreach reinforcement items, but not those "intended as rewards for pre-screening or completing an application."

To address these comments, the Department is hereby clarifying that providing individuals with information about the ancillary benefits of applying for SNAP is not an incentive or a recruitment activity designed to persuade. Providing factual information to an individual about the benefits of SNAP, such as that SNAP participation may make a household's children eligible for the National School Lunch Program, is a permissible sharing of factual information, per the regulations on allowable informational activities in 7 CFR 272.5(c). The Department is also hereby clarifying that offering outreach reinforcement items at any point in the process of sharing information about SNAP with an interested individual(s) is permissible and not a recruitment activity designed to persuade, so long as the receipt of such reinforcements is not contingent on applying for SNAP. The Department does not think any changes are needed to the regulatory text to address these clarifications.

#### *Radio, Television and Billboard Advertisements*

Section 4018 of the Agricultural Act of 2014 prohibits the use of funds authorized to be appropriated under the FNA for television, radio, or billboard advertisements that are designed to promote SNAP benefits and enrollment. The proposed rule would have prohibited States or other entities from

using these Federal funds for television, radio, or billboard advertisements designed to promote program benefits and enrollment.

Several commenters (n = 14) supported language in the preamble that stated only funds authorized by the FNA would be prohibited from purchasing television, radio and billboard advertisements that promote SNAP benefits and enrollment, but that funding from other sources could be spent on these advertisements. In addition, some commenters had concerns about individual elements of the restriction on radio, television, and billboard advertisements, which are discussed more below.

#### *Billboards and Retailer Informational Activities*

The proposed rule defined billboards as large format advertising displays intended for viewing from extended distances of more than 50 feet. There were no comments that directly supported the billboard definition in the proposed rule. Several commenters (n = 18) stated that the billboard definition needed to be changed or clarified to consider the context in which a billboard is used so as to allow for large signs at health fairs, farmers markets, or other similar venues where individuals may be seeking information about SNAP or SNAP services. In addition, one commenter explained that not allowing retailers to advertise would prevent these businesses from educating the community about SNAP benefits and remove opportunities to advertise that they support SNAP beneficiaries.

The Department agrees that the restriction on Federal funding for billboard advertisements is not intended to prohibit Federal funding for large signs used for informational purposes at health fairs, farmers markets, and other venues where most attendees are on foot. Consequently, for the purposes of the final rule, a billboard is now defined as an outdoor, large format advertising display, either permanent or portable, which is used to advertise or inform alongside a roadway. This definition does not include large signs and banners intended for viewing predominantly by individuals not travelling along a roadway.

In addition, the Department believes that retailers advertising where SNAP benefits are accepted does not constitute promoting SNAP benefits and enrollment. FNS has long allowed retailers to advertise that SNAP benefits can be used at their establishment. This practice is essential to help both SNAP beneficiaries identify locations to use their benefits, and retailers to connect

with potential customers. As a result, the final regulatory text at 7 CFR 277.4(b)(5)(ii) is amended to state that the restriction on the use of Federal funds for radio, television, and billboard advertising does not restrict retailers, such as farmers markets, from using these methods to provide information about where SNAP benefits are accepted. Similarly, the Department also believes that the restriction on the use of Federal funds for radio, television, and billboard advertising does not restrict retailers from using these methods to provide factual information about their FNS-approved programs for currently enrolled SNAP households, such as fruits and vegetables incentive programs.

#### *Exception for Remote Areas and Native American Tribes, and Other Vulnerable Communities*

Six commenters felt that radio, television, and billboard advertisements are helpful ways to communicate information about SNAP and suggested these advertising methods should continue to be allowable activities. Two of these commentators noted that the prohibition on radio, television, and billboard advertising would have a negative impact on Native American communities, especially tribes living in remote areas. In addition, a commenter in Alaska noted that radio advertisements are an effective method to communicate within their state, which has many remote areas. One commenter explained that radio, television, and billboard advertisements are important ways to communicate about SNAP in elderly or highly impoverished communities.

The Department understands that the prohibition on using Federal funds for radio, television, and billboard advertisements may negatively impact information sharing in Alaskan, Native American, and other vulnerable communities, as well as other rural areas where radio, television, and billboard advertisements are effective methods of communication. The Department will continue to conduct allowable outreach and communication activities appropriate to various types of vulnerable communities served by SNAP, including technical assistance and regular Tribal consultation. However, the Department has no discretion to allow appropriations authorized under the FNA to fund television, radio, and billboard advertisements to promote program benefits and enrollment in these targeted communities. Consequently, as proposed, the regulation at new 7 CFR 277.4(b)(5)(ii), continues to prohibit

States or other entities from using Federal funds for television, radio, or billboard advertisements that promote program benefits and enrollment, with the exception that Federal funds may be used to provide factual information identifying retailers that accept SNAP benefits.

#### *Disaster SNAP*

Pursuant to the Agricultural Act of 2014, the prohibition on the use of funding authorized to be appropriated under the FNA for television, radio, or billboard advertisements does not apply to Disaster SNAP. Accordingly, the proposed rule stated that the advertising restriction would not apply to Disaster SNAP. Eleven commenters supported the proposed rule language exempting Disaster SNAP from the ban on Federal funding for radio, television, and billboard advertisements. There were no comments opposing the exemption for Disaster SNAP. Therefore, in the final rule the Department maintains that the prohibition on the use of Federal funding authorized to be appropriated in the FNA for television, radio, and billboard advertisements that promote SNAP benefits and enrollment does not apply to Disaster SNAP.

#### *Social Media*

Section 4018 of the Agricultural Act of 2014 does not address the use of social media in promotion activities. As a result, in the proposed rule, the use of social media like Twitter, Facebook, YouTube, or other internet sites was not prohibited, so long as the content was not recruitment activity designed to persuade an individual to apply for SNAP benefits through coercion, pressure, or incentives. The majority of commenters (n = 71) supported the language in the proposed rule exempting social media from the ban on Federal funding for radio, television, and billboard advertisements that promote SNAP benefits and enrollment. No comments were received seeking a change or clarification in the proposed rule language. Therefore, the use of social media, such as Twitter, Facebook and YouTube is not prohibited in the final rule, so long as the content is not designed to persuade an individual to apply for SNAP benefits through persuasive practices.

#### *Ban on Outreach With Foreign Governments*

Section 4018 of the Agricultural Act of 2014 prohibits the use of funds appropriated under the FNA from being used for any agreements with foreign governments designed to promote SNAP benefits and enrollment. Accordingly,

under the proposed rule, agreements with foreign governments that are designed to promote SNAP benefits and enrollment were proposed to be prohibited. The ban on outreach with foreign governments contained in the proposed rule was only addressed by two commenters. They both supported the ban on the use of Federal funding for SNAP outreach with foreign countries. No commenters requested a change or clarification to this provision. As a result, the Department maintains the language from the proposed rule, to state that the Federal funds authorized to be appropriated under the Act shall not be used to support agreements with foreign governments that are designed to promote SNAP benefits and enrollment.

#### *Worker Compensation*

Section 4018 of the Agricultural Act of 2014 also states that any entity that receives funds under the FNA is banned from compensating any person for conducting outreach activities relating to participation in, or for recruiting individuals to apply to receive benefits under SNAP, if the amount of the compensation would be based on the number of individuals who apply to receive benefits. Pursuant to this provision, the proposed rule banned tying outreach worker compensation to the number of individuals who apply for SNAP as a result of that worker's efforts in any organization that receives funding under the FNA. In other words, the proposed rule would have prohibited organizations who receive any funding from the FNA from requiring a worker to meet a quota of SNAP applicants in order to receive their full compensation or performance bonus; however, the preamble to the proposed rule stated that organizations would be allowed to compensate outreach workers based on the number of hours an outreach worker dedicates to assisting individuals applying for SNAP benefits. For example, an outreach worker may be compensated at an hourly rate of "X" dollars for each hour the worker spends providing SNAP application assistance. Lastly, the preamble in the proposed rule also stated this prohibition would apply even if the organization used funds from a source other than those authorized to be appropriated in the FNA to pay outreach workers on a per application basis, so long as that organization received any funds under the FNA.

Several commenters (n = 16) supported the language in the proposed rule prohibiting compensation of workers based on the number of individuals who apply for benefits by entities that receive funds under the

FNA. However, these same commenters recommended clarifying that State agencies and their partners are allowed to set outreach and application goals as part of their State outreach plan contracts. These commenters explained that State agencies should be able to hold outreach partners accountable for effective use of State and Federal resources, and be able to track submitted applications that result from educational or informational activities. Another commenter expressed a similar sentiment in explaining that the final rule should confirm that the prohibition on tying outreach worker compensation to the number of SNAP applications completed by a worker applies only to the compensation of individuals and not to the compensation of organizations.

In addition, an advocacy organization stated that the worker compensation regulation raised serious concerns about unwarranted control of independent organizations by the government, including possible constitutional violations by the government. At the very least, this commenter felt that the policy was overbroad and unfairly intruded into the lawful activity of important organizations over which the government cannot, and should not, exert such control.

The Department understands the importance of setting outreach goals for organizations involved in allowable SNAP outreach activities to ensure accountability for taxpayer dollars. The Department encourages States to establish performance metrics in their agreements with community partners as part of their State outreach plans to ensure State and Federal resources are used efficiently and effectively. Accordingly, the Department does not intend to ban the setting of outreach goals, but seeks to prevent the tying of compensation of individual workers, by any organization that receives funding under the FNA, to the number of individuals who apply for SNAP as a result of that particular worker's efforts as required by the Agricultural Act of 2014. The Department is hereby clarifying that the ban does not apply to the setting of outreach goals at the level of the individual or the organization, so long as those goals are not tied to individual worker compensation. The Department believes the regulatory text is sufficiently clear in this regard and maintains the language from the proposed rule.

Regarding the comment on potential government overreach, the Department has little discretion in how this provision of the Agricultural Act of 2014 is implemented. If an organization does not receive funding under the

FNA, then this regulation would not apply to them. However, for organizations that do receive funding under the FNA, the final rule maintains the restriction on the spending of funds received from any source.

#### *Other Impacted FNS Programs*

The FNA provides authorization of funds for SNAP, and also for food purchases and administrative costs for the Food Distribution Program on Indian Reservations (FDPIR) (7 U.S.C. 2013b) and for food purchases for The Emergency Food Assistance Program (TEFAP) (7 U.S.C. 2036). Under the proposed rule, FDPIR and TEFAP funds, as authorized under the FNA, would not be permitted for use in banned recruitment activities as described above.

No comments were received regarding the impact of the proposed rule on programs other than SNAP. As a result, the Department will proceed, as discussed in the proposed rule, to amend current 7 CFR 251.10(i), to prohibit entities funded by TEFAP from compensating staff engaged in SNAP outreach activities based on the number who apply to receive SNAP benefits. FDPIR regulations, at Section 253.11 of Title 7, currently require that funds must be expended and accounted for in accordance with the SNAP regulations at Part 277. Because the SNAP regulations at Part 277 have been amended to account for the changes mandated by the Agricultural Act of 2014, FDPIR funds, as authorized under FNA, would not be permitted for use in SNAP recruitment and promotion activities.

### **III. Procedural Matters**

#### *Executive Order 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### *Regulatory Impact Analysis*

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This final rule would not have an impact on small entities because, while the rule would restrict the types of recruitment and promotion activities eligible for Federal reimbursement and the types of activities for which funds authorized to be appropriated under the FNA may be spent, it does not change the type of entities that may receive administrative reimbursement or the rate at which they may be reimbursed for allowable activities. In addition, the rule would prohibit entities that receive funds under the FNA from compensating any person engaged in outreach or recruitment activities based on the number of individuals who apply to receive SNAP benefits; however, this is not expected to limit the ability of small entities, or any entity, from using other methods of compensating persons engaged in outreach or recruitment activities.

### *Unfunded Mandates Reform Act*

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 Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for 2016 inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory

provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

### *Executive Order 12372*

The State Administrative Matching Grants for the Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in the final rule in 2 CFR chapter IV, and related Notice (48 FR 29114, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. FNS has consulted with State and local officials regarding the changes set forth in this rule by issuing to SNAP State agencies on March 21, 2014, an Implementation Memorandum for the 2014 Farm Bill which included guidance on implementing the changes in Section 4018 and on May 5, 2014, issuing a Question and Answer Memorandum responding to implementation questions from the State SNAP agencies and their partners. In addition, FNS hosted a stakeholder meeting on September 4, 2014, to consult with State and local representatives on the provisions of Section 4018.

### *Federalism Summary Impact Statement*

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 13121. The Department has determined that this final rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

### *Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.

This final rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

### *Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the Supplemental Nutrition Assistance Program.

### *Executive Order 13175*

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this rule on Indian tribes and determined that while this rule may have tribal implications as discussed in the summary of comments in the preamble, FNS has no discretion to change the implementation of the final rule, and for that reason no tribal consultation under Executive Order 13175 is required. If a Tribe requests consultation, FNS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires Office of Management and Budget (OMB) approval of all covered collections of information by a Federal agency before such collections can be implemented. Respondents are not required to respond to any such collection of information unless it

displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 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.

List of Subjects

7 CFR Part 251

The Emergency Food Assistance Program, Miscellaneous provisions.

7 CFR Part 271

Supplemental Nutrition Assistance Program, Promotional activities.

7 CFR Part 272

Supplemental Nutrition Assistance Program, Program informational activities.

7 CFR Part 277

Supplemental Nutrition Assistance Program, Funding.

Accordingly, 7 CFR parts 251, 271, 272 and 277 are amended as follows:

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

- 1. The authority citation for 7 CFR part 251 is revised to read as follows: Authority: 7 U.S.C. 2011–2036.

- 2. Revise § 251.10 (i) to read as follows:

§ 251.10 Miscellaneous provisions.

\* \* \* \* \*

(i) Recruitment activities related to the Supplemental Nutrition Assistance Program (SNAP). Any entity that receives donated foods identified in this section must adhere to regulations set forth under § 277.4(b)(6) of this chapter.

\* \* \* \* \*

PART 271—GENERAL INFORMATION AND DEFINITIONS

- 3. The authority citation for 7 CFR part 271 continues to read as follows: Authority: 7 U.S.C. 2011–2036.

- 4. Add § 271.9 to read as follows:

§ 271.9 Promotional activities.

No funds authorized to be appropriated under the Food and Nutrition Act of 2008, as amended, shall

be used for recruitment or promotion activities as described in § 277.4(b)(5). No entity receiving funds under the Food and Nutrition Act of 2008, as amended, shall be permitted to perform activities described in § 277.4(b)(6) of this chapter.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

- 5. The authority citation for 7 CFR part 272 continues to read as follows: Authority: 7 U.S.C. 2011–2036.

- 6. Revise § 272.5(c) to read as follows:

§ 272.5 Program informational activities.

\* \* \* \* \*

(c) Program informational activities for low-income households. At their option, State agencies may carry out and claim associated costs for Program informational activities designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of SNAP. Allowable informational activities shall not include recruitment activities as described in § 277.4(b)(5) of this chapter. Program informational materials used in such activities shall be subject to § 272.4(b), which pertains to bilingual requirements. Before FNS considers costs for allowable informational activities eligible for reimbursement at the fifty percent rate under part 277 of this chapter, State agencies shall obtain FNS approval for the attachment to their Plans of Operation as specified in § 272.2(d)(1)(ix). In such attachments, State agencies shall describe the subject activities with respect to the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. State agencies shall update this attachment to their Plans of Operation when significant changes occur and shall report projected costs for this Program activity in accordance with § 272.2(c), (e), and (f).

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

- 7. The authority citation for 7 CFR part 277 continues to read as follows: Authority: 7 U.S.C. 2011–2036.

- 8. In § 277.4:

a. Remove the phrase “Food Stamp Program” wherever it appears and add in its place “SNAP”.

b. Amend paragraph (b) introductory text by removing the last two sentences; and

c. Add paragraphs (b)(5) and (b)(6).

The additions read as follows:

§ 277.4 Funding.

\* \* \* \* \*

(b) \* \* \*

(5) The Federal reimbursement rate shall include reimbursement for SNAP informational activities, but shall not include the following:

(i) Recruitment activities designed to persuade an individual to apply for SNAP benefits through the use of persuasive practices. Persuasive practices constitute coercing or pressuring an individual to apply, or providing incentives to fill out an application for SNAP benefits. Communicating factual information pertaining to SNAP so that an individual can make an informed choice is not a recruitment activity designed to persuade an individual to apply for SNAP benefits.

(ii) Television, radio or billboard advertisements that are designed to promote SNAP benefits and enrollment, excepting the use of such advertisements for programmatic activities undertaken with respect to benefits provided under § 280.1 of this chapter. This restriction does not apply to radio, television, or billboard advertisements that are not designed to promote SNAP benefits and enrollment and that provide factual information identifying retail food stores where SNAP benefits are accepted.

(iii) Agreements with foreign governments that are designed to promote SNAP benefits and enrollment.

(6) Any entity that receives funding from the programs identified by this section and § 251.4 of this chapter is prohibited from compensating any person for conducting outreach activities relating to participation in, or for recruiting individuals to apply to receive benefits under, the Supplemental Nutrition Assistance Program, if the amount of the compensation would be based on the number of individuals who apply to receive the benefits.

Dated: December 13, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

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