



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS 2011-0017]

RIN 0584-AE07

Supplemental Nutrition Assistance Program: Nutrition Education and Obesity

Prevention Grant Program

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

ACTION: Final rule.

SUMMARY: This rule adopts the interim rule implementing the Supplemental Nutrition Assistance Program (SNAP) nutrition education and obesity prevention grant program with changes as provided in this rule. This rule also amends SNAP regulations to implement section 28 of the Food and Nutrition Act (FNA) of 2008, as added by section 241 of the Healthy, Hunger-Free Kids Act (HHFKA) of 2010, to award grants to States for provision of nutrition education and obesity prevention programs. These programs provide services for eligible individuals that promote healthy food choices consistent with the current Dietary Guidelines for Americans (DGAs). The rule provides State agencies with requirements for implementing section 28, including the grant award process and describes the process for allocating the Federal grant funding for each State's approved SNAP-Ed plan authorized under the FNA to carry out nutrition education and obesity prevention services each fiscal year. This final rule also implements section 4028 of the Agricultural Act of 2014 (Farm Bill of 2014), which authorizes physical activity

promotion in addition to promotion of healthy food choices as part of this nutrition education and obesity prevention program.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, USDA, 3101 Park Center Drive, Alexandria, VA 22302, Jane.Duffield@fns.usda.gov, (703) 605-4385.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The HHFKA removed the existing nutrition education program under section 11(f) of the FNA (7 U.S.C. 2011 et seq.), commonly known as SNAP Education (SNAP-Ed), and added in its place section 28, the nutrition education and obesity prevention grant program. This rule implements the new program, which the Food and Nutrition Service (FNS) continues to refer to as SNAP-Ed, and seeks to improve its operation and effectiveness to make the program easier for States to administer while improving the health of the low-income population.

The implementation of this program provides a focus on the critical problem of obesity and allows coordinated services to be provided to participants in Federal assistance programs and other low-income persons. This action broadens collaboration

efforts and relationships in order to provide more flexibility to include a wider range of evidence-based intervention strategies.

The interim rule published at 78 FR 20411 (April 5, 2013) is adopted as a final rule with changes as provided in this rule.

B. Summary of the Major Provisions of the Regulatory Action In Question

Target Population

The FNA defines individuals eligible for SNAP-Ed as those who receive SNAP or National School Lunch/School Breakfast Program free or reduced price benefits, individuals residing in a community with a significant low-income population, and other low-income individuals as defined by the Secretary. FNS decided to include low-income individuals eligible to receive benefits under SNAP or other means-tested Federal assistance programs such as Medicaid or Temporary Assistance for Needy Families (TANF), etc., in this definition to ease administrative burden on States. This definition more closely aligns SNAP-Ed with other FNS, Federal and State-administered benefit programs.

Nutrition Education State Plans

This rule requires States to submit a Nutrition Education State Plan (SNAP-Ed Plan) in order to receive a SNAP-Ed grant, essentially the same procedure as before. FNS decided to strengthen SNAP-Ed Plan requirements to better assure that the Plans adequately address HHFKA requirements and public comment. The Plans must: 1) present valid and data driven needs assessments of the nutrition, physical activity, and obesity prevention needs of the target population; 2) identify the use of funding for evidence-based State or local projects that meet those needs; 3) ensure that interventions

are comprehensive in scope and appropriate for the eligible low-income population and communities; 4) recognize the population's constrained resources and potential eligibility for Federal nutrition assistance; and 5) demonstrate and follow evidence-based strategies for effective nutrition education and obesity prevention. The rule allows States to propose implementing annual or multi-year SNAP-Ed Plans of up to three years.

Use of Funds

The FNA permits States to use funds for evidence-based allowable uses identified by the FNS Administrator in consultation with the Director of the Centers for Disease Control and Prevention (CDC). Under this rule, the definitions for nutrition education and obesity prevention services and an evidence-based approach are provided for States to use in their SNAP-Ed programming. These definitions provide States with greater flexibility to include environmental approaches and policy level work in addition to nutrition education, health promotion, and social marketing. Expanding these approaches has the added benefit of supporting more comprehensive anti-obesity efforts in addition to providing greater State flexibility in programming.

Under this rule, States may deliver nutrition education and obesity prevention activities using two or more of these approaches: individual or group-based nutrition education, health promotion, and intervention strategies; comprehensive, multi-level interventions; and community and public health approaches. To improve program design, States are expected to integrate multiple approaches in implementing their activities.

Coordination

The rule encourages coordination of SNAP-Ed activities with public or privately funded health promotion and nutrition improvement strategies and requires that States describe their coordination activities in their SNAP-Ed Plans. States are strongly encouraged to coordinate with other organizations, particularly other State agencies delivering nutrition assistance programs, to reach low-income individuals through varied approaches.

Funding

1. National Funding

Congress prescribed specific dollar amounts for each of federal fiscal years (FFY) 2011-2015. For the 2016 and subsequent FFY, the total amount will be determined by adjusting the total SNAP-Ed allocation available nationally during the preceding FFY by an amount that is equal to the increase in the Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding June 30, as published by the Bureau of Labor Statistics of the Department of Labor.

2. Individual State Allocation

This rule provides grants to States through Federal funding authorized specifically for SNAP-Ed grants, requires no State contribution or match, and is the only source of Federal SNAP funds for these activities. This rule encourages States to seek public and private financial contribution for SNAP-Ed activities to leverage the Federal SNAP investment. However, funds in excess of the Federal SNAP-Ed grant are not eligible for SNAP Federal reimbursement. The rule describes the allocation process by which a State receives funds between FFY 2011-2013, based on the State's SNAP-Ed expenditures in FFY year 2009, as reported to the Secretary in February 2010, in

proportion to FFY 2009 SNAP-Ed expenditures by all States nationally in that year. For FFY 2014 and subsequent years, the allocation formula is based on a ratio of 1) a State's share of national SNAP-Ed expenditures in FFY 2009 and 2) the percentage of the number of individuals participating in SNAP in the State during the preceding year in relation to the percentage of SNAP participation nationally during that year. The second part of the formula, the ratio of SNAP participation in a State in relation to SNAP participation nationally, will progressively increase as a percentage of the annual State funding from FFY 2014 forward. In FFY 2014, the formula's ratio of State FFY 2009 SNAP-Ed expenditures to SNAP participation was 90/10. A State's FFY 2009 SNAP-Ed expenditure will annually decrease as a factor of the ratio until FFY 2018, when the ratio will be 50/50. The 50/50 ratio shall continue each FFY after 2018. The financial provisions of this rule stabilize SNAP-Ed funding and reduce State administrative burden since no State contribution is required.

II. Background

Purpose of the Rule

The HHFKA removed the previously existing nutrition education program under Section 11(f) of the FNA of 2008 (7 U.S.C. 2011 et seq.), known as SNAP-Ed, and adds in its place section 28, the Nutrition Education and Obesity Prevention Grant Program. This rule finalizes codification of the grant program, which FNS continues to refer to as SNAP-Ed, and seeks to improve its operation and effectiveness to make the program easier for States to administer while meeting the needs of the low-income population. The interim rule published at 78 FR 20411 (April 5, 2013), was effective upon

publication, providing immediate direction for States, while also allowing for adjustments, based on public comment. It is adopted as a final rule with changes as provided in this rule.

This final rule provides State agencies with final requirements for implementing section 28 of the FNA, including the grant award process and describes the process for allocating the Federal grant funding authorized under the FNA. Section 28 of the FNA requires no State contribution or match, but permits States to seek public and private financial contributions to SNAP-Ed activities. This rule encourages States to seek these contributions to leverage their Federal SNAP investment. The rule encourages greater coordination of projects with other public or privately funded health promotion, nutrition improvement and obesity prevention strategies, including other Federal assistance programs.

Consultations

A requirement of section 28 of the FNA was for FNS to consult with the Director of the CDC and a wide range of stakeholders and experts to identify allowable uses of funds and to strengthen the delivery, oversight and evaluation of nutrition education and obesity prevention services in the development of the rule. FNS conducted an aggressive outreach effort during the development of the interim rule, hosting 25 consultative sessions and obtaining input from more than 150 stakeholders over a 6 month period. The extensive consultation period was instrumental in the development of the SNAP-Ed interim rule and may have contributed to FNS receiving relatively few comments

recommending major changes for consideration during the comment period for the interim rule.

Based on the requirements of section 28 of the FNA and the input received during the consultations, the interim rule was formulated to make changes in SNAP-Ed programming in the following areas:

Nutrition Education State Plans

Consistent with prior law, section 28 of the FNA requires State agency submission of a SNAP-Ed Plan in order to receive a grant for the provision of nutrition education and obesity prevention services. Based on stakeholder interest, FNS determined that States may propose to implement annual or multi-year SNAP-Ed Plans that cover a timeframe of up to three years. The timelines associated with Plan development, submission and final reports remained the same as they were prior to changes in the FNA and these timelines were incorporated into the interim rule. The interim rule codified the requirement that SNAP-Ed Plans address the provisions specified by law and meet standards established in the rule, SNAP-Ed Plan Guidance (<https://snaped.fns.usda.gov/national-snap-ed/snap-ed-plan-guidance-and-templates>), and other FNS policy.

Target Population

Section 28 of the FNA defines individuals eligible for SNAP-Ed services as those who receive SNAP or National School Lunch/School Breakfast Program free or reduced price benefits, individuals residing in a community with a significant low-income population, and other low-income individuals as defined by the Secretary. Some stakeholders recommended that FNS expand the definition of those eligible for SNAP-

Ed. In considering that recommendation, FNS decided to define low-income persons for SNAP-Ed as SNAP participants and low-income individuals eligible to receive benefits under SNAP or other means-tested Federal assistance programs such as Medicaid, Temporary Assistance for Needy Families (TANF), the free and reduced price meals under the National School Lunch Program (NSLP), etc. This definition aligns SNAP-Ed with other FNS, Federal and State-administered benefit programs, allowing the focus to remain on low-income populations while permitting a greater reach to persons residing in communities with a significant low-income population.

Information received during the consultations leading up to the interim rule indicated the need for expanded strategies and data sources to assist in identifying SNAP-Ed target audiences, to address fully the challenges many experienced identifying and reaching their audiences. FNS recognized States' interest in greater flexibility in the methods and data sources to use in identifying their low-income SNAP-Ed population. FNS determined that States may propose several methodologies that use relevant supporting data sources beyond those included in SNAP-Ed Plan Guidance to identify their target audience, including alternative targeting methodologies such as defined areas around a qualifying school, SNAP office or other methodologies.

Use of Funds

FNS received input from stakeholders, including Federal partners, on the definition of nutrition education and obesity prevention services on which to base SNAP-Ed programming under the interim rule. FNS considered these recommendations, the definition used by CDC for obesity prevention services, and the Institute of Medicine's key messages about obesity prevention to define nutrition education and obesity

prevention services. The interim rule definition considered the resources available for nutrition education and obesity prevention services, the mission of FNS, and the goal of SNAP-Ed.

Choosing physically active lifestyles along with making healthy food choices for those eligible for SNAP have long been included as goals of SNAP-Ed. SNAP-Ed principles at present also are aligned with the FNA's requirement for promotion of physical activity in addition to healthy food choices. Thus, physical activity choices along with food choices were included in the definition of SNAP-Ed nutrition education and obesity prevention services.

The FNA also required that allowable nutrition education and obesity prevention strategies shall be evidence-based. FNS received feedback on the evidence-based approaches stakeholders thought would move SNAP-Ed into closer alignment with other governmental, institutional, community-based and public health organizations. Stakeholders also encouraged FNS to approve and promote nutrition education and obesity prevention activities that showed promise and could be instrumental in demonstrating the effectiveness of a wide range of approaches to provide these activities. FNS reviewed definitions used by the Institute of Medicine and CDC, and recommendations from commenters to develop the definition of evidence-based activities included in the interim rule.

The FNA further stipulates that funds may be used for evidence-based activities using any or all of these three approaches: individual and group-based strategies; comprehensive multi-level interventions; and/or community and public health approaches. FNS also considered the following to determine how States might best

deliver nutrition education and obesity prevention services in SNAP-Education: use of the social-ecological model to address nutrition education and obesity prevention interventions; community and public health approaches promoted by CDC and other groups; and the 2010 DGAs Social-Ecological Framework for Nutrition and Physical Activity Decisions that illustrates how spheres of influence affect individual and family eating and physical activity choices. FNS decided to permit States to implement one or more of the approaches described in section 28 of the FNA to deliver evidence-based nutrition education and obesity prevention activities in their SNAP-Education programs. FNS encouraged State agencies in the interim rule to integrate multiple approaches in implementing nutrition education and obesity prevention activities to improve program design.

Coordination

The FNA encourages States to coordinate nutrition education and obesity prevention grant program projects with other public or privately funded health promotion or nutrition improvement strategies as long as the State agency retains administrative control of the projects. FNS expects States to coordinate SNAP-Education activities with other national, State and local nutrition education and health promotion initiatives and interventions, and requires that an applying State demonstrate such coordination in its SNAP-Education Plan. FNS recognizes the synergy of coordinating activities and the potential impact of leveraging funding. In addition, States must show in their SNAP-Education Plans that the Federal funding received from SNAP will remain under the administrative control of the State agency as they coordinate their activities with other organizations.

Although FNS has encouraged States to connect and integrate nutrition education across programs and to implement a variety of nutrition education approaches, stakeholders have advised FNS to more strongly encourage or mandate that State agencies coordinate their SNAP-Ed activities with other projects in their State.

Funding

Section 28 of the FNA altered the manner in which SNAP-Ed funding is determined for States. Because the funding language is specific and prescriptive, FNS has no discretion as to how funds are allocated to States with approved SNAP-Ed Plans. However, FNS has addressed concerns expressed by commenters about the methods used to determine the allocations, the allocation amounts and the reallocation of funds should any State surrender them. The interim rule implemented financial changes retroactive from the enactment of the HHFKA forward, stipulating that SNAP State agencies submitting an approved SNAP-Ed Plan will receive a Federal nutrition education and obesity prevention grant.

Summary of Comments

Eighteen comments to the interim rule were received and are available for public inspection on www.regulations.gov. Representatives from two State agencies, six member organizations, four advocacy/policy groups, as well as six non-affiliated individuals provided comments.

In general, all of the commenters except one were supportive of the rule. The majority of the commenters observed that the interim rule is very consistent with their vision for SNAP-Ed. Several further stated that the rule is clearly responsive to the input that they and many other stakeholders provided during the development of the rule. The

commenters acknowledged that the rule adds flexibility and efficiencies to SNAP-Ed programming while ensuring rigorous oversight and facilitating a comprehensive approach to SNAP-Ed. Commenters favorably viewed the provision allowing States to adopt multi-year nutrition education plans as having a positive impact on States' administrative burden. The one negative comment received expressed that there is no need for spending on the program.

Positive feedback was received on three definitions included in the interim rule: nutrition education and obesity prevention services; evidence-based approaches; and target population. One organization recommended that FNS expand the definition of nutrition education and obesity prevention services to include an emphasis on food insecurity as a strategy to improve nutrition and reduce obesity. FNS understands the commenter's interest in addressing food insecurity through SNAP-Ed. However, because receipt of SNAP benefits addresses food insecurity and addressing food insecurity is not a stated purpose for SNAP-Ed in section 28 of the FNA, the recommendation to include additional emphasis on food insecurity will not be included in the final rule. The definition for SNAP nutrition education and obesity prevention at § 272.2(d)(2)(vii)(B) has been improved to enhance clarity.

One organization expressed that States should be allowed to implement strategies that may not have been thoroughly reviewed in scientific literature but may have potential to improve nutrition and reduce obesity. In response to this comment FNS further refined the definition of evidence-based approaches at § 272.2(d)(2)(vii)(B) to indicate that SNAP-Ed services may include emerging strategies or interventions and that these strategies or interventions require justification and evaluation.

This final rule implements section 4028 of the Farm Bill of 2014 which authorizes physical activity promotion along with promotion of healthy food choices as part of SNAP-Ed programming. Language at § 272.2(d)(2)(vii)(C) remains the same as the interim rule because SNAP-Ed has promoted physical activity along with healthy food choices based on the Dietary Guidelines for Americans for some time. Physical activity was included as a required element of a SNAP-Ed Plan at § 272.2(d)(2)(iv), § 272.2(d)(2)(vi) and § 272.2(d)(2)(vii)(D).

The final rule addresses SNAP-Ed provisions of the FNA and HHFKA, however many of the comments relate to routine SNAP-Ed programmatic operations that are more effectively addressed through alternate means rather than through rulemaking. The SNAP-Ed Plan Guidance and other opportunities for additional policy development are available and are the most effective means to address stakeholder concerns that are unrelated to the provisions being implemented through this rule. The final rule at §272.2(d)(2)(i) stipulates that SNAP-Ed Plans shall conform to standards established in this regulation, SNAP-Ed Plan Guidance, and other FNS policy. FNS concurs with several comments on the interim rule and is responding by making adjustments in the final rule to address those comments. The comments received on the interim rule were reviewed, categorized and analyzed in six key areas and are discussed below.

Reporting

The Education and Administrative Reporting System (EARS) form is the current means by which States report SNAP-Ed programmatic activity to FNS. The EARS form was devised to collect uniform information about SNAP-Ed activities such as demographic characteristics of participants, topics covered, educational delivery sites,

education strategies and resource allocation. EARS is not an evaluation tool but provides FNS with national data to inform management decisions, support policy initiatives, provide documentation for legislative, budget and other requests and support planning within FNS. Four commenters recommended that FNS replace EARS with a more comprehensive reporting and evaluation system that would accommodate collection of data related to new activities included in the FNA. FNS foresees opportunities to improve any reporting form and/or system such as EARS over time. FNS has begun the process of addressing the feasibility of additional data collection through the EARS form or another means that captures SNAP-Ed activities implemented in the past, as well as activities called for in post-HHFKA SNAP-Ed programming. On August 17, 2015, a notice was published in the Federal Register (80 FR 49198), inviting public comment on a revised EARS form that will collect data related to some HHFKA provisions.

The interim rule specified that States are expected to collect and report State and private financial contributions on the EARS form. The possibility exists that an alternative method for the reporting of programmatic and financial data will be identified by FNS. As a result, FNS changed language at § 272.2(d)(2)(xi), Fiscal recordkeeping and reporting requirements, in response to comments received, to indicate that States must submit financial data through the means and in the timeframe specified by FNS. This applies to financial data that is reported on the EARS form as well as other financial data. Reference to the EARS form was deleted. FNS will provide guidance to States outside this rulemaking on the submission of programmatic data such as that collected by EARS and any new data collection that might be implemented.

One organization representing State and Implementing Agencies requested that FNS extend the due date for annual reports. FNS currently does provide flexibility for report submissions in practice on a case by case basis. However FNS, in response to this comment at § 272.2(d)(2)(xiii), changed the due date for Annual Reports from November 30 to January 31 as requested to allow States more time to better analyze and report on Program activities and budget. The reporting of outcomes was added at this section to emphasize that these should be included in Annual Reports.

Target Population

Language was added at § 272.2(d)(2)(v) to modify the definition of the target population to explicitly include individuals residing in communities with a significant low-income population as specified in the FNA. The SNAP-Ed target population is now defined in this final rule as SNAP participants and low-income individuals eligible to receive benefits under SNAP or other means-tested Federal assistance programs and individuals residing in communities with a significant low-income population.

Several groups commented that FNS should make available information on approved alternative targeting strategies for assessing eligible areas and defining target populations. FNS considered this suggestion and included extensive information relevant to this issue in recent SNAP-Ed Plan Guidance. FNS will continue to identify alternative targeting strategies and methodologies and will disseminate the information through SNAP-Ed Plan Guidance and other appropriate means. One advocacy group suggested FNS permit inclusion of large-scale institutional settings and systems, buffer zones, etc., as part of a targeting strategy where there is a significant proportion of potentially eligible individuals. Another organization recommended allowing State-specific criteria to

determine target audiences. States may propose these and other targeting strategies for FNS consideration under current SNAP-Ed Plan Guidance, so no changes will be made to the rule in this area.

One State agency provided comments about requiring States to conduct valid and data-driven needs assessments of their target populations to include barriers to accessing healthier options. A member organization further elaborated on the characteristics of the target population that States should consider when conducting needs assessments. These recommendations were incorporated into the rule at §272.2(d)(2)(iv). In response to the same State agency, FNS added language at § 272.2(d)(2)(vi) requiring States to specify how their evidence-based interventions and strategies meet the assessed needs of their target population.

Evaluation

Several commenters provided suggestions related to evaluations. One recommended expanding approval of formative research and ongoing monitoring costs; two organizations suggested establishing clearer definitions for SNAP-Ed methods, interventions, metrics and evaluation; others commented that FNS should allow greater flexibility in how SNAP-Ed funds may be used for subsequent evaluative purposes. Another recommended continued FNS investment in SNAP-Ed evaluations such as the SNAP Education and Evaluation Studies (WAVES I and II). These recommendations are relevant and timely but go beyond the scope of the requirements for SNAP-Ed set forth in the FNA and HHFKA. FNS will continue to consider these concerns, as applicable, through other SNAP-Ed policy-making and development processes. FNS did include

evaluating programs in addition to planning, implementing, and operating SNAP-Ed programs as an appropriate use of funds at § 272.2(d)(2)(vii).

Several commenters requested that FNS share information about new SNAP-Ed nutrition education and obesity prevention programming that has demonstrated effectiveness or has shown significant promise. FNS agrees with this recommendation and did release with the FFY 2014 Guidance for States in March 2013 the *SNAP-Ed Strategies and Interventions: An Obesity Prevention Toolkit for States* (<https://snaped.fns.usda.gov/snap//SNAP-EdInterventionsToolkit.pdf>) developed in conjunction with the National Collaborative for Childhood Obesity Research. This toolkit was designed to help States identify evidence-based obesity prevention policy and environmental change strategies and interventions to include in SNAP-Ed Plans. The toolkit was updated in July 2013, again in May 2014, and will continue to be updated as needed. Also, an inventory of best practices in nutrition education was prepared through a National Institute of Food and Agriculture grant which FNS released in April 2014. Further information on promising and proven nutrition education and obesity prevention strategies for SNAP-Ed will be communicated to States through appropriate channels as they are identified.

Two organizations commented that FNS should encourage States to conduct needs assessment, formative research, interventions and evaluations for three population segments: SNAP participants, persons with incomes less than 130 percent of the Federal Poverty Level (FPL), and persons between 130 and 185 percent of the FPL to expand the target population for interventions and evaluations. Interventions and evaluations conducted in venues that qualify for SNAP-Ed are covered for these three population

segments as described in SNAP-Ed Plan Guidance. Other organizations also recommended that: the costs of formative research, pilot testing, and ongoing monitoring and surveillance, and outcome/impact evaluation should be borne fully by SNAP-Ed; the costs of surveys, surveillance and special studies should be fully allowed as reasonable and necessary and not subject to proration when the baselines of different segments or communities impacts SNAP-Ed interventions; and FNS should clarify that the cost of evaluations and State surveys conducted for planning and evaluation include the full SNAP-Ed target population and not be prorated to apply only to persons at less than 130 percent of the FPL.

The SNAP-Ed Plan Guidance includes information about conducting interventions and evaluations and is an appropriate source to provide clarifying information on these topics. Additional focus on evaluation in SNAP-Ed was achieved with: the addition of an evaluation and related resources section to the SNAP-Ed Plan Guidance; the addition of an evaluation section to the *SNAP-Ed Strategies and Interventions: An Obesity Prevention Toolkit for States*; the development and posting of the guide, *Addressing the Challenges of Conducting Effective Supplemental Nutrition Assistance Program Education (SNAP-Ed) Evaluations: A Step-by Step Guide* (http://www.fns.usda.gov/sites/default/files/SNAPEDWaveII_Guide.pdf) , and the addition of an evaluation Web page (<https://snaped.fns.usda.gov/professional-development-tools/evaluation>) to the SNAP-Ed Connection Web site, a resource for professionals working in SNAP-Ed. FNS will continue to provide evaluation information through existing communication with State agencies and will consider these comments when doing so.

Program Coordination

States were encouraged in the interim rule to coordinate their activities with other public or private entities. Two groups commented that FNS should require rather than encourage States to coordinate activities with other organizations as well as report on the coordination efforts of their sub-grantees. In recent Guidance, FNS sets forth its expectation that States will coordinate SNAP-Ed activities with other groups. FNS believes that by stating its expectation and encouraging States to move forward with their coordination efforts rather than requiring them to form such cooperative relationships, consideration is properly given to the varying levels of existing efforts States have made and their abilities and resources to establish additional partnerships. Reflecting the intent of the HHFKA, States are encouraged at § 272.2(d)(2)(viii) to coordinate obesity prevention, nutrition education, and health promotion initiatives and interventions and must describe such coordination in State SNAP-Ed Plans. Recognizing the importance of coordination of efforts among operators of FNS programs, FNS added language at § 272.2(d)(2)(viii) requiring States to consult and coordinate with State and local operators of other FNS programs to ensure that their SNAP-Ed activities complement the nutrition education and obesity prevention efforts of these programs.

One commenter recommended that the rule further clarify when written agreements between partnering organizations are needed. A change was made at § 272.2(d)(2)(viii) to reflect that the term Memoranda of Understanding is often used interchangeably with Memoranda of Agreement and to clarify that these documents must be available for inspection only when SNAP-Ed funding is being used in collaborative efforts with other programs or organizations.

Other coordination-related recommendations to the interim rule that FNS may explore and address through SNAP-Ed Plan Guidance and other policy-making include suggestions that FNS: encourage States to inform State and local staff of implementing agency SNAP-Ed efforts; waive SNAP cost allocation requirements when a State Nutrition Action Plan is operational among Federally-funded programs; and require States to describe the processes for coordination between States, other organizations, or contractors providing services. These recommendations will not be included in this final rule.

Funding

The funding provisions of the FNA are prescriptive and were included as such in the interim rule. One implementing agency and three organizations provided funding-related comments and suggestions. The comments and FNS’ determinations related to changes in the final rule are listed below.

Recommendation	FNS Determination
Amend the reallocation methodology	No change. Reallocation method is a provision of the FNA and cannot be amended by this rule
Include details on an appeal and dispute resolution process for State disagreement with Federal funding allocations	No change. SNAP-Ed allocations are determined through a formula contained in the FNA and is not contestable
Clarify that States do not have the authority to require matching funds	No change. This is not a provision of the FNA
Establish protocols for the receipt of non-Federal funds for SNAP-Ed activities and using SNAP-Ed funds as an incentive	No change. Recommendation beyond the scope of current regulation but may be addressed through other channels
Include as an allowable SNAP-Ed activity the establishment of State exchanges or expert panels for peer training, technical assistance, and consultation	No change. Such activity is currently allowable
Release State allocation numbers when the SNAP-Ed Guidance is released	No change. Final State allocations can only be determined when an actual appropriation is received, but estimates based on the President’s Budget are provided for planning purposes

Provide provisional approval of implementing agency budgets of greater than two years	No change. The rule provides requirements for State agencies, not sub-grantees
---	--

The funding-related sections of the final rule at § 272.2(d)(2)(x), Federal financial participation and allocation of grants, are revised from the interim rule in these areas: deleted the specific funding amounts for FFYs 2011- 2015 since SNAP-Ed funding levels are indicated in the FNA; deleted reference to the two-year period of performance since this language does not appear in the FNA and the information can be communicated to States through other channels; and minimally revised parts to delete non-essential information and to enhance clarity.

In response to the comment of one member organization, at § 272.2(d)(2)(vii)(A), Use of Funds, language was added to specify that State agencies shall provide program oversight and demonstrate program effectiveness regarding SNAP-Ed outcomes and impacts. At § 272.2(d)(2)(x)(B) the word State was added so that all parties are clear that the funds allocated under this grant may be used for State as well as local projects.

Recently concern has been expressed to FNS about identifying SNAP-Ed funds that may be at risk of not being spent in a timely manner and returned to the Federal government. Connected to this concern is identifying opportunities for the potential reallocation of funds should a State(s) surrender them. To address these interests and foster full use of limited resources, language was added at § 272.2(d)(2)(ix) requiring a State as part of the budget process to inform FNS, by the end of the first quarter of each FFY (December 31) of any portion of its prior year allocation that it cannot or does not plan to spend for SNAP-Ed activities by the end of the FFY. This section also is referenced at § 272.2(d)(2)(x)(F) to advise a State that FNS may reallocate unobligated or

unexpended funds to another participating State agency if informed that a State will not obligate or expend funds during the period for which funding is available for new obligation by FNS. Other minor changes were made to this section for clarity.

Program Delivery

Several commenters provided suggestions for the final rule related to program delivery. Two organizations recommended that the rule include specific language allowing SNAP-Education programming to include advice on specific types of food to reduce in the diet consistent with the DGAs. States are permitted, as described in the SNAP-Education Plan Guidance, to include such programming in their SNAP-Education Plans. In response to the comments of two organizations, language was added to the definition of SNAP nutrition education and obesity prevention services at § 272.2(d)(2)(vii)(B) to indicate that intervention strategies may focus on limiting, as well as increasing, consumption of certain foods, beverages, and nutrients consistent with the DGAs. The SNAP-Education Plan Guidance further specifies that FNS has determined that States may not use SNAP-Education funds to convey negative written, visual, or verbal expressions about any specific brand of food, beverage or commodity. Policy changes regarding specific brands of foods, beverages and commodities are not included in the final rule.

One State agency recommended that the rule include language that States may use all aspects of the social-ecological model and multi-level interventions. The rule does encourage this but at § 272.2(d)(2)(vii)(B) interpersonal level was added to the levels where SNAP-Education activities can be conducted. Another organization recommended that FNS work with States denied approval to submit a multi-year plan in order to resolve any concerns. FNS currently does work with States to address concerns that may impede

their progress in developing multi-year plans. The recommendation is not included in this rule.

Several organizations commented that FNS should strengthen the language regarding the number and requirements for approaches used in SNAP-Ed activities. These groups recommended that language should be changed from “states are encouraged to integrate” to “states are expected to integrate” multiple approaches in implementing their SNAP-Ed activities. FNS agrees with and supports these comments. The preamble of the final rule makes this change in language under Use of Funds. Additionally at § 272.2(d)(2)(vii)(D) language was changed to specify that SNAP-Ed activities must include evidence-based activities using two or more approaches.

One member organization recommended that FNS invest in technical assistance and training for regional and State SNAP staff to integrate fully comprehensive approaches to behavior change in State SNAP-Ed Plans. FNS does provide training, support and technical assistance to States. States additionally may use their SNAP-Ed funding for staff training. This recommendation will not be included in the final rule. Another organization suggested that FNS solicit and accept comments on the SNAP-Ed Guidance process from States and collaborating partners. States and partners currently may provide recommendations on the Guidance content and development process and FNS sought the input of a virtual work group of stakeholders in the development of recent SNAP-Ed Guidance. This recommendation does not necessitate any changes to the final rule.

Several other recommendations unrelated to the current rule were submitted. These include suggestions for communication improvement between State and local implementing agencies, using reallocated funds for purposes other than those stated in the

FNA, discussing point-of-purchase strategies, and expanding the use of SNAP-Ed funds to conduct what might be considered SNAP outreach-related functions. These recommendations which are unrelated to provisions of the FNA, the HHFKA, and the interim rule may be addressed through other communications with States, and are not being addressed in the final rule.

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.

The changes from the interim rule to this final rule were determined to be not significant and thus no further review was required 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. Currently 53 State agencies receive funding for SNAP-Ed, and this final rule institutes policy oversight and cost reductions required by statute.

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 \$100 million or more 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 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. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in 2 CFR chapter IV, SNAP is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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 13132.

This final rule is necessary to amend SNAP regulations to implement Section 28 of the FNA of 2008, as added by Section 241 of Public Law 111-296, the HHFK Act of 2010. The Department has determined that this 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 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 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 SNAP.

Executive Order 13175

This 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 this rule does not, to our knowledge, have tribal implications that require tribal consultation under

EO 13175. On February 18, 2015 FNS held a webinar for tribal participation and comments. During the comment period, FNS did not receive any comments on the interim rule. If a Tribe requests consultation, FNS will work with the 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 the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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.

Information Collection for SNAP-Ed requirements will not change under this rule. This final rule contains information collections that have been approved by OMB. The rule does not increase burden hours for State agencies in the preparation of Nutrition Education Plans. Nutrition Education State Plan requirements are included in the State Plan of Operations, OMB 0584-0083, Program, and Budget Summary Statement, and will not change with this rule.

Additionally, State requirements to report on the Education and Administration Reporting System (EARS) information collection form, OMB 0584-0542, will not change under this rule. FNS may determine that future revisions are needed. States will

report FY 2014 EARS data by December 31, 2014, thereby negating the necessity for an Information Collection Request as part of this rule.

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 in 7 CFR Part 272

Alaska, Civil rights, Grant programs-social programs, Reporting and recordkeeping requirements, Supplemental Nutrition Assistance Program, Unemployment compensation, Wages.

Accordingly, the interim rule amending 7 CFR part 272 which was published at 78 FR 20411 (April 5, 2013), is adopted as a final rule with the following changes:

PART 272 — REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011-2036.

2. In §272.2:

a. Republish paragraph (d)(1)(iii).

- b. Revise paragraph (d)(2).
- c. Revise paragraph (e)(6).

The revisions read as follows:

§272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(iii) Nutrition Education Plan if the State agency elects to request Federal Supplemental Nutrition Assistance Program Education (SNAP-Ed) grant funds to conduct nutrition education and obesity prevention services as discussed in paragraph (d)(2) of this section.

* * * * *

(2) *Nutrition Education Plan.* If submitted, the Supplemental Nutrition Assistance Program Education (SNAP-Ed) Plan must include the following:

- (i) Conform to standards established in this regulation, SNAP-Ed Plan Guidance, and other FNS policy. A State agency may propose to implement an annual or multiyear Plan of up to three years;
- (ii) Identify the methods the State will use to notify applicants, participants and eligible individuals to the maximum extent possible of the availability of SNAP-Ed activities in local communities;
- (iii) Describe methods the State agency will use to identify its target audience. FNS will consider for approval targeting strategies and supporting data sources included in SNAP-Ed Plan Guidance and alternate targeting strategies and supporting data sources proposed by State agencies;

- (iv) Present a valid and data-driven needs assessment of the nutrition, physical activity, and obesity prevention needs of the target population, and their barriers to accessing healthy foods and physical activity. The needs assessment should consider the diverse characteristics of the target population, including race/ethnicity, gender, employment status, housing, language, transportation/mobility needs, and other factors;
- (v) Ensure interventions are appropriate for the low-income population defined as SNAP participants and low-income individuals eligible to receive benefits under SNAP or other means-tested Federal assistance programs and individuals residing in communities with a significant low-income population. The interventions must recognize the population's constrained resources and potential eligibility for Federal food assistance;
- (vi) Describe the evidence-based nutrition education and obesity prevention services that the State will provide in SNAP-Ed and how the State will deliver those services, either directly or through agreements with other State or local agencies or community organizations, and how the interventions and strategies meet the assessed nutrition, physical activity, and obesity prevention needs of the target population;
- (vii) Use of Funds. (A) A State agency must use the SNAP-Ed nutrition education and obesity prevention grant to fund the administrative costs of planning, implementing, operating, and evaluating its SNAP-Ed program in accordance with its approved SNAP-Ed Plan; State agencies shall provide program oversight to ensure integrity of funds and demonstrate program effectiveness regarding SNAP-Ed outcomes and impacts;
- (B) Definitions. SNAP nutrition education and obesity prevention services are defined as a combination of educational strategies, accompanied by supporting environmental interventions, demonstrated to facilitate adoption of food and physical activity choices

and other nutrition-related behaviors conducive to the health and well-being of SNAP participants and low-income individuals eligible to receive benefits under SNAP or other means-tested Federal assistance programs and individuals residing in communities with a significant low-income population. Nutrition education and obesity prevention services are delivered through multiple venues, often through partnerships, and involve activities at the individual, interpersonal, community, and societal levels. Acceptable policy level interventions are activities that encourage healthier choices based on the current Dietary Guidelines for Americans. Intervention strategies may focus on increasing consumption of certain foods, beverages, or nutrients as well as limiting consumption of certain foods, beverages, or nutrients consistent with the Dietary Guidelines for Americans;

SNAP-Ed nutrition education and obesity prevention activities must be evidence-based. An evidence-based approach for nutrition education and obesity prevention is defined as the integration of the best research evidence with best available practice-based evidence. The best research evidence refers to relevant rigorous nutrition and public health nutrition research including systematically reviewed scientific evidence. Practice-based evidence refers to case studies, pilot studies and evidence from the field on nutrition education interventions that demonstrate obesity prevention potential. Evidence may be related to obesity prevention target areas, intervention strategies and/or specific interventions. The target areas are identified in the current Dietary Guidelines for Americans. SNAP-Ed services may also include emerging strategies or interventions, which are community- or practitioner-driven activities that have the potential for obesity prevention, but have not yet been formally evaluated for obesity prevention outcomes. Emerging strategies or interventions require a justification for a novel approach and must be evaluated for

effectiveness. Intervention strategies are broad approaches to intervening on specific target areas. Interventions are a specific set of evidence-based, behaviorally-focused activities and/or actions to promote healthy eating and active lifestyles. Evidence-based allowable uses of funds for SNAP-Ed include conducting and evaluating intervention programs, and implementing and measuring the effects of policy, systems and environmental changes in accordance with SNAP-Ed Plan Guidance;

(C) SNAP-Ed activities must promote healthy food and physical activity choices based on the most recent Dietary Guidelines for Americans.

(D) SNAP-Ed activities must include evidence-based activities using two or more of these approaches: individual or group-based nutrition education, health promotion, and intervention strategies; comprehensive, multi-level interventions at multiple complementary organizational and institutional levels; community and public health approaches to improve nutrition and physical activity;

(viii) Include a description of the State's efforts to coordinate activities with national, State, and local nutrition education, obesity prevention, and health promotion initiatives and interventions, whether publicly or privately funded. States must consult and coordinate with State and local operators of other FNS programs, including the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the National School Lunch Program, Farm to School, and the Food Distribution Program on Indian Reservations, to ensure SNAP-Ed complements the nutrition education and obesity prevention activities of those programs. States may engage in breastfeeding education, promotion, and support that is supplementary to and coordinated with WIC, which has the lead and primary role in all breastfeeding activities among FNS programs. The

relationship between the State agency and other organizations it plans to coordinate with for the provision of services, including statewide organizations must be described.

Copies of contracts and Memoranda of Agreement or Understanding that involve funds made available under the State agency's Federal SNAP-Ed grant must be available for inspection upon request;

(ix) Include an operating budget for the Federal fiscal year with an estimate of the cost of operation for one or more years, according to the State's approved SNAP-Ed Plan. As part of the budget process, the State must inform FNS by the end of the first quarter of each Federal fiscal year (December 31) of any portion of its prior year allocation that it cannot or does not plan to spend for SNAP-Ed activities by the end of the Federal fiscal year.

(x) Federal financial participation and allocation of grants. (A) A State agency's receipt of a Federal SNAP-Ed grant is contingent on FNS' approval of the State agency's SNAP-Ed Plan. If an adequate Plan is not submitted or an extension granted, FNS may reallocate a State agency's grant among other State agencies with approved Plans. These funds are the only source of Federal funds to States available under section 28 of the Food and Nutrition Act of 2008, as amended, for SNAP nutrition education and obesity prevention services. Funds in excess of the grants are not eligible for SNAP Federal reimbursement. The grant requires no State contribution or match;

(B) Shall identify the uses of funding for State or local projects and show that the funding received shall remain under the administrative control of the State agency;

(C) For each of fiscal years (FY) 2011-2013, each State agency that submitted an approved 2009 SNAP-Ed Plan received a Federal grant based on the State's SNAP-Ed

expenditures in FY 2009, as reported to the Secretary in February 2010, in proportion to FY 2009 SNAP-Ed expenditures by all States in that year.

(D) For FY 2014 and subsequent years, the allocation formula (prescribed in section 28(d)(2)(A) of the Food and Nutrition Act of 2008) is based on a ratio of:

(1) A State's share of national SNAP-Ed expenditures in FY 2009 in relation to State SNAP-Ed expenditures nationally (as described in paragraph (d)(2)(x)(C) of this section) and

(2) The percentage of the number of individuals participating in SNAP in the State during the preceding fiscal year in relation to the percentage of SNAP participation nationally during that year.

(E) The second part of the formula applicable to FY 2014 and subsequent years, the ratio of SNAP participation in a State in relation to SNAP participation nationally, will annually increase as a percentage of the annual Federal SNAP-Ed funding. In FY 2014, the formula's ratio of State FY 2009 SNAP-Ed expenditures to SNAP participation was 90/10. SNAP participation will increase as a factor in the funding formula until FY 2018, when the ratio will be 50/50. The 50/50 ratio shall continue after FY 2018.

The allocations to a State for SNAP-Ed grants will be:

(1) For FY 2013, in direct proportion to a State's SNAP-Ed expenditures for FY 2009, as reported in February 2010;

(2) For FY 2014, 90 percent based on a State's FY 2009 SNAP-Ed expenditures, and 10 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2012 to January 31, 2013;

(3) For FY 2015, 80 percent based on a State's FY 2009 SNAP-Ed expenditures, and 20 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2013 to January 31, 2014;

(4) For FY 2016, 70 percent based on a State's FY 2009 SNAP-Ed expenditures, and 30 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2014 to January 31, 2015;

(5) For FY 2017, 60 percent based on a State's FY 2009 SNAP-Ed expenditures, and 40 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2015 to January 31, 2016; and,

(6) For FY 2018 and subsequent years, 50 percent based on a State's FY 2009 SNAP-Ed expenditures, and 50 percent based on the State's share of national SNAP participants for the previous 12-month period ending January 31;

(F) If a participating State agency notifies FNS as required in (ix) above that it will not obligate or expend all of the funds allocated to it for a fiscal year under this section, FNS may reallocate the unobligated or unexpended funds to other participating State agencies that have approved SNAP-Ed Plans during the period for which the funding is available for new obligations by FNS. Reallocated funds received by a State will be considered part of its base FY 2009 allocation for the purpose of determining the State's allocation for the next fiscal year; funds surrendered by a State shall not be considered part of its base FY 2009 allocation for the next fiscal year for the purpose of determining the State's allocation for the next fiscal year.

(xi) Fiscal recordkeeping and reporting requirements. Each participating State agency must meet FNS fiscal recordkeeping and reporting requirements. Total SNAP-Ed

expenditures and State, private, and other contributions to SNAP-Ed activities are reported through the financial reporting means and in the timeframe designated by FNS;

(xii) Additional information may be required of the State agency, on an as needed basis, regarding the type of nutrition education and obesity prevention activities offered and the characteristics of the target population served, depending on the contents of the State's SNAP-Ed Plan, to determine whether nutrition education goals are being met;

(xiii) The State agency must submit a SNAP-Ed Annual Report to FNS by January 31 of each year. The report shall describe SNAP-Ed Plan project activities, outcomes, and budget for the prior year.

(e) * * *

(6) The SNAP-Ed Plan shall be signed by the head of the State agency and submitted prior to funding of nutrition education and obesity prevention activities when the State agency elects to request Federal grant funds to conduct these SNAP-Ed activities. The Plan shall be submitted for approval no later than August 15. Approved plans become effective the following FFY October 1 to September 30.

* * * * *

Audrey Rowe
Administrator
Food and Nutrition Service

March 24, 2016
Date

[FR Doc. 2016-07179 Filed: 3/30/2016 8:45 am; Publication Date: 3/31/2016]