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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: Proposed rule.

SUMMARY: This proposed rule would implement 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 (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. This provision does not apply to Disaster SNAP, or any agreements with foreign governments designed to promote SNAP benefits and enrollment.

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 proposed rule would also impact 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: To be assured of consideration, written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred method:* Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Send comments to Mary Rose Conroy, Chief, Policy Design Division, Program Design Branch, Food and Nutrition Services, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mary Rose Conroy, Branch 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.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures**
- II. Background and Discussion of the Proposed Rule**
- III. Procedural Matters**

I. Public Comment Procedures

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) and/or provide supporting information for any change you recommend or proposal(s) you oppose.

Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period listed in DATES will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make the proposed regulations easier to understand, as well as comments and information that could help us make the programs as effective as practical, including answers to questions such as the following:

- (1) Are the requirements in the proposed regulations clearly stated?

- (2) Does the proposed rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, and paragraphing) make it more or less clear?
- (4) What could be done to minimize the burdens and/or improve outcomes of the program, consistent with program objectives? Costs and benefits include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Please provide information that would help quantitatively assess the benefits and costs of this proposed rule.
- (5) What could be done to foster incentives for innovation, flexibility, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities and the public)?

II. Background and Discussion of the Proposed Rule

This proposed rule would implement Section 4018 of the Agricultural Act of 2014 (P.L. 113-79, 2014 Farm Bill). Section 4018 of the Agricultural Act of 2014 (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:

- Prohibits 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 Section 16(a)(4) of the FNA.]

- Prohibits 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.]
- Requires that the Secretary of Agriculture issues 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. [Amends the end of Section 18 of the FNA.]

What are the recruitment activities designed to persuade an individual to apply for SNAP benefits?

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 this proposed rule, prohibited recruitment activities are 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.

The Department 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. For instance, the Department has documented that many eligible elderly individuals do not apply for benefits because they are concerned about using benefits that would otherwise go to another family. Informing the elderly that their enrollment does not preclude the enrollment or diminish the benefit level of other eligible households is an important part of ensuring the elderly can make a well-informed decision about applying for SNAP.

In addition, changes required in Section 4018 of the Agricultural Act of 2014 do not preclude specialized services for eligible SNAP applicants, including application assistance, as explained in the Manager's Statement in the Conference Report, H.R. Rep. 113-333, to accompany the Agricultural Act of 2014. 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.

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.

The regulations already define recruitment activities as activities that are designed to persuade an individual who has made an informed choice not to apply for SNAP benefits to change his or her decision and apply. How will this definition change?

The definition of prohibited recruitment activities would change in two ways: (1) the new definition would prohibit the use of persuasive practices, with persuasive practices constituting coercing or pressuring an individual to apply, or providing incentives to fill out an application; and (2) the new definition would stipulate that providing factual information pertaining to SNAP is not a recruitment activity designed to persuade an individual to apply for SNAP. This stipulation is included to reflect the intent of Congress to not prohibit activities that: provide basic program information, inform applicants about eligibility requirements and benefits of the program, assist applicants in applying for benefits (particularly for vulnerable populations), or otherwise dispel common misconceptions.

What are examples of persuasive practices?

The Department proposes in the regulatory definition that persuasive practices constitute coercing or pressuring an individual to apply, or providing incentives to fill out an application. Examples of persuasive practices used in face-to-face interactions would include:

- 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 continuing to discuss SNAP with the

visitor would constitute a persuasive practice because the visitor has clearly expressed a lack of interest and should not be pressured to apply.

- A worker funded by SNAP funds at a community-based organization is giving a presentation on SNAP eligibility requirements to a group of likely eligible SNAP applicants. The worker explains that every person who applies that day will be allowed to stay for a free parenting class. This would be prohibited if only those who fill out the SNAP application are allowed to attend the parenting class because the parenting class is offered as an incentive to fill-out the application. The activity would be allowable if everyone is allowed to stay for the parenting class, regardless of whether or not they fill out an application.

How would the definition of recruitment activities that are designed to persuade an individual to apply for SNAP benefits apply to written materials?

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 and that are designed to persuade an individual to apply for SNAP benefits through coercion, pressure, or incentives. As a result, written materials should not use statements that are coercive, pressure individuals to apply for SNAP benefits, or offer incentives to fill out an application. Written materials will be expected to contain accurate, factual information that allows individuals to make a well-informed decision about applying for SNAP benefits. For instance, written materials may include information about SNAP eligibility criteria, application procedures, or where to apply for benefits.

What actions are allowed if an individual's point of view appears to not be based on accurate information?

The Department is aware that many prevalent myths about SNAP influence whether or not someone thinks s/he is eligible and whether or not s/he decides to apply. For instance, the Department has documented many myths held by the elderly that deter this needy population from applying for nutrition assistance, for instance, in the 2014 report *Reaching the Underserved Elderly and Working Poor in SNAP* (available at <http://www.fns.usda.gov/sites/default/files/SNAPUnderseved-Elderly2009.pdf>). Dispelling these myths by sharing accurate information is a legitimate informational and educational activity that allows an individual to make a well-informed choice. The following are some examples of informational activities that would be allowed under the proposed rule.

- 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, provided the senior citizen does not express disinterest in learning more.
- An outreach worker is talking to a working mother who states that she is struggling to put food on the table for herself and her two children. The working mother explains that she does not think she is eligible for SNAP because she has a job. The outreach worker could permissibly educate the working mother about SNAP gross and net income limits and assist her in determining her likely eligibility status.
- A community-based organization receiving SNAP funds has become aware that many potentially eligible working families are not signing up for the program

because they think they must take time off from work to apply. The organization could share informational brochures detailing the web address for online applications and availability of telephone interviews with local employers to share with employees, so long as these brochures are not designed to persuade an individual to apply for SNAP benefits through coercion, pressure, or incentives.

How would these regulations change the types of television, radio, or billboard advertisement that are allowed with Federal SNAP appropriations?

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. Consequently, the regulation proposes to prohibit States or other entities from using these Federal funds for television, radio, or billboard advertisements that promote program benefits and enrollment.

What is a billboard?

For the purpose of this proposed rule, billboards are large format advertising displays intended for viewing from extended distances of more than 50 feet.

Would the use of social media to promote SNAP be prohibited?

The Agricultural Act of 2014 provision does not address the use of social media in promotion activities. As a result, the use of social media like Twitter, Facebook, YouTube, or other internet sites would not be prohibited, so long as the content is not recruitment activity designed to persuade an individual to apply for SNAP benefits through coercion, pressure, or incentives.

How would these proposed regulations affect agreements with foreign governments?

The Agricultural Act of 2014 prohibits the use of funds appropriated in the FNA from being used for any agreements with foreign governments designed to promote SNAP benefits and enrollment. Consequently, this proposed rule would prohibit foreign agreements that are designed to promote SNAP benefits and enrollment.

How would these proposed regulations apply to informational activities?

The proposed regulations would not prohibit informational activities as defined in Section 11(e)(1) of the FNA, namely those activities that provide factual information about the availability, eligibility requirements, application procedures, and benefits of SNAP.

Would these regulations apply to Disaster SNAP?

No. Pursuant to the Agricultural Act of 2014, the prohibition on the use of SNAP appropriations for television, radio, or billboard advertisements would not apply to Disaster SNAP.

Would these regulations apply to recruitment activities designed to persuade individuals to apply for SNAP benefits or to television, radio, or billboard advertisements promoting SNAP that were paid for with funds that were not authorized to be appropriated under the FNA?

No. The proposed regulations prohibit only recruitment activities designed to persuade individuals to apply for SNAP benefits and television, radio, or billboard advertisements promoting SNAP that use funds authorized to be appropriated under the FNA.

How would the proposed rule impact vulnerable populations?

As stated in the Manager's Statement to the Conference Report, H.R. Rep. 113-333, 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. 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 prohibit activities that provide vulnerable populations with application assistance or basic program information, including information about rights, program rules, client responsibilities, and benefits.

What would the proposed rule on outreach worker compensation prohibit?

For any organization that receives funding under the FNA, this proposed rule would prohibit tying outreach worker compensation to the number of individuals who apply for SNAP as a result of that worker's efforts. Organizations would not be allowed to require a worker to meet a predetermined quota of SNAP applicants in order to receive their full compensation or performance bonus, nor would an organization be allowed to base compensation or performance bonus on a set dollar amount for each individual who applies for SNAP as a result of a worker's efforts. For example, an organization would be prohibited from requiring that at least 10 individuals apply for benefits a week in order for a worker to receive their base pay, and an organization would be prohibited from paying outreach workers \$10 per individual who applies for SNAP.

Which organizations would be affected by the new prohibitions on outreach worker compensation?

All organizations that receive funding under the FNA would be affected, as this a condition of funding under the FNA. For instance, an organization that does not receive funds from SNAP, but does receive funding authorized under FNA and/or receives USDA donated foods purchased with FNA-authorized funds, such as the Food Distribution Program on Indian Reservations (FDPIR) (7 U.S.C. § 2013b) and The Emergency Food Assistance Program (TEFAP) (7 U.S.C. § 2036), would be prohibited from compensating employees based on the number of individuals who apply for SNAP benefits.

Could an organization use money from sources other than those received under the FNA to compensate workers based on the number of individuals who apply for benefits?

No. If an organization receives any funds under the FNA they would not be able use funds from any source to compensate any persons conducting outreach or recruitment based on the number of individuals who apply for SNAP benefits as a result of that person's efforts. If an organization does not receive funding under the FNA, then this regulation would not apply to them.

Could an organization compensate outreach workers based on the number of hours it takes for an outreach worker to assist an individual applying for SNAP benefits?

Yes. Organizations would be allowed to compensate outreach workers based on the number of hours it takes an outreach worker to assist an individual applying for SNAP benefits. In other words, organizations would be allowed to compensate their employees who provide SNAP application assistance based on an hourly wage. 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.

Does this provision apply to food and nutrition programs other than SNAP?

Yes. The FNA provides authorization of funds for food purchases and administrative costs for FDPIR and for food purchases for TEFAP and this provision also applies to those programs.

As background, FDPIR serves as an alternative to SNAP and provides USDA donated foods to low-income households living on Indian reservations, and to American Indian households residing in approved areas near reservations or in Oklahoma. Participating FDPIR Indian Tribal Organizations and State agencies receive both food and administrative funding authorized under the FNA. TEFAP is a Federal program that helps supplement the diets of low-income Americans by providing them with emergency food assistance at no cost. USDA donated foods provided to TEFAP State and recipient agencies are purchased with funds authorized under the FNA.

FDPIR regulations at part 253.11 of this chapter currently require that funds must be expended and accounted for in accordance with SNAP regulations at part 277. Under this proposed rule, SNAP regulations would be amended in order to account for the changes mandated by Section 4018 and described above. In particular, Section 4018 prohibits Federal reimbursement or the use of Federal funds authorized to be appropriated under the FNA for the specific SNAP recruitment and promotion activities discussed above. Thus, under this proposed rule, FDPIR funds, as authorized under FNA, would not be permitted for use in such activities. As FDPIR serves as an alternative to SNAP under the FNA and serves an average of fewer than 90,000 participants each month, the Department does not anticipate significant impact of this requirement on FDPIR Indian Tribal Organizations and State agencies.

As provided above, Section 4018 requires the Secretary of Agriculture to issue regulations that prohibit entities that receive funds under the FNA from compensating staff engaged in SNAP outreach activities based on the number of individuals who apply to receive SNAP benefits. Though the Department does not believe this requirement will have a significant impact on TEFAP, the program receives food funding authorized under the FNA. In this proposed rule, FNS would amend TEFAP program regulations to prohibit entities funded by TEFAP from compensating staff engaged in SNAP outreach activities based on the number of individuals who apply to receive SNAP benefits.

Thus, we propose to amend current 7 CFR § 251.10(i) by replacing the existing text in its entirety with the requirement that any entity which receives TEFAP donated foods adhere to SNAP regulations at proposed 7 CFR § 277.4(b)(6), related to the prohibition on providing compensation for SNAP recruitment outreach.

Current 7 CFR § 251.10(i) Miscellaneous Provisions – *Data Collection related to eligible recipient agencies*, the faith-based reporting requirement which expired in fiscal year 2009, is outdated. The language in current § 251.10(i) of this chapter was published on May 2, 2007, as part of a USDA rule amending several program regulations in order to fulfill the Department’s responsibilities under Executive Orders 13279 and 13280, regarding the collection of information on faith-based and community organizations that participate in social service programs and that receive Federal financial assistance. The rule required State agencies to report on a number of data elements for Federal fiscal years 2006 through 2009. The required collection time period expired in 2010 for the reporting period ending in Federal fiscal year 2009, and is no longer applicable to TEFAP. The proposed removal of the current regulatory text would not affect the current

program requirement that TEFAP State agencies continue to maintain lists of eligible recipient agencies, consistent with part 251 of this chapter.

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 proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. The RIA for this proposed rule was published as part of docket number [FNS-2016-0028] in Supporting Documents on www.regulations.gov. The following summarizes the conclusions of the Regulatory Impact Analysis:

Need for Action: This proposed rule is necessary to implement Section 4018 of the Agricultural Act of 2014, which establishes new prohibitions regarding how funds

authorized by the FNA are to be spent to persuade individuals to apply for SNAP benefits and to promote SNAP. The Agricultural Act of 2014 makes these changes by amending Sections 16(a)(4) and 18 of the FNA. The law requires the Secretary to write regulations to implement these changes.

Benefits: The proposed rule provides State agencies and State partners with additional guidance regarding promotion expenses that are eligible for 50 percent Federal reimbursement of administrative costs (7 CFR § 277.4).

Costs: There are no anticipated costs.

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 proposed rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because, while the proposal 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 proposed 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 \$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 proposed 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 \$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

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.551 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR

chapter IV.) 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 proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 Executive Order 13175. 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 proposed 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 proposed to be amended as follows:

PART 251 THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for 7 CFR part 251 continues to read as follows:

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

2. Revise § 251.10 (i). The revision reads 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

1. The authority citation for 7 CFR 271 continues to read as follows:

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

2. Add § 271.9 as follows:

§ 271.9 Promotional activities

- (a) 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).

PART 272 REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for 7 CFR part 272 continues to read as follows:

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

2. Revise § 272.5(c). The revision reads 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). 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

1. The authority citation for 7 CFR part 277 continues to read as follows:

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

2. In § 277.4:

- a. Remove the phrase “Food Stamp Program” and add in its place “SNAP”.
- b. Amend paragraph (b) 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 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 Part.
- (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 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: March 3, 2016.

Kevin Concannon
Under Secretary
Food, Nutrition, and Consumer Services
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