

# Rules and Regulations

Federal Register

Vol. 78, No. 66

Friday, April 5, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 272

RIN 0584-AE07

#### Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant Program

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

**ACTION:** Interim rule.

**SUMMARY:** This rule amends Supplemental Nutrition Assistance Program (SNAP) regulations to implement Section 28 of the Food and Nutrition Act ("FNA" or the "Act") of 2008, as added by Section 241 of the Healthy, Hunger-Free Kids (HHFK) Act of 2010, to award grants to States for provision of nutrition education and obesity prevention programs. These programs will provide services for eligible individuals that promote healthy food choices consistent with the current Dietary Guidelines for Americans (DGAs). This rule provides State agencies with requirements for implementing Section 28 including the grant award process and describes the process for allocating the 100 percent Federal grant funding authorized under the Act to carry out nutrition education and obesity prevention services each fiscal year.

**DATES:** *Effective Date:* This rule will become effective April 5, 2013.

*Comment Date:* To be considered, comments on this interim rule must be postmarked on or before June 4, 2013.

**ADDRESSES:** The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

- *Mail:* Send comments to Jane Duffield, Branch Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, (703) 605-4385.

- *Web site:* Go to <http://www.fns.usda.gov>. Follow the online instructions for submitting comments through the link at the Supplemental Nutrition Assistance Program Web site.

- *Email:* Send comments to [SNAP-Ed@fns.usda.gov](mailto:SNAP-Ed@fns.usda.gov). Include Docket ID Number [FNS-2011-0017], Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant Program Interim Rule in the subject line of the message.

- All comments submitted in response to this interim 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 comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jane Duffield, (703) 605-4385, at the above address.

### Executive Summary

#### I. Purpose of the Regulatory Action

The HHFK Act removes the existing nutrition education program under section 11(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), commonly known as SNAP Education (SNAP-Ed), and adds in its place Section 28, the nutrition education and obesity prevention grant program. This rule implements the nutrition education and obesity prevention grant program, which FNS will continue 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 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

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

#### II. Summary of the Major Provisions of the Regulatory Action in Question

##### Target Population

The Act 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. The Agency decided to ease administrative burden on States for SNAP-Ed so defined low-income individuals for the purposes of SNAP-Ed to include those mentioned above and low-income individuals eligible to receive SNAP benefits or other means-tested Federal assistance programs such as Medicaid or Temporary Assistance for Needy Families (TANF), etc. 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 in order to receive a SNAP-Ed grant, essentially the same procedure as before. The Plans must: identify the use of funding for local projects; ensure that interventions are appropriate for the eligible low-income population; and recognize the population's constrained resources and potential eligibility for Federal nutrition assistance. The rule allows States to propose implementing annual or multi-year SNAP-Ed Plans of up to three years.

##### Use of Funds

The Act 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 and health promotion. 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 are permitted to use funds to deliver nutrition education and obesity prevention activities using one 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 encouraged 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. Since SNAP-Ed funds are capped, States are strongly encouraged to coordinate with other organizations to leverage financial resources to reach low-income individuals through varied approaches.

**Funding**

This rule provides grants to States through 100 percent Federal funding, requires no State contribution or match, is the only source of Federal SNAP funds for these activities, and provides a two year period of performance. This rule encourages States to seek public and private financial contribution for SNAP-Ed activities to leverage the Federal SNAP investment. The rule

describes the allocation process in which States receive funds based on their share of national SNAP-Ed expenditures for Federal Fiscal Year (FFY) 2009 until FFY 2014 when the allocation formula considers State shares of national SNAP participation as well. In FFY 2014, the ratio of expenditures to participation is 90/10 building progressively to a 50/50 ratio of expenditures to SNAP participation by 2018 and thereafter. The funding provisions of this rule stabilize SNAP-Ed funding and reduce State administrative burden since no State contribution is required.

**III. Costs and Benefits**

	Primary estimate	Year dollar	Discount rate	Period covered
<b>Benefits</b>				
Qualitative: Provisions in Section 28 will result in a reduction of Federal costs and will reduce administrative and financial burden for States, as well as improve the likelihood that low-income persons eligible for SNAP and other federal means-tested programs will make healthy lifestyle choices.				
<b>Costs</b>				
Annualized Monetized (\$millions/year) .....	.....	.....	.....	.....
<b>Transfers</b>				
Annualized Monetized (\$millions/year) .....	-\$131 -\$132	2013 2013	7% 3%	FFY2013–2017

The first-year cost reduction for the Federal government is estimated at \$158 million, with a total cost reduction of \$663 million in the first five years. Impacts are already incorporated into the President's budget baseline.

From the Federal Government to State SNAP Agencies.

**SUPPLEMENTARY INFORMATION:**

**I. Procedural Matters**

*Issuance of an Interim Rule and Date of Effectiveness*

USDA, under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B), finds for good cause that use of prior notice and comment procedures for issuing this interim rule is impracticable. Section 28 of the FNA of 2008, as added by Section 241 of Public Law 111–296, the HHFK Act of 2010, Public Law 111–296 enacted on December 13, 2010, requires publication in the **Federal Register** not later than January 1, 2012 of a “description of the requirements for the receipt of a grant under this section.” This statutory language demonstrates that Congress expected the Secretary to publish in the **Federal Register** a description of requirements that have maximum legal effect, not proposed requirements, by

January 1, 2012 so that State agencies can rely on those requirements in preparing their fiscal year 2013 Nutrition Education State plans. To have maximum legal effect, USDA believes that such requirements must be in the form of an effective rule published in the **Federal Register**, not merely Agency guidance materials. Furthermore, in Section 28 of the Act Congress mandated that the Secretary consult with the Director of the CDC and outside stakeholders and experts prior to identifying allowable uses of the grant funds. Through USDA's diligent efforts to meet this Congressional mandate, the Agency conducted nearly 25 consultative sessions with the CDC and outside stakeholders and experts over a 6 month period. USDA concludes that there was insufficient time to meet this Congressional mandate and issue both a proposed rule and final rule prior to the statutory deadline. As a result, this interim rule is necessary to comply

fully with the requirements of Section 28 of the FNA to ensure that State agencies implement its provisions.

For the same reason of impracticability due to the statutory implementation deadline, under the provisions of the Congressional Review Act at 5 U.S.C. 808(2), USDA for good cause is issuing this rule to be effective upon publication. This date is less than the latest of the 60-day delay in effective date prior to, either the submission of a report to Congress, or after publication of the rule in the **Federal Register**, as required under section 801(a)(3)(A) of the Congressional Review Act.

FNS invites public comment on this interim rule. FNS will consider amendments to the rule based on comments submitted during the 60-day comment period. The agency will address comments and affirm or amend the interim rule in a final rule.

## II. Background

The purpose of SNAP-Ed is to improve the likelihood that SNAP participants and eligible low-income people will make healthy food choices within a limited budget and choose active lifestyles consistent with the current Dietary Guidelines for Americans (DGAs) and USDA food guidance. SNAP-Ed is designed to coordinate with other Federal, State, and local efforts to provide nutrition education to low-income individuals and families.

State SNAP agencies have the option of providing nutrition education to persons eligible for SNAP as part of their program operations. FNS staff review and approve annual Nutrition Education State Plans submitted by State agencies that chose to participate in SNAP-Ed. These plans outline the States' activities and budget for the following year.

In FFY 1992, FNS approved \$661,000 in Federal funds for SNAP-Ed efforts conducted by seven State agencies. The SNAP-Ed program has grown steadily such that by FFY 2010 FNS approved \$380 million in Federal funds to provide SNAP-Ed in 52 State agencies.

SNAP-Ed is delivered through State SNAP agencies who subcontract with implementing agencies for conducting local projects. Prior to the HHFK Act, State SNAP agencies seeking Federal reimbursement for State administrative costs submitted a Nutrition Education State Plan, commonly referred to as a "SNAP-Ed Plan", for FNS approval. Criteria for evaluating SNAP-Ed Plans included: timeliness, completeness, presence of a needs assessment, goals/objectives, description of projects, consistency with the DGAs and USDA food guidance, evaluation, coordination of efforts, staffing, budget, assurances, and waivers.

Prior to the addition of Section 28 to the FNA, each year FNS provided SNAP-Ed Plan Guidance that assists States with preparation of SNAP-Ed Plans, describes reporting requirements for Plan activities, serves as a reference for SNAP-Ed policy, and provides a timeline for planning and reporting. The Guidance recommended that SNAP-Ed Plans include behaviorally focused, science-based nutrition education interventions, projects, or social marketing campaigns that fall within the scope of SNAP-Ed and are consistent with FNS priorities. The focus of SNAP-Ed has been:

(1) Health promotion to help SNAP eligibles establish healthy eating habits and a physically active lifestyle and

(2) Primary prevention of disease to help SNAP eligibles that have risk factors for diet-related chronic disease prevent or postpone the onset of disease by establishing healthier eating and more physically active lifestyles.

### *Purpose of the Rule*

The HHFK Act removes the 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. The rule implements the nutrition education and obesity prevention grant program, which FNS will continue 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.

This rule provides grants to States through 100 percent Federal funding and requires no State contribution or match. Section 28 of the FNA permits State and private financial contribution to SNAP-Ed activities and this rule encourages States to seek these contributions to leverage their Federal SNAP investment.

Implementation of this provision will provide accountability and transparency through SNAP-Ed Plans and ensure that interventions implemented as part of these Plans recognize the constrained resources of the low-income population and are provided at no cost to recipients. It also encourages greater coordination of projects with other public or privately funded health promotion and nutrition improvement strategies.

The implementation of this Program will continue SNAP's commitment to serving low-income populations while focusing on the critical problem of obesity, a major health concern. Implementation of the nutrition education and obesity prevention grant program allows coordinated services to be provided to participants in Federal assistance programs and other low-income persons. This action will broaden coordination and collaboration efforts and relationships in order to provide more flexibility to include a wider range of evidence-based intervention strategies. It will foster a more effective and comprehensive program to address the critical problem of obesity, especially its effects on low-income Americans.

### *Consultations*

Section 28 of the FNA required 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 this rule. These stakeholders and experts included representatives of advocacy groups, academic and research communities, nutrition and health promotion associations, representatives of Federal, State and local governments, and community service providers.

To assist in the formulation of this rule while meeting the requirements of the Act, FNS conducted an aggressive outreach effort to engage its partners, stakeholders, and experts in consultation on all aspects of the provision. FNS conducted nearly 25 consultative sessions over a 6 month period. These sessions included national stakeholder meetings, listening sessions, webinars, meetings and conference calls with State and local staff, Cooperative Extension Service staff/administrators, nutrition network administrators, Indian Tribal Leaders, nutrition practitioners, researchers, and representatives of community-based organizations that serve low-income and minority populations. Additional meetings and planning sessions were conducted with Federal partners such as the CDC Division of Nutrition, Physical Activity, and Obesity and representatives from various USDA agencies. To broaden opportunities for public input, SNAP established an Internet mailbox as a vehicle to receive informal written comments from stakeholders and the public. These efforts resulted in over 150 stakeholder groups and individuals providing comments and suggestions to FNS through meetings, webinars, listening sessions, and email for re-shaping SNAP-Ed as a more robust program with demonstrated impact.

### *Nutrition Education State Plans*

Prior regulation required that SNAP-Ed Plans include information on the number and positions of staff providing services, a description of nutrition education activities, and assurance that activities benefit SNAP participants and others eligible to receive SNAP. The time frames for Plan submission and approval were also stipulated in prior regulation. Under prior law, State agencies received Federal reimbursement for 50 percent of their allowable administrative costs for approved nutrition education activities. States described these activities in their Plans and the methods they would use to provide their State contribution or match to the Federal reimbursement.

Consistent with prior law, Section 28 of the FNA requires State agency submission of a Nutrition Education State Plan in order to receive a grant for the provision of nutrition education and obesity prevention services. FNS will continue to refer to these Plans as SNAP-Ed Plans. Previous SNAP-Ed Plan Guidance required and Section 28 of the Act mandated that SNAP-Ed Plans:

- Identify the use of funding for local projects;
- Ensure that interventions are appropriate for the eligible low-income population; and
- Recognize the population's constrained resources and potential eligibility for Federal nutrition assistance.

The law calls for a two-year transition period, FFYs 2011 and 2012, during which SNAP-Ed Plans remain consistent with requirements in effect prior to passage of the law, with the exception of the new funding procedures proscribed, i.e., no State match required. Section 28 of the Act further requires that Plans conform to Agency standards set through guidance, grant award documents, or regulation.

Prior to this rule, FNS conveyed policy about the operation of SNAP-Ed to States primarily through annual SNAP-Ed Plan Guidance. During the transition period, SNAP-Ed Plan requirements for SNAP-Ed remained relatively static. This allowed States to adjust to the new funding structure called for in the HHFk Act during the two-year transition period.

FNS received input about SNAP-Ed Plan requirements for FFY 2013 and beyond from stakeholders through its numerous consultations, listening sessions, and email responses. Some stakeholders expressed interest in FNS allowing States the flexibility to submit either annual Plans or multi-year Plans that describe SNAP-Ed activities over more than one fiscal year. FNS has permitted multi-year Plans for SNAP-Ed on a limited basis for several years. FNS has determined that States may propose to implement annual or multi-year SNAP-Ed Plans that cover a timeframe of up to three years.

SNAP-Ed Plans must be submitted by August 15th for FNS approval to receive a grant for provision of nutrition education and obesity prevention services. Approved Plans become effective for the following FFY (October 1st—September 30th). The SNAP-Ed Plans must address the requirements specified by law and meet standards established in this rule, SNAP-Ed Plan Guidance, and other FNS policy. The SNAP-Ed Annual Report that examines project activities and budget for the

prior year must be submitted by November 30th of each year.

#### *Target Population*

Section 28 of the Act 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. Under Section 28, State agencies may deliver services either directly to eligible individuals or through agreements with other State or local agencies or community organizations.

Current SNAP-Ed guidance places a priority on nutrition education for SNAP participants and persons eligible to receive SNAP. States can also use SNAP-Ed funds to reach persons in locations where at least half of the population has gross incomes equal to or less than 185 percent of the poverty threshold. For example, SNAP funds may be used to serve persons residing, attending school, or in some circumstances shopping for food in low-income areas.

Through consultations, some stakeholders recommended that FNS expand the current definition of SNAP-Ed eligible. Considering its goal to focus limited SNAP-Ed resources to reach as many of the SNAP-eligible, low-income population as possible, the Agency decided, as permitted by Section 28 of the Act, to define low-income individual to ease administrative burden on States to target eligible populations. The Secretary's definition for low-income persons for SNAP-Ed under this rule is SNAP participants and low-income individuals eligible to receive SNAP benefits 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 of low-income more closely 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.

SNAP-Ed Plan Guidance prior to implementation of the HHFk Act provisions defined the target audience for services as SNAP participants and eligibles and included multiple strategies and data sources to assist agencies in identifying their target populations. Commenters stated that the strategies and data sources described in

this previous SNAP-Ed Plan Guidance did not entirely address the challenges experienced by some agencies to identify and reach their target audience. They described the challenges some face in implementing interventions such as social marketing campaigns where, in focusing efforts on the low-income population, they inevitably reach ineligible persons. These stakeholders indicated that implementing SNAP-Ed activities should not exclude strategies States may develop that might include ineligible individuals while reaching significant numbers of low-income persons.

The Agency understands that States want greater flexibility in the methods and data sources they use to identify their low-income SNAP-Ed population to improve service delivery. FNS has determined that States may propose alternative targeting methodologies such as defined areas around a qualifying school, SNAP office, etc. that use relevant supporting data sources beyond those included in prior SNAP-Ed Plan Guidance to identify their target audience. States may propose how they will identify their target audience as that audience is defined in Section 28 of the Act and § 272.2(d)(2)(iii) of this rule. FNS will consider these State targeting proposals in SNAP-Ed Plans submitted for approval.

#### *Use of Funds*

FNS received a significant number of comments from stakeholders, including Federal partners, on the definition of nutrition education and obesity prevention services in SNAP-Ed under this rule. SNAP-Ed Plan Guidance prior to implementation of the HHFk Act provisions defined nutrition education in SNAP-Ed as follows.

*Nutrition education* is a set of learning experiences designed to facilitate the early adoption of eating and other nutrition-related behaviors conducive to health and well-being for those on a limited budget.

This definition addresses primarily the nutrition-related behavior of SNAP recipients who, by definition, have limited resources. Many stakeholders recommended revising this definition to address additional factors that impact individual health and well-being such as environmental, community, and policy factors that invariably impact food choices. A majority of stakeholders recommended using the following definition as the foundation for nutrition activities in SNAP:

*Nutrition education* is any combination of educational strategies, accompanied by environmental supports, designed to facilitate

voluntary adoption of food choices and other nutrition-related behaviors conducive to health and well-being; nutrition education is delivered through multiple venues and involves activities at the individual, community and policy levels. (Isobel R. Contento, Ph.D., Nutrition Education, Linking Research, Theory, and Practice, Jones and Bartlett Publishers, 2011)

The Agency also sought to describe obesity prevention services as these are called for under Section 28 of the Act. CDC uses in its programming this definition for obesity prevention services: “interventions that address one or multiple levels of the socio-ecologic model (SEM) related to nutrition, physical activity, or select lifestyle behaviors that have been shown to impact obesity, and address that level through policy, system, and environmental supports”. In addition to CDC’s definition, FNS considered some of the Institute of Medicine’s key messages about obesity prevention to describe obesity prevention services in future SNAP-Ed programming such as “The most promising approaches for obesity prevention are population-based and multilevel, focus on environmental and policy change, and require participation from actors in multiple sectors” and “The strategies and actions undertaken to prevent obesity and their resulting outcomes vary according to the different environments in which they are undertaken”. (Bridging the Evidence Gap in Obesity Prevention: A Framework to Inform Decision Making, Institute of Medicine, Food and Nutrition Board, April, 2010)

Section 28 of the FNA states that the nutrition education and obesity prevention grant program activities may include comprehensive multilevel interventions at multiple complementary organizational and institutional levels with opportunity for community and public health approaches. FNS decided to develop a definition for nutrition education and obesity prevention services for use in SNAP-Ed programming to include factors illuminated by Contento and others, described in the HHFk Act, and implemented by other Federal agencies and SNAP-Ed partners and stakeholders. The updated definition considers the resources available for nutrition education and obesity prevention services, the mission of FNS: “To provide children and needy families better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts;” and the goal of SNAP-Ed: “To improve the likelihood that persons eligible for

SNAP will make healthy food choices within a limited budget and choose physically active lifestyles consistent with the current Dietary Guidelines for Americans and USDA food guidance.”

The definition of *nutrition education and obesity prevention services* that will become the basis for SNAP-Ed programming under this rule and SNAP-Ed Plan Guidance implementing the HHFk Act provisions follows:

*SNAP nutrition education and obesity prevention services* are any combination of educational strategies, accompanied by environmental supports, designed to facilitate voluntary 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 participate in SNAP and other means-tested Federal assistance programs. Nutrition education and obesity prevention services are delivered through multiple venues and involve activities at the individual, community, and appropriate policy levels. Acceptable policy level interventions are activities that encourage healthier choices based on the current Dietary Guidelines for Americans.

Section 28 of the FNA also stipulated that allowable nutrition education and obesity prevention strategies be evidence-based. Commenters provided feedback to the Agency on what evidence-based approaches they 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 that could be instrumental in demonstrating the effectiveness of a wide range of approaches in providing these activities.

FNS sought to formulate a definition for evidence-based to describe the types of activities that would be funded in order to have the greatest impact. The Agency reviewed definitions used by the Institute of Medicine and CDC when developing the following definition for evidence-based that will be used to describe nutrition education and obesity prevention activities in SNAP-Ed.

*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. 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 use of funds for SNAP-Ed include conducting and evaluating intervention programs, and implementing and measuring policy, systems, and environmental changes in accordance with SNAP-Ed Guidance.

Section 28 further stipulates that funds may be used for evidence-based activities using these approaches:

(1) Individual or group-based nutrition education, health promotion, and intervention strategies;

(2) Comprehensive, multi-level interventions at multiple complementary organizational and institutional levels;

(3) Community and public health approaches to improve nutrition.

The first approach, individual or group-based nutrition education efforts, has been the hallmark of most nutrition efforts conducted by FNS programs, including SNAP. Commenters acknowledged the importance of providing nutrition education, health promotion, and other intervention strategies to individuals and groups.

A significant number of commenters urged FNS to allow States to implement strategies that would address the second approach, comprehensive, multi-level interventions at multiple complementary organizational and institutional levels, included in Section 28 of the FNA. An example of this approach could include collaborating with schools and other organizations to improve the school nutrition environment including providing nutrition education classes and serving on school wellness committees. Commenters generally suggested that FNS consider the socio-ecological model (SEM) to address interventions. The majority of these commenters requested that FNS allow nutrition education and obesity prevention activities to emanate from all levels of the SEM. The SEM, as described in the 2010 DGAs, provides a framework that illustrates how spheres of influence including individual factors,

environmental settings, sectors of influence (government, public health and health care systems, agriculture, industry, and media), and social and cultural norms affect individual and family eating and physical activity choices.

Commenters indicated that using the SEM to provide nutrition education and obesity prevention activities will address the relationship between individuals, families, their environmental setting, and the various sectors of influence in addition to the impact of social and cultural norms and values. Commenters stated that using a comprehensive approach such as the SEM could further SNAP-Education's collaborative efforts and that doing so would make SNAP-Education's strategies more consistent with current public and private organizational recommendations for providing nutrition education and obesity/chronic disease prevention strategies.

The third approach for the use of nutrition education and obesity prevention grant funds is community and public health approaches to improve nutrition. Community and public health approaches, based on a definition used by CDC, are efforts that impact a large segment of the population rather than targeting the individual. Public health approaches can be targeted to low-income populations by focusing the interventions on settings with large proportions of low-income people such as schools, worksites, or other settings with a majority low-income population. Community-based approaches can take place in community centers, places of worship, community gardens, schools, farmers markets, food retail venues, etc. Community and public health programs, environmental strategies, and policies can impact larger numbers of people as opposed to individual and group-based nutrition education interventions alone which may impact a small number of people.

Stakeholders encouraged greater implementation of multilevel interventions and community and public health approaches into SNAP-Education activities. They added that SNAP-Education funds could be leveraged with other Federal and State funds for nutrition education and obesity prevention efforts to increase effectiveness and efficiency.

States may 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. To improve program design, FNS encourages State agencies to integrate multiple approaches in

implementing these activities. SNAP-Education Plan Guidance will further describe how nutrition education and obesity prevention activities can be implemented in SNAP-Education utilizing the approaches called for in Section 28 of the Act.

#### *Coordination*

Section 28 of the FNA stipulates that nutrition education and obesity prevention grant program projects may be coordinated with other public or privately funded health promotion or nutrition improvement strategies as long as the State agency retains administrative control of the projects. While FNS currently encourages States to connect nutrition education across programs and to collaborate and develop more integrated nutrition education approaches, commenters advised FNS to more strongly encourage or mandate that State agencies coordinate their SNAP-Education activities with other projects in their State to the maximum extent possible. Commenters recommended that States coordinate these services with other State-administered Federal programs, State and Federal nutrition education and obesity prevention strategies, and community-based efforts as examples.

FNS recognizes the potential synergy of coordinating nutrition education and obesity prevention activities with public and private interventions aimed at encouraging healthier lifestyles for the low-income population. It also recognizes the potential impact of leveraging SNAP-Education financial resources with that of other organizations to reach eligible individuals through multiple channels and varied approaches. FNS continues to encourage States to coordinate SNAP-Education activities with other national, State, and local nutrition education and health promotion initiatives and interventions including those implemented by other FNS nutrition assistance programs. FNS has determined that States shall describe their coordination efforts in their SNAP-Education Plans. States are strongly encouraged to coordinate activities and collaborate with community nutrition education and obesity prevention activities such as State Departments of Health and Education implementation of related State and Federally-funded programs. Such collaboration provides the capacity to implement activities through multiple spheres of the SEM. In accordance with Section 28 of the FNA, States shall continue to show in their Plans that the funding received from SNAP will remain under the administrative control of the State

agency as they coordinate their activities with other organizations.

#### *Funding*

Section 28 of the FNA altered the manner in which funding is provided to States for nutrition education and obesity prevention services. When the statute was enacted, for fiscal year 2011 and thereafter, States receive 100 percent Federal funding through grants with no requirement for a State contribution or match.

FNS staff held several listening sessions with State SNAP directors and local project staff and an additional session that was coordinated through the American Public Human Services Association to hear their concerns about the SNAP provisions of the HHFK Act. The majority of State and local concerns focused on State allocations and how those allocations may have differed from the level of funding requested in approved FFY 2011 SNAP-Education Plans, as well as other funding issues. Most of the comments came from States whose allocation was significantly less than the amount earlier approved in their FFY 2011 State plans. Additionally States:

- Questioned whether reallocation of funds from States that would not use their full allocation was feasible;
- Requested further explanation of the funding formula that would be used from FFY 2012 onward; and
- Inquired as to whether States could borrow against future allocations to help meet shortfalls.

Under Section 28 of the FNA, FNS has no discretion in how the funds are allocated as the language in the Act is prescriptive. Based on the funding formula used to determine allocations under Section 28, some States received a lower allocation than the level approved in their FFY 2011 SNAP-Education Plan and considered this a cut in funding. Other States received a higher allocation than the amount approved previously for FFY 2011.

States inquired as to whether there would be a reallocation of funds as allowed in the statute, should some States surrender funds they could not use. FNS encouraged States to expend all available funds and does not anticipate a need for reallocation. States surrendering funds would be negatively impacted since their base allocation for the following fiscal year would be reduced by the amount of funds surrendered. The base allocation for States receiving funds would be increased by the same amount. No funds were surrendered or reallocated in FFY 2011 and some States had to decrease planned services due to funding limitations.

Based on the Act, FNS cannot allow States to borrow against future allocations as some States requested. The Agency provided financial technical guidance to States to address their other funding-related concerns through *implementing memoranda and responses to questions*.

FNS considered the impact on State and local agencies as a result of the funding changes. The overall effect is to lessen administrative burden by eliminating the requirement that States provide a 50 percent contribution or match and the associated documentation. Furthermore, by making the grant period of performance a two-year period rather than the previous one-year period, the FNS provides greater flexibility to State agencies and allows them to expend effectively and more fully the Federal funds available to them.

This rule implements financial changes retroactive to the beginning of FFY 2011 as required by law. Based on the statute, FNS allocated \$375,000,000 in grant funding for FFY 2011 for nutrition education and obesity prevention services to the 52 State agencies that provided SNAP–Ed services based on an approved FFY 2009 SNAP–Ed Plan. From October 1, 2011, and thereafter, each State agency that submits an approved SNAP–Ed Plan will receive a Federal nutrition education and obesity prevention grant consisting of a base amount that reflects its share of national SNAP–Ed expenditure for FFY 2009 as reported in February 2010. The grants are the only source of Federal funds available from SNAP for nutrition education and obesity prevention services to States. Costs in excess of the grants are not eligible for Federal SNAP reimbursement.

For FFY 2012 and thereafter the funds are indexed for inflation and are adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Consumer Price Index (CPI) for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. FNS will make every effort to provide estimates to States of any increases in the CPI earlier than June 30th. These estimates will be based on projections contained in the annual President's Budget submission to Congress. The funding formula from FFY 2014 and thereafter factors in State shares of national SNAP participation in conjunction with State shares of the base 2009 national expenditures, building progressively to a 50/50 weighting in FFY 2018 and beyond. The allocations to States for nutrition

education and obesity prevention grant program services are summarized as follows:

- For FFY 2011, 2012, 2013, funds allocated to States are in direct proportion to State expenditures for FFY 2009, as reported in February 2010;
- For 2014, 90 percent based on expenditures, plus 10 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2012 to January 31, 2013;
- For 2015, 80 percent based on expenditures, plus 20 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2013 to January 31, 2014;
- For 2016, 70 percent based on expenditures, plus 30 percent based on the State's share of national SNAP participants for the 12-month period February 1, 2014 to January 31, 2015;
- For 2017, 60 percent based on expenditures, plus 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,
- For 2018 and thereafter, 50 percent based on expenditures, plus 50 percent based on the State's share of national SNAP participants for the previous 12-month period ending January 31st.

FNS reserves its authority to reallocate funds as described in Section 28 of the Act. If the Agency determines that a State agency will not expend all of its funds or if a State elects to not receive its entire grant amount, FNS may reallocate the unexpended funds during the period for which the funding is available for new obligations at the Federal level to other States that have approved SNAP–Ed Plans, as appropriate, based upon criteria that the Agency may establish for such purposes. Reallocated funds received by a State will be considered part of its base 2009 allocation for the next fiscal year for the purpose of determining allocation; funds surrendered by a State shall not be considered part of its base 2009 allocation for the next fiscal year for the purpose of determining allocation.

If a State proposes during the SNAP–Ed planning process to surrender funds that they have no plans to obligate during the two year period of performance for the grants, FNS could potentially re-direct those surrendered funds to other States. At this time, FNS anticipates that no State would surrender funds due to the potential for negative impact on the State's allocation for the following year. No States surrendered funds during fiscal year 2011 and no reallocation criteria were needed.

States expressed an interest in exercising greater oversight over administration of their SNAP–Ed grants, especially in light of adoption of community and public health approaches and the requirement for greater coordination and collaboration with public and private partners. Some States and other stakeholders expressed interest in using SNAP–Ed funds to employ State staff to oversee administration and monitoring of the funds. Some States inquired about incorporating more competition in selection of sub grantees to implement nutrition education and obesity prevention services. For these and other reasons, States requested FNS provide further guidance on State-level administration of nutrition education and obesity prevention grants. FNS' role in the State administration of approved grant funds is limited to what is required by Federal law. FNS did clarify to States that they have discretion to choose to use any part of their SNAP–Ed grant funds or other State administrative funds to retain staff, such as a Registered Dietitian or credentialed nutrition service provider, to administer SNAP–Ed grant funding. States additionally have the authority to award funds to sub grantees, competitively or otherwise, according to State financial guidance. However, funds shall remain under the administrative control of the State agency.

#### *Executive Order 12866 and Executive Order 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 interim rule has been designated an "economically significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

#### *Regulatory Impact Analysis*

As required for all rules that have been designated as economically significant by the Office of Management and Budget (OMB), a Regulatory Impact Analysis (RIA) was developed for this interim rule. The following summarizes

the conclusions of the regulatory impact analysis:

*Need for Action:* The interim rulemaking 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 signed on December 13, 2010, to award grants to States for the provision of nutrition education and obesity prevention programs.

*Benefits:* There are several benefits to the rule. In the past, the funding for SNAP-Ed was highly variable between years. With this rule, the funding will grow by the CPI-U, smoothing out the variation to a regular growth pattern. Secondly, the cost-sharing burden on States will decrease because they will no longer have a required funding match and may result in improved targeting of services and greater efficiencies since States will no longer have to seek matching funds in order to provide those services. The rule has an added benefit of supporting more comprehensive anti-obesity efforts as the use of funding has been expanded to include environmental approaches and policy level work in addition to nutrition education and health promotion. States will have the opportunity to implement comprehensive, multilevel interventions and use community-based and public health approaches to extend their efforts. *Federal Cost Reduction:* The new rule is expected to reduce Federal costs by \$158 million in FY 2013 and \$663 million in the five-year period between FY 2013 and FY 2017. When annualized at a discount rate of 7 percent, this yields an expected Federal cost reduction of \$131 million per year.

#### *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 will not have a significant impact on a substantial number of small entities. Currently, 52 State agencies implement SNAP-Ed programs, and this 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 interim 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 under 10.561. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), 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 in accordance with Section 6(b)(2)(B) of Executive Order 13132. This interim rulemaking 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. USDA has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implication and 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*

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim 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 reviewed this interim rule in accordance with the Department Regulation 4300–4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities, elderly, homeless, and persons with Limited English proficiency.

#### *Executive Order 13175*

E.O. 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. In late 2010 and the first half of 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires 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 interim 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 2013 EARS data by December 31, 2013 thereby negating the necessity for an Information Collection Request as part of this rule.

*E-Government Act Compliance*

The Food and Nutrition Service 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.

**Regulatory Impact Analysis**

7 CFR part 272: Supplemental Nutrition Assistance Program Provisions of Title II of Public Law 111–296

**Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant Program Interim Rule**

*I. Statement of Need*

The interim rulemaking is necessary to amend Supplemental Nutrition Assistance Program (SNAP) regulations to implement Section 28 of the Food and Nutrition Act (“FNA” or the “Act”) of 2008, as added by Section 241 of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFK Act), signed on December 13, 2010, to award grants to States for the provision of nutrition education and obesity prevention programs. The HHFK Act removes the existing nutrition education program under section 11(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), commonly known as SNAP-Ed, and replaces it with the nutrition education and obesity prevention grant

program, which will still be referred to as SNAP-Ed. The interim rule seeks to improve program operation and effectiveness by making it easier for States to administer while meeting the needs of the eligible low-income population. The interim rule provides State agencies with requirements for implementing Section 28 of the FNA including the grant award process and the formula for allocating the 100 percent Federal grant funding authorized under the Act to carry out nutrition education and obesity prevention services each fiscal year.

*II. Summary of Impacts*

The Department has estimated that the SNAP-Ed program provision of Section 28 of the FNA implemented in the interim rule will result in a reduction of Federal costs of \$158 million in Federal fiscal year (FFY) 2013 and \$663 million over the 5 years, FFY 2013 through FFY 2017. The Federal budget impacts are summarized below in Table 1; these estimates are categorized as transfers in the accounting statement that follows.

TABLE 1—SUMMARY OF FEDERAL BUDGET IMPACTS

In millions of dollars	FFY 2013	FFY 2014	FFY 2015	FFY 2016	FFY 2017	Total
Nutrition Education and Obesity Prevention Grant Program—Section 28 of the FNA .....	–\$158	–\$77	–\$109	–\$142	–\$177	–\$663
Total Cost .....	–\$158	–\$77	–\$109	–\$142	–\$177	–\$663

As required by OMB Circular A–4, in Table 2 below, we have prepared an

accounting statement showing the annualized estimates of benefits, costs,

and transfers associated with the provisions of this interim rule.

TABLE 2—ACCOUNTING STATEMENT

	Primary estimate	Year dollar	Discount rate	Period covered
Benefits				
Qualitative: Provisions in Section 28 will result in a reduction of Federal costs and will reduce administrative and financial burden for States, as well as improve the likelihood that low-income persons eligible for SNAP and other federal means-tested programs will make healthy lifestyle choices.				
Costs				
Annualized Monetized (\$millions/year).				
Transfers				
Annualized Monetized (\$millions/year) .....	–\$131 –\$132	2013 2013	7% 3%	FFY2013–2017

The first-year cost reduction for the Federal government is estimated at \$158 million, with a total cost reduction of \$663 million in the first five years. Impacts are already incorporated into the President’s budget baseline.

From the Federal Government to State SNAP Agencies.

### Analysis of Impacts

The cost estimates rely on assumptions about the future growth of SNAP Education (SNAP-Ed) approved<sup>1</sup> Federal funding in absence of the change contained in Section 28 of the Food and Nutrition Act. Between FFY 2009 and FFY 2010, the approved Federal funding for SNAP-Ed grew from \$350.3 million to \$379.6 million, an increase of 8 percent. The cost estimate assumes the same annual growth rate in future years.

The estimates of the cost of the SNAP-Ed program in future years are based on economic assumptions from the Office of Management and Budget (OMB) of the June value of the Not Seasonally Adjusted Consumer Price Index for All Urban Consumers (CPI-U).

### Nutrition Education and Obesity Prevention Grant Program—Section 241

*Discussion:* Section 28 of the FNA changed the funding for SNAP-Ed. In the past, the Department would match all State funding designated for SNAP-Ed in their SNAP nutrition education state plan. As a result, the approved Federal funding varied substantially from year-to-year, from a low of \$99 million in FFY 2000 to nearly \$380 million in FFY 2010. The year-to-year percentage changes during that time had a range from a decline of 1 percent to an increase of 45 percent.

This interim rule provides grants to States through 100 percent Federal SNAP funding and requires no State contribution or match. Section 28 of the FNA permits financial contributions from State and private, as well as from other Federal programs when multi-level/organizational activities are covered, for nutrition education and obesity prevention program activities and FNS encourages States to seek these contributions to leverage their Federal SNAP investment.

*Effect on Low-Income Families:* The Department determined that the definition of eligible individuals under Section 28 of the FNA does not significantly change the population eligible for the previous SNAP-Ed programs. The implementation of the new SNAP-Ed program will continue SNAP's commitment to serving low-income populations while focusing on the critical problem of obesity, a major health concern. Implementation of the SNAP-Ed program allows coordinated services to be provided to participants in Federal assistance programs and other low-income persons. This action will broaden coordination and

collaboration efforts and relationships in order to provide more flexibility to include a wider range of evidence-based intervention strategies. It will foster a more effective and comprehensive program to address the critical problem of obesity, especially its effects on low-income Americans. The goal of the SNAP-Ed Program is to improve the likelihood that persons eligible for SNAP will make healthy food choices within a limited budget and choose physically active lifestyles consistent with the current Dietary Guidelines for Americans (DGAs).

*Federal Savings Impact:* The new legislation intends to improve program funding and operations by creating a specific formula with a set growth pattern for a steady year-to-year increase. The HHFK Act specified that total funding for FFY 2011 would be \$375,000,000 and that total funding for subsequent fiscal years is adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Not Seasonally Adjusted CPI-U published by the Bureau of Labor Statistics (BLS) of the Department of Labor. Subsequent to the HHFK Act, the American Taxpayer Relief Act of 2012 (ATRA), signed into law on January 2, 2013, authorized the total amount of SNAP-Ed funding that would be available for FFY 2012 through FFY 2015 and then subsequent fiscal years would be adjusted by the CPI-U as in the HHFK Act. The following cost analysis uses the funding authorized in ATRA for FFY 2013 to FFY 2015 and estimates of the CPI-U in future years from OMB to estimate funding in FFY 2016 and FFY 2017.

ATRA authorized \$285,000,000 for SNAP-Ed in FY 2013. We estimate the approved Federal funding for SNAP-Ed in the absence of Section 28 of the FNA and ATRA for FFY 2013 at \$442,768,187. We calculate this by taking the approved Federal funding amount for FFY 2011 (\$379,602,355) and multiplying it by an estimated increase of 8 percent to get the FFY 2012 funding. The amount of \$379,602,355 multiplied by 1.08 is \$409,970,543, which is the FFY 2012 funding. The FFY 2013 funding is calculated the same way. We multiply the FFY 2012 funding of \$409,970,543 by 8 percent for a FFY 2013 funding total of \$442,768,187.

To estimate the savings from implementing the new SNAP-Ed program funding formula, we subtract the SNAP-Ed program funding for FFY 2013 of \$285,000,000 from the projected approved Federal funding for SNAP-Ed in absence of Section 28 of the Act and ATRA of \$442,768,187. When we

subtract \$285,000,000 from \$442,768,187, it results in a savings of \$157,768,187 in FFY 2013.

The same methodology was used for FFY 2014 and FFY 2015. We calculated the funding for SNAP-Ed in absence of Section 28 of the FNA by multiplying the prior year's funding by 8 percent. The SNAP-Ed funding authorized in ATRA is \$401,000,000 in FFY 2014 and \$407,000,000 in FFY 2015. The difference between the two projected funding estimates is the savings in each fiscal year. This results in a savings of \$77,189,642 in FFY 2014 and \$109,444,813 in FFY 2015.

For FFY 2016, the SNAP-Ed funding authorized by ATRA is the prior year funding amount indexed by the change in the June value of the CPI-U. The OMB estimate of the unadjusted index is 240.229 for June 2014 and 245.513 for June 2015. To calculate the June-to-June change, we divide 245.513 by 240.229, which is 1.022. We then multiply the FFY 2015 funding amount of \$407,000,000 by the June-to-June change in the CPI-U, or 1.022, which results in the FFY 2016 funding for SNAP-Ed of \$415,952,241. When we subtracted this value from the projected funding for SNAP-Ed in absence of the HHFK Act for FFY 2016 of \$557,760,398, the result is a savings of \$141,808,157.

For FFY 2017 the SNAP-Ed funding for FFY 2016 is indexed by the change in the June value of the CPI-U. The OMB estimate of the unadjusted index is 250.915 for June 2016. To calculate the June-to-June change, we divide 250.915 by 245.513, which is 1.022. We then multiply the FFY 2016 funding amount of \$415,952,241 by the June-to-June change in the CPI-U, or 1.022, which results in the FFY 2017 funding of \$425,104,400. When we subtracted this value from the projected funding for SNAP-Ed in absence of the HHFK Act and ATRA for FFY 2016 of \$602,381,230, the result is a savings of \$177,276,830.

We anticipate that stabilizing the funding structure for SNAP nutrition education will save the Government \$158 million in FFY 2013, and \$663 million in the five-year period from FFY 2013 to FFY 2017.

*Participant Impacts:* We do not anticipate any changes in SNAP participation resulting from the SNAP-Ed Programs.

### III. Alternatives Considered

Under Section 28 of the Food and Nutrition Act, the Department has no discretion in the total funding for SNAP-Ed programs or how the funds are allocated to the States as the language in the Act is prescriptive.

<sup>1</sup> Actual expenditures were often less than approved Federal funds.

Section 28 of the Food and Nutrition Act makes no significant change to the eligible population for SNAP-Ed programs.

We considered a number of alternatives for estimating future SNAP-Ed funding in absence of Section 28 of the FNA to determine the savings from the implementation of the SNAP-Ed programs. Because approved Federal funding for SNAP-Ed from year to year between FFY 2000 and FFY 2010 varied considerably, we could have used the average year-to-year change in funding based on actual dollar amounts, or we could have used an average year-to-year change in funding based on the percentage change. Another alternative we considered was using the compound annual growth rate in approved Federal funding. However, because the year-to-year funding amount changed considerably during that period, and because the amounts were decreasing over time, we chose to use only the change of 8 percent between the most recent two fiscal years, FFY 2009 and FFY 2010, which reflects a conservative estimate of future growth in SNAP-Ed funding in the absence of Section 28 of the FNA.

#### IV. References

Approved Federal Funds for

Supplemental Nutrition Assistance Program Education by Fiscal Year at <http://www.nal.usda.gov/foodstamp/pdf/>

*Historical%20FSNE%20Funding.pdf* and <http://www.nal.usda.gov/foodstamp/pdf/>

*Historical%20FSNE%20Funding.pdf*.

Bureau of Labor Statistics Consumer Price Index page at <http://www.bls.gov/cpi/>.

#### List of Subjects in 7 CFR Part 272

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

For the reasons set forth in the preamble, 7 CFR part 272 is amended as follows:

#### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

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

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 272.2, paragraphs (d)(1)(iii), (d)(2), (d)(6) are revised to 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 shall:

(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 the 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;

(iv) Ensure interventions are appropriate for the low-income population defined as SNAP participants and low-income individuals eligible to receive SNAP benefits or other means-tested Federal assistance programs. The interventions must recognize the population's constrained resources and potential eligibility for Federal food assistance;

(v) 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;

(vi) *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, and operating its SNAP-Ed program in accordance with its approved SNAP-Ed Plan;

(B) *Definitions.* SNAP nutrition education and obesity prevention services are defined as any combination of educational strategies, accompanied by environmental supports, designed to facilitate voluntary 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 participate in SNAP and other means-tested Federal assistance programs. Nutrition education and obesity prevention services are delivered through multiple venues and involve activities at the individual, community, and appropriate policy levels. Acceptable policy level interventions are activities that encourage healthier choices based on the current 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. 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 policy, systems, and environmental changes in accordance with SNAP-Ed 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 one 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;

(vii) Include a description of the State's efforts to coordinate activities with national, State, and local nutrition education and health promotion initiatives and interventions, whether public or privately funded. 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 must be available for inspection upon request;

(viii) 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;

(ix) *Federal financial participation and allocation of grants.* (A) Each State agency that submitted an approved fiscal year 2009 SNAP-Ed Plan will receive a 100 percent Federal grant each fiscal year to operate SNAP-Ed based on the State's share of national SNAP-Ed expenditures for fiscal year 2009 as reported in February 2010. The grant requires no State contribution or match. The grant period of performance is two years and these funds are the only source of Federal funds available under the Food and Nutrition Act of 2008, as amended, for SNAP nutrition education and obesity prevention services to States. Funds in excess of the grants are not eligible for SNAP Federal reimbursement;

(B) A State agency's receipt of its 100 percent Federal SNAP-Ed grant is contingent on FNS' approval of the State agency's SNAP-Ed Plan. If an adequate Plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved Plans;

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

(D) Annually, FNS will determine each State's share of the funding provided for each fiscal year. The amount of funding provided in fiscal year 2011 was \$375,000,000, and the amount of funding provided in each subsequent year is determined by adjusting the previous fiscal year's amount to reflect any increases for the 12-month period ending the preceding June 30th in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor;

(E) FNS will allocate the funding available each fiscal year for SNAP-Ed grants using the formula proscribed by law that factors in State shares of the base 2009 Federal expenditures, building progressively to a 50/50 weighting of expenditures to participation from fiscal year 2014 to fiscal year 2018 and beyond. The allocations to a State for SNAP-Ed grants will be:

(1) For fiscal year 2013, in direct proportion to State expenditures for FFY 2009, as reported in February 2010;

(2) For fiscal year 2014, 90 percent based on expenditures, plus 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 fiscal year 2015, 80 percent based on expenditures, plus 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 fiscal year 2016, 70 percent based on expenditures, plus 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 fiscal year 2017, 60 percent based on expenditures, plus 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 fiscal year 2018 and thereafter, 50 percent based on expenditures, plus 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 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, 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 at the Federal level. Reallocated funds received by a State will be considered part of its base 2009 allocation for the next fiscal year for the purpose of determining allocation; funds surrendered by a State shall not be considered part of its base 2009 allocation for the next fiscal year for the purpose of determining allocation.

(x) *Fiscal recordkeeping and reporting requirements.* Each participating State agency must meet FNS fiscal recordkeeping and reporting requirements. Total SNAP-Ed expenditures are reported on the Financial Status Report (SF-425). States are expected to continue to collect and report State and private contributions to their SNAP-Ed activities through the Education Administration and Reporting System FNS-759;

(xi) 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;

(xii) The State agency must submit a SNAP-Ed Annual Report to FNS by November 30th of each year. The report shall describe SNAP-Ed Plan project activities 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 15th. Approved plans become effective the following FFY October 1st to September 30th.

\* \* \* \* \*

#### § 272.5 [Amended]

■ 4. Section 272.5(b)(1) is amended by removing paragraphs (b)(1) and (b)(2) and redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(1) and (b)(2).

Dated: March 27, 2013.

**Kevin Concannon,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2013-07602 Filed 4-4-13; 8:45 am]

BILLING CODE 3410-30-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1209

[Docket No. NASA-2013-0001]

RIN 2700-AD82

#### Boards and Committees

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule makes nonsubstantive changes to correct and remove citations referenced in NASA's Contract Adjustment Board rule. The revision to this rule is part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011. NASA's full plan and updates can be accessed on the Agency's open Government Web site at <http://www.nasa.gov/open/>.

**DATES:** This direct final rule is effective on June 4, 2013. Comments due on or before May 6, 2013. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.