



Program Design Branch  
Program Development Division  
Food and Nutrition Service (FNS)  
U.S. Department of Agriculture  
3101 Park Center Dr.  
Alexandria, VA 22302

7 CFR Part 273 [FNS-2019-0009]  
RIN 0584-AE69

Proposed Rule: Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances<sup>i</sup>

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Submitted electronically

### *Introduction*

The Institute for Agriculture and Trade Policy (IATP)<sup>ii</sup> appreciates this opportunity to comment on this Proposed Rule (PR).<sup>1</sup> IATP commented on the “Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)”.<sup>iii</sup> IATP has a professional interest in USDA nutrition programs. As we wrote to the FNS on September 23, “IATP works to help enable Minnesotan farmers to provide healthy foods to schools and early child care education programs.”<sup>iv</sup> The rural and urban partners of our Farm to Head Start initiatives report economic, educational and health benefits, all of which will be in jeopardy if the rule is finalized as proposed. IATP’s Farm to School and Farm to Early Care initiatives have observed the health and educational benefits of healthy foods for a decade.<sup>v</sup> IATP is also a partner in Farm to Summer, an initiative to incorporate local foods into free Summer Food Service Program meals provided to Minnesota children during non-school months.<sup>vi</sup> The reduction of SNAP benefits resulting from the revision of eligibility criteria will place an additional burden on

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<sup>1</sup> IATP submits this comment in honor of Rodney Leonard, one of the three co-designers of federal food assistance during the Kennedy and Johnson administrations. He served as the USDA Administrator of the Consumer and Marketing Division during the Johnson administration. Mr. Leonard is a former IATP Board member.

private food shelves and small non-profit initiatives, such as that of IATP, to try to compensate for the reduction.

As a result of the PR we comment on today, FNS has determined that "29 States are expected to see a net loss of SNAP benefits (about \$1.54 billion annually) and 22 are expected to see a net gain (about \$540 million annually)." ( Federal Register (FR) Vol. 84, No. 192, October 3, 2019, p. 52812) The USDA's Economic Research Service (ERS) has estimated "\$1 billion in new SNAP benefits would raise GDP by \$1.54 billion, implying a GDP multiplier of 1.5."<sup>vii</sup> IATP assumes that this economic multiplier still applies negatively when SNAP benefits are reduced. The anticipated reduction of net \$1 billion SNAP benefits that USDA estimates to result from this PR will add to the difficulty of compensating for the loss of SNAP benefits from the eligibility criteria PR.

#### *A PR Deficit: Not Consulting ERS, State Agencies, Local Governments and Native American Tribes*

The decision by the FSN to outsource research to the Econometrica consultancy on the methodology for standardizing SNAP benefit related heating and cooling costs,<sup>viii</sup> rather than also requesting the USDA's Economic Research Service (ERS) to carry out research about the nutritional impact of the PR, likely will result in a final rule that will exacerbate SNAP's nutritional inadequacy. For example, FSN notes the Econometrica study recommends using "a three-year average of the CPI [Consumer Price Index] for fuels and utilities to make annual [Standard Utility Allowance] adjustments." (FR 52810) However, CPI summarizes urban consumer prices, published by the Bureau of Labor Statistics in the following categories:<sup>ix</sup>

- All Urban Consumers (Current Series)
- Urban Wage Earners and Clerical Workers (Current Series)
- All Urban Consumers (Chained CPI)
- Average Price Data
- Department Store Inventory Price Index

As FSN knows well, 16 percent of SNAP beneficiaries live in rural areas, and 85 of the 100 most SNAP reliant counties are rural.<sup>x</sup> To reduce SNAP benefits in rural areas by adjusting the SUA on the basis of an urban CPI not only reduces SNAP's rural nutritional benefits, but also the rural economic multiplier benefits of SNAP participation, well documented by ERS.<sup>xi</sup> The Econometrica study is just one of two FSN uses to substantiate a PR that will have a major negative economic impact, to say nothing of a major negative nutritional and health impact. FSN would have been well served by asking ERS to adjust the CPI factor to incorporate rural prices, as well as rural utility costs, in the proposed formula for calculating Heating and Cooling Standardized Utility Allowances (HCSUAs). However, the FY 2020 USDA Budget not only cuts ERS staff by 50 percent (greater reductions have resulted from ERS relocation to the Kansas City area) but also eliminates the SNAP Policy Data Base.<sup>xii</sup> FNS will have to depend on private studies, made to order, to justify future proposed rules.

The agency's decision not to consult with state and local governments, which supervise and administer SNAP programs, prior to releasing the PR is one harbinger of a process leading to a regulatory outcome that invites litigation. Referencing "Executive Order 12988: Civil Justice Reform," FSN states, "Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted." (FR 52813) It is not likely that state governments will be deterred from litigation.

In the normal course of government, FNS would have released a preliminary notice of rulemaking. Indeed, in its lack of questions addressed to state and local governments, to Native American tribes and to other interested parties, the PR resembles a preliminary notice. We can find no notice on the FNS website that "FNS provided opportunity for consultation [with Native American tribes] on the issue on June 27, 2019 but received no feedback." (FR 52813) It is not clear what "the issue" is, but it cannot be regarding this PR, released on October 3, 2019. USDA's Office of Tribal Relations website shows a consultation and listening session on general Farm Bill Implementation on June 27, 2019.<sup>xiii</sup> A consultation prior to the release date of this PR does not constitute the "quality consultation" that FNS says it wishes to provide. As the agency knows well, the National Congress of American Indians (NCAI) submitted a comment letter on April 2, 2019 that was highly critical of the first PR to cut SNAP benefits. Among many other criticisms, NCAI wrote that "USDA fell short of its federal trust responsibilities by failing to engage in meaningful consultation with tribal nations."<sup>xiv</sup>

#### *Context of the PR: Achieving Adequate Nutrition and Food Security Through SNAP*

The chief objective of the SNAP program is clearly stated in Section 2: Declaration of Policy of the Food and Nutrition Act of 2008:

It is hereby declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. . . . To alleviate such hunger and malnutrition, a supplemental nutrition assistance program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.<sup>xv</sup>

From the beginning of the Act, Congress emphasizes that "raising the levels of nutrition among low-income households" would be achieved by increasing the food purchasing power of those households to enable them to use "normal channels of trade" to alleviate food insecurity. If SNAP benefits currently were adequate to improve the nutrition and food security of low-income Americans, the reduction of benefits resulting from this PR, if finalized and implemented, would not be devastating. However, according to a recent Food Research and Action Center paper:

Researchers, advocates, food pantries, and SNAP participants have been saying for years that SNAP benefits are inadequate, and, in 2013, after a thorough study, the prestigious Institute of Medicine (IOM) outlined the factors that explain why the SNAP allotment is not enough to get most families through the month with a minimally adequate diet. These factors include, among others, the lag in SNAP benefits keeping up with inflation; households' shelter costs that consume income that SNAP rules incorrectly treat as available for food purchases (therefore reducing SNAP allotments); and the cost-time trade-offs in obtaining a nutritious diet.<sup>xvi</sup>

FSN is well-aware of the IOM report, as well as other research, on the inadequacy of SNAP benefits, since much of that research was produced by USDA. According to the FSN HSCUA standardization methodology derived from the Econometrica study, the PR anticipates achieving "benefit equity" by reducing already inadequate SNAP allotments in 29 states, while increasing allotments in 22 states. (FR 52812) It is consistent with the objectives of the Food and Nutrition Act for the secretary to reduce SNAP benefits that are already nutritionally inadequate.

*Benefit Equity: Purpose of the PR and a More Effective Way to Achieve the Purpose*

USDA is concerned that allowing each State to calculate HCSUAs, a major factor in determining SNAP eligibility, is leading to an inequitable distribution of SNAP benefits among states. "In FY 2017, HCSUAs were used to determine 63 percent of household eligibility and benefit amounts." (FR 52810) By establishing a mandatory uniform methodology for calculating HCSUAs, FSN hopes to establish "benefit equity" for SNAP users. FNS states,

For example, in FY2019, the difference in HCSUAs between two bordering States was as high as \$339, which would cause a difference in benefits of \$55. While differences in utility costs are expected across State lines, the degree of the variation in methodologies and therefore SUA amounts is of concern as similarly situated households living a few miles apart could have significantly different benefit amounts. (FR 52810)

The proposed rule on HCSUA, if implemented as proposed, may achieve statistical equity, but at the very high cost of reducing SNAP benefits in those states with higher HCSUAs, particularly as climate change drives both hotter summers and springs, and colder winters.

SNAP benefits are distributed uniformly to all states, save for Alaska and Hawaii, and vary only according to family size. Because SNAP eligible food prices vary greatly among states and even within states, SNAP purchasing power varies greatly, meaning that SNAP benefits are already inequitable to greatly inequitable. Furthermore, recent research has shown that health indicators related to declining SNAP purchasing power from state to state are likewise inequitable to greatly inequitable.<sup>xvii</sup>

There are proposals to reform the Thrifty Food Plan (TFP) formula to increase SNAP purchasing power to enable SNAP to achieve its program objectives, particularly regarding

food security and nutrition.<sup>xviii</sup> The ERS authors of a history of efforts to cut SNAP benefits in the name of equity write, "Recent concerns about benefit adequacy revolve around the construction of the TFP, which currently does not account for geographic variation in food prices, cost variations associated with the age and nutrient requirements of some household members, and the costs of time in food preparation."<sup>xix</sup> It is more than a little strange that FSN would ignore ERS and academic research that documents SNAP purchasing power inequities and proposes how to redesign the TFP formula to enable the purchasing power equity that would lead to enhanced food security and health outcomes. Instead, FSN has chosen to increase benefit equity by employing a formula for calculating HSCUA that will exacerbate the already nutritional inadequacy of the SNAP program by exacerbating existing SNAP purchasing power inequities consequent to the great variation in heating and cooling costs among and within states.

FSN will likely receive some letters with this salient quote: "According to the [U.S. Energy Information Agency](#), in 2015 about 1 in 5 households reported reducing or forgoing necessities, such as food and medicine, to pay an energy bill."<sup>xx</sup> This estimate of the grim choice between food, medicine and energy is derived from the EIA's Residential Energy Consumer Survey (RECS), one of the data sources that would be used in the HSCUA factor in determining SNAP eligibility. It is difficult to imagine that FSN's attempt to achieve statistical equity, reducing net SNAP benefits, will be understood as a good faith attempt to implement the objectives of the Food and Nutrition Act of 2008,<sup>xxi</sup> scarcely referenced in the PR.

#### *FNS Justification for Non-consultation*

The FSN writes, "The Department is particularly interested in receiving comments from State agencies as to whether removing these options [for calculating the utilities costs of SNAP beneficiaries] pose administrative challenges based on their current practices." (FR 52811) FSN should be asking State agencies about much more than the administrative challenges posed by the PR. Food purchasing power, economic multiplier effects and nutritional impacts of the PR are among many questions that State officials likely would have wished to discuss with FSN before the release of the PR. Such comments, and indeed, dialogue with State officials about could have taken place in meetings with the relevant State agencies. However, the agency cites a 1983 Federal Register notice of one sentence to argue "this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials." (FR 52813) The rationale cited is that "The Food Stamp Program is an entitlement program and benefits are provided directly to individuals."<sup>xxii</sup> As the agency knows, State agencies administer SNAP and hence the benefits are not directly provided by FSN. The secretary has sought a legal rationale to avoid having to consult with State and local officials in advance of releasing this PR.

The lack of public consultation with interested and affected parties has become a hallmark of USDA rulemaking in this administration. Instead, the agency anticipates litigation from the States and local agencies and other affected parties that it now requests comments from in response to a proposed rule without proposed text:

This rule is not 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. (FR 52813)

Whatever USDA's stated intent, the PR almost surely will have pre-emptive effects on State innovations to improve assistance programs. For example, Section 22 of the Food and Nutrition Act of 2008 concerns a "family investment demonstration project" of the State of Minnesota to substitute cash assistance for food assistance, subject to satisfying other provisions of the Act and many State of Minnesota laws. It is likely that the implementation of the Minnesota project and laws governing the provision of home energy assistance to qualified families will be disrupted by the standardization of HCSUAs from Alabama to Wyoming.

### *Conclusion*

The lack of consultation with States, local governments and tribes may make this rule a candidate for litigation under the Administrative Procedures Act. The PR, if finalized and implemented, will undermine FSN's ability to achieve SNAP Program objectives in the Food and Nutrition Act of 2008. IATP urges that following extensive and substantive consultation with tribes, States, counties, local governments, food retailers, food security and nutrition academics, energy economists and other interested parties, USDA re-propose a PR with background and rulemaking language that will enable all parties to contribute to increasing SNAP benefits. If USDA is, however, committed to finalizing this PR, it must not do so without first scheduling meetings to obtain the consultation we recommend and ensure that the loss of economic multiplier effects of SNAP reductions is included in the required cost and benefit analysis for the PR. IATP hopes to have the opportunity to comment on this and other FSN re-proposed SNAP rules.

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<sup>i</sup> <https://www.regulations.gov/document?D=FNS-2019-0009-0001>

<sup>ii</sup> IATP is a nonprofit, 501(c)(3) nongovernmental organization, headquartered in Minneapolis, Minn., with offices in Washington, D.C. and Berlin, Germany.

<sup>iii</sup> Steve Suppan, "Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)" Institute for Agriculture and Trade Policy, September 26, 2019. <https://www.iatp.org/documents/proposed-rule-revision-categorical-eligibility-supplemental-nutrition-assistance-program>

<sup>iv</sup> Katie Costello, "Exploring Farm to Head Start Across Minnesota: Lessons from IATP's Farm to Head Start Partners," Institute for Agriculture and Trade Policy, August 13, 2019. <https://www.iatp.org/blog/201908/exploring-farm-head-start-across-minnesota-lessons-iatps-farm-head-start-partners>

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- <sup>v</sup> Costello, Lessons from IATP's Farm to Head Start Program," Institute for Agriculture and Trade Policy, March 12, 2019. <https://www.iatp.org/blog/201903/lessons-iatps-farm-head-start-program>
- <sup>vi</sup> Costello, "Farm to Summer Feeds Minnesota Children," Institute for Agriculture and Trade Policy, June 25, 2019. <https://www.iatp.org/blog/201906/farm-summer-feeds-minnesota-children>
- <sup>vii</sup> Patrick Canning and Rosanna Mentzer Morrison, "Quantifying the Impact of SNAP Benefits on the U.S. Economy and Jobs," Economic Research Service, In *Amber Waves*, July 2019. <https://www.ers.usda.gov/amber-waves/2019/july/quantifying-the-impact-of-snap-benefits-on-the-us-economy-and-jobs/>
- <sup>viii</sup> Chris Holleyman, Timothy Beggs, and Alan Fox. Methods to Standardize State Standard Utility Allowances. Prepared by Econometrica for the U.S. Department of Agriculture, Food and Nutrition Service, August 2017. <https://www.fns.usda.gov/snap/methods>
- <sup>ix</sup> Ibid, at 15.
- <sup>x</sup> Tim Marema, "The Geography of Food Stamps," *The Daily Yonder*, December 31, 2018. <https://www.dailyyonder.com/geography-food-stamps/2018/12/31/>
- <sup>xi</sup> Patrick Canning and Brian Stacy, "Supplemental Nutrition Assistance Program (SNAP) and the Economy: New Estimates of the SNAP Multiplier," USDA Economic Research Service, July 2019. <https://www.ers.usda.gov/webdocs/publications/93529/err-265.pdf?v=8010.7>
- <sup>xii</sup> "USDA FY 2020 Budget Explanatory Notes: Economic Research Service," at 6. <https://www.obpa.usda.gov/16ers2020notes.pdf>
- <sup>xiii</sup> <https://www.usda.gov/our-agency/staff-offices/office-tribal-relations-otr/tribal-consultations>
- <sup>xiv</sup> [http://www.ncai.org/policy-issues/land-natural-resources/agriculture/SNAP Proposed Rule.pdf](http://www.ncai.org/policy-issues/land-natural-resources/agriculture/SNAP_Proposed_Rule.pdf)
- <sup>xv</sup> <https://fns-prod.azureedge.net/sites/default/files/resource-files/Food%20And%20Nutrition%20Act%20of%202008%20Enacted%20122018.pdf>
- <sup>xvi</sup> Heather Hartline-Grafton, Jim Weill and Ellen Vollinger, "Initiatives to Make SNAP Benefits More Adequate Significantly Improve Food Security, Nutrition and Health," Food Research and Action Center, February 2019, at 2. <https://frac.org/wp-content/uploads/snap-initiatives-to-make-snap-benefits-more-adequate.pdf>
- <sup>xvii</sup> Erin T. Bronchetti, Garret Christensen And Hilary W. Hoynes, "Local Food Prices, SNAP Purchasing Power and Child Health," Junew 29, 2018. <https://intranet.weatherhead.case.edu/document-upload/docs/1618.pdf>
- <sup>xviii</sup> Hilary W. Hoynes and James P. Ziliak, "Increasing SNAP purchasing power reduces food Insecurity and Improve child outcomes," Brookings Institute, July 24, 2018. <https://www.brookings.edu/blog/up-front/2018/07/24/increasing-snap-purchasing-power-reduces-food-insecurity-and-improves-child-outcomes/>
- <sup>xix</sup> Victor Oliveira, Marc Trell, Laura Tiehen and David Smallwood, "Design Issues In Supplementary Nutrition Assistance Program: Looking Ahead by Looking Back," USDA Economic Research Service, January 2019, at 44. <https://www.ers.usda.gov/webdocs/publications/86924/err-243.pdf?v=43124>
- <sup>xx</sup> Ellen Vollinger and Heather Hartline-Grafton, "Winter storms underscore harshness of proposal to make It harder for SNAP households to afford to heat and eat," Food Research and Action Center, November 14, 2019.

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<https://frac.org/blog/winter-storms-underscore-harshness-of-proposal-making-it-harder-for-snap-households-to-afford-to-heat-and-eat> referencing "One In three U.S. households face a challenge In meeting energy needs," U.S. Energy Information Agency, September 19, 2018.

<https://www.eia.gov/todayinenergy/detail.php?id=37072> cited In

<sup>xxi</sup><https://fns-prod.azureedge.net/sites/default/files/resource-files/Food%20And%20Nutrition%20Act%20of%202008%20Enacted%20122018.pdf>

<sup>xxii</sup> <https://www.govinfo.gov/content/pkg/FR-1983-06-24/pdf/FR-1983-06-24.pdf> at 158.