Brandon Lipps, Administrator
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 812
Alexandria, Virginia 22302

 **RE: Docket Number: FNS-2019-0009**

 **Supplemental Nutrition Assistance Program: Standardization**

**of State Heating and Cooling Standard Utility Allowances**

Dear Administrator Lipps:

 The Pennsylvania Department of Human Services (DHS) strives to improve the quality of life for Pennsylvanians by promoting opportunities for independence through services and supports while demonstrating accountability for taxpayer resources. We thank you for the opportunity to comment on this proposed rulemaking.

 DHS has carefully reviewed the proposed rulemaking. While we concur in the effort to modernize SNAP rules to take into account today’s technology by adopting a telecommunications standard utility allowance (SUA), we have no choice but to oppose the majority of the proposed rulemaking due to grave concerns about its impact on the wellbeing of Supplemental Nutrition Assistance Program (SNAP) recipients in Pennsylvania.

 For the reasons which follow, and to minimize negative effects on SNAP recipients, DHS respectfully submits the proposed rulemaking should be terminated

**Vagueness of Proposal**

 This proposed rulemaking would standardize how the Heating/Cooling Standard Utility Allowance (HCSUA) is determined across the country, while also setting a cap on the maximum amounts for the Limited Standard Utility Allowance (LSUA) and Single Standard Utility Allowance (SSUA) at a percentage of the HCSUA. DHS has concerns that USDA is not providing more clarity in exactly how they will determine this standardized HCSUA. While the proposed rulemaking says that it will be set at the 80 percentile of low-income households’ heating costs and that it will pull this information from the American Community Survey (ACS) and the Residential Energy Consumption Survey (RECS), it does not specify what specific information it will use from each report and how it will use that data to determine the 80 percentile amount. This lack of information implies that the USDA has either not yet determined how it will specifically determine the new HCSUA, only that it wants to decrease SNAP costs over the next five years; or that there are known flaws in the methodology planning to be used that it wishes to shroud from public knowledge.

 Further, under the proposed rulemaking USDA would simply create a cap for the LSUA and SSUA based on a percentage of HCSUA. USDA cites a lessening of effort on the part of states to determine their SUAs because of this proposed rulemaking, yet the only SUA that the states will no longer have to determine is the HCSUA, the most frequently used SUA across all states. If USDA intended this proposed rulemaking to lessen the administrative effort of states in determining SUAs, it fails as it only removes one SUA from the states’ responsibility.

**Alternative Methodology**

Since USDA’s stated concern is that several states cannot explain how their base rate was determined, USDA should adopt an alternative to this proposed rulemaking: allow each state to re-submit its base rate, along with justification and data to support it as well as how the state will update the SUAs each year. USDA would then have ownership for approving the new base rate formula and amount as well as the adjustment formula while allowing the states to maintain control over how the HCSUA within their state is determined. This ensures that each state is determining the appropriate HCSUA for their state while allowing USDA to monitor that formula and validate that it meets appropriate standards for determination. It also allows states to use the most up to date information available and to account for state specific issues as it relates to energy. Further, it allows the state SNAP agency to work with other departments within the state to obtain information and factor in additional considerations, such as the average low-income household’s energy burden, which is defined as the amount of the household’s annual income that is spent on utilities. For example, in Pennsylvania, DHS has ownership of both SNAP and the Low-Income Home Energy Assistance Program (LIHEAP), which coordinates with anywhere from 1,200 to 1,400 various heating vendors, including deliverable fuel vendors, from season to season. This means that DHS can work with the Public Utility Commission as well as these vendors to better determine estimated energy costs than can be gathered from nationwide reports completed on a wide-ranging basis.

On an annual basis, every state must provide energy data to the Administration for Children and Families (ACF) capturing the number of households that receive LIHEAP, their income and their estimated annual utility cost. Using this information, states can estimate the energy burden for their high burden households. In Pennsylvania, for federal fiscal year 2018, the estimated energy burden for high burden households reached an average of approximately 33%. This means that 33 percent of their annual income was spent on energy providers, including deliverable fuels.

 USDA notes in the proposed rulemaking that while a large portion of states are likely to see a reduction in their HCSUA, some states would see an increase. The proposed rulemaking does not mention that those few states who would see an increase can submit new HCSUAs for USDA approval under existing rules, if they choose to do so. This also further supports DHS’ recommendation above that each state re-submit its base rate and supporting documentation. The states that would see an increase under the proposed rulemaking could still see an increase, if they submit an appropriate base rate with all of the necessary supporting documentation and would do so without punishing the remainder of states and their residents.

**Impact of Proposed Rulemaking**

 The proposed rulemaking details that there will be an overall reduction in SNAP benefits of approximately $4.5 billion over a five-year period following the implementation of this rule. It arrives at this number by stating that some states will see a decrease in SNAP benefits received in their state while others will see an increase. This seems to be an oversimplification of the impact of the rule. Each state currently has responsibility for determining the SUAs used in their state as they have the best access to their state’s utility costs. That means the state is determining the most reasonable SUA based on their specific experience within that state. By simply generalizing the information across all states, it discounts real impacts felt within each individual state. A state that does have higher utility costs than its neighbor may see a reduction in SNAP benefits for its recipients who are less able to afford the reduction.

 In Pennsylvania, each reduction in the SUA of $10 equates to a $2 to $3 reduction in SNAP benefits. If the HCSUA were reduced by $200, for example, most households would see a reduction in SNAP benefits of $40 to $60 per month. While the language in the proposed rulemaking indicates that there would be no changes to Pennsylvania’s LSUA or SSUA, it could significantly reduce our HCSUA, which would have a dramatic impact on our SNAP population. Currently, approximately 775,000 households in Pennsylvania are receiving the HCSUA in their SNAP determination.

 This proposed rulemaking is also likely to adversely impact the elderly SNAP population in two ways. First, elderly and disabled households will be impacted because they are not subject to the maximum shelter deduction, they can use the full amount of their shelter costs combined with the appropriate SUA. Second, many elderly individuals have lived in their homes for 15, 20 or 30 or more years with older appliances and heating systems that are likely less energy efficient than newer homes built in the past ten years. This standardization of the HCSUA and likely reduction does not take into account that these individuals are likely paying higher energy costs because of these inefficiencies.

**Quality of Reports to Be Used**

 The proposed rulemaking would use the ACS and RECS reports based on a previous study conducted by USDA and released in 2017. However, even in this report, USDA acknowledged[[1]](#footnote-1) that there are flaws with the proposed reports. The RECS report is too intermittent in completion, ranging from four to eight years between reports. It also uses far too small of a sample size to be considered for this type of analysis. The most recent RECS report was based on a sample of less than 5,700 households and was used to represent 118.2 million households. That means it is using a fraction of one percent to extrapolate its data. Further, it only breaks down the information by region and not by each state. While Pennsylvania and Delaware share a border, utility costs in Philadelphia are far higher than they are in Delaware. This sort of variance is normal, especially when considering that additional taxes and fees may be present in one state that don’t exist in its neighboring state. However, the RECS report only groups households by regions, such as New England or Mid-Atlantic. This grouping means that using this report in determining a state specific HCSUA would disregard any pricing differences that may exist across states, thereby punishing SNAP applicants and recipients within the impacted states.

In addition, the RECS report focuses solely on utility expenditures. It does not factor in deliverable fuel costs which have higher usage in northeast states. The RECS report also looks at total energy expenditures, including residential, commercial, and industrial usage. The proposed rulemaking does not specify whether USDA will consider the data as a whole, or focus only on the residential group, which could have a large impact on the formula that the USDA is planning to use.

 The ACS report has three different types of data: 5-year, 3-year, and 1-year estimates. However, the proposed rulemaking does not specify which of these estimates would be used in determining the HCSUA. Further, USDA admits1 this data is from a sampling and can be considered unreliable, especially in terms of the 1-year estimates. Even the 5-year estimate can be questionable, depending upon how detailed the review of data is. For example, here is the House Heating Fuel from the 2013-2017 5-Year ACS Estimates:

|  |  |
| --- | --- |
|  | Pennsylvania |
| Estimate | Margin of Error |
| Total: | 5,007,442 | +/-10,133 |
|  Utility gas | 2,572,824 | +/-8639 |
|  Bottled, tank, or LP gas | 209,004 | +/-3,197 |
|  Electricity | 1,120,667 | +/-5,659 |
|  Fuel Oil, kerosene, etc. | 843,106 | +/-4,864 |
|  Coal or coke | 63,149 | +/-1,239 |
|  Wood | 141,440 | +/-1,688 |
|  Solar energy | 1,769 | +/-250 |
|  Other fuel | 36,382 | +/-1,083 |
|  No fuel used | 19,101 | +/-738 |

This table shows that the margin of error for utilities in the ACS report is much smaller than the margin of error for deliverable fuels. However, as stated previously, many Northeastern states use a large number of deliverable fuels and using data that does not accurately reflect deliverable fuel usage and costs will result in these states being negatively affected by the proposed rulemaking.

On page 10 of the impact analysis that FNS completed regarding the proposed rulemaking, FNS asserts that “the New England states have among the highest HCSUAs, but per capita expenditures in many of those States falls closer to the average”. However, these states have a higher population density for their size than states in other parts of the country. Further, when reviewing data for average retail electrical costs per state as of July 2019[[2]](#footnote-2), many of the states that have higher HCSUAs also have higher electrical costs. For example, Connecticut has 21.06 cents per kilowatt hour while Louisiana, which FNS specifically cites as having a higher expenditure per capita, is next to last at only 9.73 cents per kilowatt hour, which is less than half of Connecticut’s. Using average energy costs is a more viable solution in determining the HCSUA than expenditures per capita.

The proposed rulemaking itself acknowledges that these two reports are not sufficient for this process as it refuses to codify them as the reports that will be used for determining the HCSUA and specifically states that it is doing so “to maintain flexibility in the event better sources become available or these surveys cease to provide the necessary information.” Since there is concern regarding the validity of these reports, it seems that it would be better to cease this proposed rulemaking until such a report becomes available so the report may be codified and subject to public review and comment.

**Impact with other Proposed Rules**

 While USDA estimates that only 8,000 households will lose eligibility due to this rulemaking, it fails to take into consideration other proposed rulemakings recently published by USDA. While under current SNAP rules and options available to states, this standardization might only result in 8,000 households losing eligibility, it does not consider the impact of this proposed rulemaking in conjunction with the proposed rulemaking to modify Broad Based Categorical Eligibility (BBCE). If the flawed BBCE proposed rulemaking is finalized as written, it would subject a much larger number of households to the net income test, which would likely cause the “minimal” number of households that the proposed rulemaking cites as losing eligibility to increase significantly. Until action is taken on the BBCE proposed rulemaking to implement it and perform additional analysis on it or it is determined that the BBCE proposed rulemaking will be disregarded, this SUA standardization proposed rulemaking should be tabled so that the appropriate impacts can be truly determined.

**Increased Food Insecurity**

New and emerging [research](https://www.cbpp.org/research/food-assistance/policy-basics-the-supplemental-nutrition-assistance-program-snap) links SNAP as the nation’s most important anti-hunger program, with improved health outcomes and lower health care costs. SNAP is the primary source of nutrition assistance for many low-income people. It provides important nutritional support for low-wage working families, low-income seniors, and people with disabilities living on fixed incomes. While SNAP provides only a modest benefit — just $1.39 on average per person per meal in fiscal year 2018 — it forms a critical foundation for the health and well-being of low-income Americans, lifting millions out of poverty and improving food security.

Food insecurity may influence health and development through its effects on nutrition and as a component of overall family stress. Families that struggle with limited resources to put enough food on the table may buy more affordable but less nutritious foods and the anxiety associated with unpredictable or intermittent meals may be a source of chronic stress that, if left unchecked, can contribute to an increased risk of chronic conditions, including high blood pressure, heart disease, obesity, and diabetes. SNAP helps low-income individuals and families who struggle to afford basic needs have enough to eat, enables them to afford healthier diets, and frees up resources that can be used on health-promoting activities and preventive health care.

The available evidence suggests that SNAP is at least associated with and may promote better health and lower health care costs. This change to how the SUAs are calculated will most likely have an impact to individuals’ health and increase medical expenses as households may no longer be food secure and even a few dollars reduction in SNAP benefits means they may have to use funds that could have been used towards medications or other necessary costs.

**Congressional Intent**

 Pennsylvania also believes that USDA does not have the authority to change the SUA calculation provisions via rulemaking. Modifying the HCSUA was included in the President’s Fiscal Year 2019 budget as proposed legislation. Congress had the opportunity to make changes and declined to do so in the Farm Bill or any other legislation. The USDA circumventing Congress’ authority in this manner is a clear violation of the Administrative Procedure Act (Pub. L. 79-404) and undermines its statutory purpose.

 SNAP’s statutory purpose, as declared by Congress, is 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 finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation’s agricultural abundance and will strengthen the Nation’s agricultural economy, as well as result in more orderly marketing and distribution of foods. 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.”[[3]](#footnote-3) Reducing the amount of benefits received by households without allowing for the differences in shelter costs across states will result in denying access to healthy food for many individuals and particularly for elderly households.

 Pennsylvania is in full agreement with Congress’ declaration and feels that this proposed rulemaking is contrary to the goals of SNAP and will result in greater food insecurity for low-income Pennsylvanian SNAP households as they are forced to make difficult choices between paying for food and paying for other needed services, such as rent, utilities, or medical costs.

**Telecommunications SUA**

 Finally, while Pennsylvania has concerns regarding this proposed rulemaking and its standardization of the HCSUA, we do support the portion adopting a telecommunications SUA. We agree that internet access and computer usage has become an integral part of many of our recipients’ lives and that the internet should be included with telephone costs when determining this specific SUA.

In summary, DHS largely opposes this proposed rulemaking for its negative impact to Pennsylvania residents and its infringement on the concepts that USDA regulates SNAP while allowing states to administer SNAP. SNAP was established to help our most vulnerable citizens – people with disabilities, older Pennsylvanians, children, and low-income people – avoid going hungry and help them achieve healthy, productive lives. Proposed rulemaking that acknowledges a reduction of benefits or total loss of eligibility is contrary to the goals of SNAP and raises significant concerns and questions about the true intentions and goals of the rulemaking.

DHS respectfully requests that the USDA reconsider its position on standardizing the SUA or cease the release of this proposal until additional information can be added to clarify omissions from this proposed rulemaking and until the other rulemakings that USDA has proposed are either discarded or implemented so that the impacts of those rules are known. Pennsylvania cannot accept any proposed rulemaking that works to adversely affect our must vulnerable citizens, especially when its implications are not considered concurrently with other proposed rulemaking that would have the same outcome.

Any changes to SNAP should help modernize the program to reflect today’s world to help ease circumstances for recipients and support a path to self-sufficiency. DHS would support USDA proceeding separately with the telecommunications provision of this rulemaking, but we cannot accept standardization that will result in less state flexibility in administering these programs, a loss of benefits or eligibility and, ultimately, greater food insecurity among vulnerable Pennsylvanians.

Thank you for your consideration of these comments.

Sincerely,

 Teresa D. Miller

 Secretary

1. Methods to Standardize State Standard Utility Allowances; United States Department of Agriculture Food and Nutrition Service, August 2017; <https://fns-prod.azureedge.net/sites/default/files/ops/methods-standardizes-uas.pdf>. [↑](#footnote-ref-1)
2. Per U.S. Energy Information Administration data, <https://www.eia.gov/state/rankings/?sid=US#/series/31>. [↑](#footnote-ref-2)
3. 7 U.S.C. section 2011 [↑](#footnote-ref-3)