

# Proposed Rules

Federal Register

Vol. 89, No. 232

Tuesday, December 3, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 273

[FNS–2024–0029]

RIN 0584–AF04

#### Supplemental Nutrition Assistance Program: Thrifty Food Plan Cost Adjustment for the Price of Food in Hawaii

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Nutrition Service (FNS) is proposing changes to Supplemental Nutrition Assistance Program (SNAP) regulations in accordance with the Food and Nutrition Act of 2008, which calls for a cost adjustment in the Thrifty Food Plan (TFP) for Hawaii to reflect the cost of food in Hawaii. The proposal would update the method for calculating this cost adjustment to incorporate food prices from throughout the State of Hawaii rather than from Honolulu alone, ensuring that SNAP benefit allotments better reflect food prices faced by participants throughout the State of Hawaii.

**DATES:** Written comments must be received on or before February 3, 2025 to be assured of consideration.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Send comments to Kevin Meyers Mathieu, Economic Advisor, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion, Food and Nutrition Service, U.S. Department of Agriculture,

1320 Braddock Place, Fourth Floor, Alexandria, VA 22314.

- *Website:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Email:* Send comments to [FNS.FoodPlans@usda.gov](mailto:FNS.FoodPlans@usda.gov).

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

#### FOR FURTHER INFORMATION CONTACT:

Kevin Meyers Mathieu, Economic Advisor, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Fourth Floor, Alexandria, VA 22314, 703–946–7619 or [FNS.FoodPlans@usda.gov](mailto:FNS.FoodPlans@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Thrifty Food Plan (TFP) is one of four Food Plans the Department of Agriculture (USDA or the Department) develops that estimates the cost of a healthy diet across various price points—the Thrifty, Low-Cost, Moderate-Cost and Liberal Food Plans. The TFP is the lowest cost of the four and represents a nutritious, practical, and cost-effective diet. The foundation of the TFP is a set of market baskets applicable to various age-sex groups that outline nutrient-dense foods and beverages, their amounts, and associated costs that can be purchased on a limited budget to support a healthy diet through nutritious meals and snacks at home. The cost of the TFP is based on a reference family of four, defined by the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2012(u)) as consisting of a man and a woman twenty through fifty, a child six through eight, and a child nine through eleven years of age.

The TFP is used to determine Supplemental Nutrition Assistance Program (SNAP) benefit amounts. The Act (7 U.S.C. 2012(u)(4)) requires the cost of the TFP in June to serve as the basis for setting maximum SNAP benefit allotments in the following Federal

fiscal year (October 1 through September 30). SNAP allotments for households of different sizes are calculated proportional to the allotments for the reference family of four with economies-of-scale adjustments.

The Act (7 U.S.C. 2012(u)(2)) also calls for cost adjustments to the TFP to reflect the cost of food in Hawaii. Requirements at 7 CFR 273.10(e)(4)(i) further specify that this cost adjustment reflect the price of food in Honolulu. The calculation and implementation of this cost adjustment are separate from the reevaluation of the TFP market basket; the cost adjustment is not required to be updated when the TFP market basket is reevaluated every five years. The extent of regional food price variation may vary across different foods and beverages. As a result, changes to the underlying TFP market basket resulting from the required 2021 TFP reevaluation present an opportunity to update the cost adjustment for Hawaii. Although not required, updating the cost adjustment for Hawaii following the TFP reevaluation is intended to maintain equivalence between the purchasing power of SNAP benefit allotments in Hawaii and in the mainland United States.

Beginning in the early 1970s, TFP costs for Hawaii were calculated as the cost of the TFP in the contiguous 48 States and the District of Columbia (hereafter referred to as the “mainland United States”) adjusted for the price of food in Honolulu. Evidence suggests that Honolulu was used as the basis for the original price-of-food adjustments because it was the only location in Hawaii where the Bureau of Labor Statistics (BLS) routinely collected food price information. FNS subsequently used BLS food price information collected for the Consumer Price Index (CPI) as the basis for the TFP cost for Hawaii through 1977.

In 1978, BLS made major changes in the methods for collecting food price data in the United States, thereby hindering the construction of price-of-food adjustments for Honolulu using BLS data. With the need for an alternate data source, FNS incorporated data collected in Hawaii from the 1977–1978 Nationwide Food Consumption Survey (NFCS) into a reevaluation of the TFP in the early 1980s. The NFCS-based

Hawaii TFP cost was subsequently updated for inflation using the semiannual CPIs for Urban Hawaii through June 2021.

As directed by Congress in the Agricultural Improvement Act of 2018, FNS published an evidence-driven reevaluation of the TFP to reflect current food prices, food composition data, consumption patterns, and dietary guidance. The reevaluation, published in August 2021,<sup>1</sup> defined the content of the TFP market baskets for 15 age-sex groups, as well as their costs in the mainland United States. After accounting for inflation, the reevaluation led to a 21.03 percent increase in the TFP cost for the mainland United States.

FNS used the 21.03-percent increase in the inflation-adjusted cost of the TFP in the mainland United States associated with the 2021 TFP reevaluation as the basis for a temporary adjustment to the TFP cost for Hawaii beginning in June 2021. The application of the temporary adjustment effectively held the cost adjustment for Hawaii (*i.e.*, the percentage difference between the TFP cost for Hawaii and the TFP cost for the mainland United States) constant despite the change in underlying market baskets. This TFP cost for Hawaii, inclusive of the temporary adjustment, was subsequently adjusted for inflation to reflect June 2022 price levels using the CPIs for Urban Hawaii while FNS conducted additional analysis of the TFP cost for Hawaii.

In July 2023, FNS published the *Thrifty Food Plan Cost Estimates for Alaska and Hawaii* report,<sup>2</sup> which calculated a TFP cost estimate for Hawaii based on the most current information available. The report detailed the identification of a data source and the development and application of a price index to these data in alignment with the statutory and regulatory framework. The report was peer reviewed by experts at USDA as well as six researchers outside of the Federal Government with demonstrated knowledge and expertise in price indexes, scanner data, and the TFP. The report provides detailed information on the four existing price indexes and the four existing food price data sources that FNS considered, as well as FNS' approach for evaluating each option. FNS identified Circana (formerly Information Resources Inc., or IRI) retail scanner data as the best available data to support the calculation of new TFP cost estimates based on sample size;

applicability to the TFP, 2021; data quality and documentation; appropriateness as a price-of-food adjustment; and the applicability to future updates and reevaluations. FNS used Circana retail scanner data from over 40,000 stores in the mainland United States and 32 stores in Honolulu, including sales at these stores for over 11,000 unique food and beverage products, to calculate an updated TFP cost estimate for Hawaii using a bilateral, fixed-basket price index. FNS used this index-based approach to calculate an updated TFP cost for Hawaii rather than the optimization model approach used to conduct TFP reevaluations because the use of an optimization model would have resulted in the creation of a new market basket, which would not align with the Act (7 U.S.C. 2012(u)(2)), which calls for an adjustment for the cost of food, exclusively. The analysis resulted in an updated estimate of the percent difference in the cost of purchasing the foods and beverages in the TFP, 2021 market basket between Honolulu and the mainland United States, which was applied to the cost of the TFP in the mainland United States to yield an updated TFP cost estimate for Hawaii. FNS is currently transitioning to using the updated TFP cost estimate for Hawaii published in the 2023 report as the basis of the maximum SNAP allotment in Hawaii.

On January 19, 2024, FNS posted a Request for Information (RFI) in the **Federal Register** (89 FR 3633) requesting comments from the public—including the food industry and research community—to help inform future policy and decisions about potentially updating TFP cost estimates for the State of Hawaii. Concurrent with its publication, FNS conducted extensive outreach to stakeholders in Hawaii to spread awareness of and encourage responses to the RFI, including by notifying national and local organizations, universities, Federal agencies, and every SNAP-approved retailer in the State for which SNAP had a valid email address (approximately 510 retailers). The comment period closed on March 4, 2024, with FNS receiving a total of 12 comments from a Federal agency, an academic, a SNAP participant, three advocacy/non-profit organizations, an industry association, three retailers (with one retailer providing two comments), and one anonymous respondent.

The comments consistently indicated that food prices are higher in the Neighbor Islands than in Honolulu. A key rationale for the higher relative prices in the Neighbor Islands provided

by the comments is that nearly all foods and beverages sold in Hawaii are imported from out of State, with these shipments first arriving in Honolulu and then being distributed out to the Neighbor Islands. This additional distribution step adds to the cost of foods and beverages in the Neighbor Islands which is then reflected in retail prices. Several comments suggested that many residents of the Neighbor Islands in rural and remote areas of the State do not live in proximity to club stores, which tend to offer lower unit prices for foods and beverages purchased in larger quantities. While club stores operate in urban areas on the Neighbor Islands, the comments noted that not all residents of the Neighbor Islands are able to consistently access these stores.

The comments also consistently expressed that a TFP cost for the State of Hawaii based on data from Honolulu alone underestimates the true cost of a healthy, practical, cost-effective diet in the State. Therefore, the respondents argued, current SNAP regulations that adjust for the cost of food in Honolulu lead to an inequitable maximum allotment level for SNAP participants in the Neighbor Islands.

FNS proposes to revise regulations at 7 CFR 273.10(e)(4)(i) to align with the Act (7 U.S.C. 2012(u)(2)) and base the cost of the TFP in Hawaii on an adjustment for the price of food in the State of Hawaii rather than an adjustment for the price of food in Honolulu.

FNS conducted analyses to develop a TFP cost estimate for Hawaii that would align with the proposed regulatory framework using the best currently available data on food prices. The analysis, which uses the same peer-reviewed methodology as the original Honolulu analysis published in 2023, is documented in a separately published scientific report.<sup>3</sup> The analysis is also based on Circana retail scanner data, which provides sales data from the 32 stores included in FNS' original analysis of food prices in Honolulu and 65 additional stores from throughout the State of Hawaii. Including these additional stores also enables the analysis to consider food prices for approximately 700 (6%) more unique food and beverage products.

The proposed changes at 7 CFR 273.10(e)(4)(i) would revise the regulatory framework for Hawaii's TFP cost without establishing a specific dollar value or a specific price-of-food adjustment for Hawaii. The Hawaii TFP cost will continue to be based on the

<sup>1</sup> <https://www.fns.usda.gov/cnpp/thrifty-food-plan-2021>.

<sup>2</sup> <https://www.fns.usda.gov/cnpp/tpf-akhi>.

<sup>3</sup> <https://www.fns.usda.gov/cnpp/statewide-tpf-hi-2024>.

best available food price data and may be updated in the future at the Secretary's discretion. To support continuous quality advancement, FNS continues to explore food price data sources for the State of Hawaii.

#### **Procedural Matters**

##### **Executive Order 12866, 13563 and 14094**

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

##### *Regulatory Impact Analysis*

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

##### **Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule', as defined by 5 U.S.C. 804(2).

##### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or

the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### **Executive Order 12372**

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

##### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

##### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule/is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

##### **Civil Rights Impact Analysis**

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in SNAP.

##### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

- We are unaware of any current Tribal laws that could be in conflict with this rule.

##### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

##### **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

##### **List of Subjects in 7 CFR Part 273**

Administrative practice and procedure, Supplemental Nutrition Assistance Program, Thrifty Food Plan.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

## PART 273.10—DETERMINING HOUSEHOLD ELIGIBILITY AND BENEFIT LEVELS

■ 1. The authority citation for part 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 273.10, amend paragraph (e)(4)(i) to remove the word “Honolulu” and adding in its place “Hawaii”.

**Tameka Owens,**

*Acting Administrator and Assistant Administrator, Food and Nutrition Service.*

[FR Doc. 2024–27853 Filed 12–2–24; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–106595–22]

RIN 1545–BQ83

#### Substantiation Requirements and Qualified Nonpersonal Use Vehicles

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed regulations relating to the definition of qualified nonpersonal use vehicles. Qualified nonpersonal use vehicles are excepted from the substantiation requirements that apply to certain listed property. These proposed regulations add unmarked vehicles used by firefighters or members of a rescue squad or ambulance crew as a new type of qualified nonpersonal use vehicle. These regulations affect governmental units that provide firefighter or rescue squad or ambulance crew member employees with unmarked qualified nonpersonal use vehicles and the employees who use those vehicles.

**DATES:** Written or electronic comments and requests for a public hearing must be received by March 3, 2025.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG–106595–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal Rulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury

Department) and the IRS will publish for public availability any comment submitted electronically or on paper, to the IRS’s public docket. Send paper submissions to CC:PA:01:PR (REG–106595–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Stephanie Caden at (202) 317–4750; concerning submissions of comments or requests for a public hearing, the Publications and Regulations section by email at [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or (202) 317–6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Authority

This notice of proposed rulemaking contains proposed regulations issued under the authority granted to the Secretary of the Treasury or her delegate (Secretary) by sections 274(p) and 132(o) of the Internal Revenue Code (Code) that would amend the Income Tax Regulations (26 CFR part 1) under sections 274(i) and 132(d) related to qualified nonpersonal use vehicles. Section 274(p) provides the Secretary with an express grant of regulatory authority with respect to section 274 as the Secretary may deem necessary to carry out the purposes of that section. Section 132(o) provides the Secretary with an express grant of regulatory authority with respect to section 132 to prescribe such regulations as may be necessary or appropriate to carry out the purposes of that section. In addition, section 7805(a) authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code.

##### Background

In general, section 274 limits or disallows deductions for certain expenditures that otherwise would be allowable under chapter 1 of the Code, primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 274(d), as relevant to these proposed regulations, provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expenses are substantiated by adequate records or by sufficient evidence corroborating the taxpayer’s own statement as to the amount, time and place, business purposes of the expenditure, and the business relationship to the taxpayer of the

person receiving the benefit. These substantiation requirements apply to expenses incurred in the use of any listed property, as defined in section 280F(d)(4), which includes any passenger automobile and any other property used as a means of transportation.

In 1985, Congress modified section 274(d) and added section 274(i), creating an exception from the substantiation requirements for qualified nonpersonal use vehicles. Public Law 99–44 2, 99 Stat. 77 (1985). Section 274(i) provides that the term “qualified nonpersonal use vehicle” means any vehicle, which by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes.

Both the business and personal use of an employer-provided vehicle that is a qualified nonpersonal use vehicle under section 274(i) qualifies under section 132(d) as a working condition fringe benefit that is excluded from the employee’s income. Thus, if an employer provides an employee with a qualified nonpersonal use vehicle, the employee does not need to keep records of how the vehicle is used, and the total use of the vehicle is excluded from the employee’s income as a working condition fringe benefit under section 132(d). See §§ 1.132–5(h) and 1.274–5(k).

The legislative history to section 274(i) includes examples of qualified nonpersonal use vehicles such as school buses, qualified specialized utility repair trucks, qualified moving vans, clearly marked police and fire vehicles, and unmarked law enforcement vehicles. H.R. Rep. No. 99–67, at 16 (1985) (Conf. Rep.). The legislative history indicates that Congress intended the IRS and the Treasury Department to expand the list to include other vehicles that, by reason of their nature, are highly unlikely to be used more than a very minimal amount for personal purposes. H.R. Rep. No. 99–34, at 11 (1985).

Temporary Regulations § 1.274–5T(k) and (l) were issued in 1985, identifying categories of qualified nonpersonal use vehicles and providing definitions (by cross reference) of terms such as “automobile,” “vehicle,” and “personal use.” TD 8061, 50 FR 46006, 46033, and 46036. Police and fire vehicles that are clearly marked and law enforcement vehicles that are unmarked were included as categories of qualified nonpersonal use vehicles. However, clearly marked vehicles provided to Federal, State, and local government workers who respond to emergency situations as public safety officers but