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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

[FNS-2011-0060]

0584-AE24

Supplemental Nutrition Assistance Program: Quality Control Error Tolerance Threshold

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule is amending the Quality Control (QC) review error threshold in our regulations from \$25.00 to \$50.00. The purpose for raising the QC error threshold is to make permanent the temporary threshold change that was required by the American Recovery and Reinvestment Act of 2008. This change does not have an impact on the public. The QC system measures the accuracy of the eligibility system for the Supplemental Nutrition Assistance Program (SNAP).

DATES: This rule will become effective on [Insert date 60 days from date of publication in the Federal Register] unless the Department receives written significant adverse comments on or before [insert date 30 days from date of publication in the Federal Register]. If significant adverse comments that are relevant within the scope of the rulemaking are received within the specified comment period, the Department will publish timely notification of withdrawal of this rule in the Federal Register. This rule shall apply to all FY 2012 QC reviews.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this direct final 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.
- Fax: Submit comments by facsimile transmission to: 703-605-0795.
- Mail: Send comments to Francis Heil, Branch Chief, Quality Control Branch, SNAP, FNS, 3101 Park Center Drive #822, Alexandria, VA 22302, 703-305-2442.
- E-Mail: Send comments to SNAPHQ-Web@fns.usda.gov. Include Docket ID Number FNS-2011-0060, Supplemental Nutrition Assistance Program: Quality Control Error Tolerance Threshold Direct Rule, in the subject line of the message.
- Hand Delivery or Courier: Deliver comments to Francis Heil, Branch Chief, Quality Control Branch, SNAP, FNS, 3101 Park Center Drive, Alexandria, VA 22302, Room #822.

All comments submitted in response to this direct final 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: Francis Heil, FNS, 3101 Park Center Drive #822, Alexandria, VA 22302, 703-305-2442.

SUPPLEMENTARY INFORMATION:

I. Background

The current regulations at §275.12(f)(2) state, “If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding \$25.00, the occurrence and the amount of the error shall be coded and reported.” In practice, when conducting both State and Federal QC reviews any overissuances or underissuances found in the amount of \$25.00 or less are not included as an error in the calculation of that fiscal year’s (FY) error rates. This \$25.00 or less error is also known as the error tolerance threshold (the threshold). This \$25.00 threshold, however, does not excuse any State from their responsibility for following procedures found at §275.16(c) regarding corrective action for all errors found in QC cases.

On February 17, 2009, the President signed Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA). Title I, Section 101(b)(5) of Public Law 111-5, indicated the Agriculture Secretary shall, “set the tolerance level for excluding small errors for the purposes of section 16(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(c)) at \$50.00 through September 30, 2009.” This temporary threshold increase was tied to the increase in the benefit amount also provided by ARRA. In short, this meant there was a temporary threshold increase from \$25.00 to \$50.00 for QC errors from April 2009 through September 2009.

According to FNS’s calculations, we estimate that the ARRA’s provision excluding any errors between \$25.00 and \$50.00 from the calculation decreased the 2009 combined Payment Error Rate (PER) by 15 percent. The total combined Payment Error Rate (PER) decreased from FY 2008’s 5.01 percent to 4.36 percent.

The ARRA provision concerning the QC threshold expired September 30, 2009. The threshold for the FY 2010 QC review period reverted to \$25.00. The increased benefit allotment, however, remains in place. The Department believes that the State agencies should continue to

benefit from the increased threshold amount of \$50.00 to offset the increased benefit amounts. Therefore, in this rulemaking, the Department is raising the QC tolerance threshold of \$25.00 to \$50.00 to make the temporary ARRA change permanent.

Prior experience with the provisions of this rule under the ARRA demonstrates that they contribute to a significant reduction in the rate of improper payments in SNAP. SNAP is identified by the Office of Management and Budget (OMB) as a high risk program for improper payments. Reducing the payment error rate is a priority for both USDA and OMB. To improve business efficiency, agencies must prioritize those areas that have the most potential to improve payment accuracy and reduce improper payments. This rulemaking supports that goal by focusing on errors that are the most economically efficient to correct. The provisions of this rule will improve the data available at the Federal level allowing for further analysis of the root causes of payment errors. The Department's payment accuracy team will be better able to focus on the largest and most problematic errors and then work with States on additional cost efficient ways to improve the Administration's goals to reduce improper payments.

The Department is also requiring all error amounts found shall be coded and reported by the State Agencies on FNS 380-1, OMB 0584-0299, Review Schedule for SNAP QC Reviews, or as directed by FNS. Currently, State Agencies do not have to code and report QC errors for cases with overissuances or underissuances of \$25.00 or below since they are not counted as QC errors when FNS calculates the National QC Error Rates at the end of each review year. However, during the temporary ARRA change from \$25.00 to \$50.00, States were required to code and report all errors between \$25.00 and \$50.00, which became valuable in conducting State corrective action as well as determining the impact of the threshold on the State and National QC error rates. The Department has determined that it would be valuable to know this information

for all variances under \$50.00, even though such variances are not included in the PER calculation. The information will be used to assist in corrective action. Therefore, the Department is making a change to current coding and reporting procedures for the FNS 380-1 to require the coding and reporting of any variances that directly contribute to the error determination, even those below the \$50.00 threshold. This coding and reporting requirement will not affect the method of calculation for the underissuance error rate, overissuance error rate, and the combined PER, since the calculation will continue to exclude all errors equal to or below the proposed threshold change of \$50.00.

State Agencies will continue to be responsible for taking corrective action for all errors found in QC cases, in accordance with the provisions of §275.16(c).

II. Procedural Matters

Issuance of a Direct Final Rule and Date of Effectiveness

FNS has determined that this rule is appropriate for direct final rulemaking because we believe this amendment to be noncontroversial and we anticipate no significant adverse comments. We believe this rule to be noncontroversial as the State agencies which administer SNAP have already expressed their unequivocal support for the policy implemented by this rule. The amendment contained in this rule was previously in effect under the ARRA for a six month period in fiscal year 2009. As such, the State agencies have significant experience with the operational implications of this amendment. We anticipate no significant adverse comments to be submitted as public comments to this rule as FNS did not, in the past, receive adverse comments as a result of the previous amendment to the threshold when it was raised from \$5.00 to \$25.00. In addition, State agencies have repeatedly expressed desire for the ARRA QC

provisions to be reinstated on a permanent basis both individually and through their representative association, the American Public Human Services Association (APHSA). This direct final rulemaking is consistent with the State agencies' requests.

This rule is effective [insert 60 days from date of publication in the Federal Register] unless the Department receives written significant adverse comments on or before [insert 30 days from date of publication in the Federal Register]. FNS invites public comment on this direct final rule. If significant adverse comments within the scope of the rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the Federal Register. A significant adverse comment is defined as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Although the rule is not effective until [insert 60 days from date of publication in the Federal Register], State agencies are required to apply the raised threshold for the entire FY 2012 QC review period. .

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been designated not significant under section 3(f) of Executive Order 12866.

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, Audrey Rowe, FNS Administrator, has certified that this rule would not have a significant impact on a substantial number of small entities.

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

Executive Order 12372

The Supplemental Nutrition Assistance Program (SNAP) is listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation 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 leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law since State welfare agencies will be the most affected to the extent that they administer the SNAP.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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. State agencies are required to apply the raised threshold in this rule to all cases reviewed as part of the FY 2012. 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 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. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to participate in SNAP. This regulation does not apply to the certification determinations made on the intended beneficiaries of the SNAP. Quality Control procedures are designed to evaluate the accuracy of the application of SNAP

certification policy and therefore, the evaluation procedures do not impact protected classes or individuals.

Paperwork Reduction Act

Information collections associated with this rule have been approved under following OMB control numbers: 0584-0074, Worksheet for SNAP Quality Control Reviews (expiration date April 30, 2013), and 0584-0299 Form FNS-380-1, Quality Control Review Schedule, Form FNS-380-1 (March 31, 2013).

E-Government Act Compliance

FNS is committed to complying with the E-Government Act, 2002, 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 275

Administrative practice and procedure, Supplemental Nutrition Assistance Program, Reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 275 is amended as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for Part 275 continues to read as follows:

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

2. In §275.12, paragraph (f)(2) is revised to read as follows:

§275.12 Review of active cases.

* * * * *

(f) * * *

(2) *Basis of issuance of errors.* If the reviewer determines that SNAP allotments were either overissued or underissued to eligible households in the sample month, the State agency shall code and report any variances that directly contributed to the error determination that were discovered and verified during the course of the review. Only variances that exceed \$50.00 (the threshold) shall be included in the calculation of the underissuance error rate, overissuance error rate, and payment error. If the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances that were discovered and verified during the course of the review.

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Jeffrey J. Tribiano
Acting Administrator
Food and Nutrition Service

October 25, 2011

Date

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