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October 15, 2018

Nicole Budzius
Chief, Retailer Administration Branch
Supplemental Nutrition Assistance Program
Retailer Policy and Management Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 422
Alexandria, VA 22302

RE: Agency Information Collection Activities: Proposed Collection; Comment Request-Supplemental Nutrition Assistance Program (SNAP), Store Applications, Forms FNS-252, FNS-252-E, FNS-252-FE, FNS-252-R, FNS-252-2 and FNS-252-C

Dear Chief Budzius:

The National Association of Convenience Stores (“NACS”) and the Society of Independent Gasoline Marketers of America (“SIGMA”) (hereinafter “the Associations”) offer these comments on the U.S. Department of Agriculture’s (“USDA”) Food and Nutrition Service’s (“FNS” or the “Agency”) proposed information collection¹ on the application forms used by stores wishing to participate in the Supplemental Nutrition Assistance Program (“SNAP” or the “Program”).²

NACS and SIGMA appreciate FNS’s willingness to revise the current application. We hope that the comments provided will help inform FNS as it considers changes to the SNAP retailer application—for without a comprehensive understanding of the impact the application will have on small retailers, FNS may propose unduly burdensome requirements that will push small retailers out of the Program. Such an outcome would harm SNAP beneficiaries who rely on many small format operators for food access.

I. NACS’ AND SIGMA’S MEMBERS ARE VALUABLE RETAIL PARTICIPANTS IN SNAP.

Out of the 154,958 convenience stores in the United States, more than 119,000 participate in SNAP—representing approximately 45 percent of all retail outlets authorized to accept SNAP benefits.³ NACS’ and SIGMA’s members provide consumers with convenient locations and extended hours,

¹ Department of Agriculture, Food and Nutrition Service; Agency Information Collection Activities: Proposed Collection; *Comment Request—Supplemental Nutrition Assistance Program (SNAP), Store Applications, Forms FNS-252, FNS-252-E, FNS-252-FE, FNS-252-R, FNS-252-2 and FNS-252-C*; 83 Fed. Reg. 160 (Aug. 17, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-08-17/pdf/2018-17722.pdf>.

² Food and Nutrition Service, *Form FNS-252 (07-18) Supplemental Nutrition Assistance Program Application for Stores* (hereinafter “Proposed SNAP Retailer Application”).

³ Food and Nutrition Service, *Fiscal Year 2017 At a Glance*, available at <https://fns-prod.azureedge.net/sites/default/files/snap/2017-SNAP-Retailer-Management-Year-End-Summary.pdf>

enabling SNAP beneficiaries to purchase a wide variety of food and beverage items that Congress has determined may be purchased with SNAP benefits.⁴ The Associations' members' locations are often the only establishments easily accessible by walking or public transportation, or the only food retail locations open for business after a late work shift ends or before one begins. In fact, 51 percent of all Americans live less than one mile from a convenience store, and 94 percent of urban Americans and 60 percent of rural Americans live less than three miles from a convenience store.

In order to participate in the Program, the Associations' members must comply with a variety of regulations and absorb the associated costs of those regulations. The small retailers that meet the regulatory requirements should not be erroneously prohibited from participating in the Program, as they may have been by the SNAP retailer application that was released by FNS in January 2018.⁵ If FNS makes it more difficult for retailers to participate in SNAP—as the 2018 SNAP Retailer Application is currently doing—SNAP recipients will be negatively affected. For this reason, the Associations appreciate and support many of the Agency's proposed changes to the 2018 SNAP Retailer Application that are found in the Proposed SNAP Retailer Application. The Associations, however, remain concerned that the Proposed SNAP Retailer Application could have a similar impact on the Program.

II. COMMENTS ON THE INFORMATION COLLECTION

The Associations appreciate and support the removal of Question 18 (regarding restaurant licenses) from the 2018 SNAP Retailer Application. NACS and SIGMA, however, remain concerned about questions in the Proposed SNAP Retailer Application and have provided comments below.

A. Question #18 – Variety

In the Proposed SNAP Retailer Application, Question #18 asks retailers to describe the staple food varieties that they have currently and on a continuous basis in their store. The law, once it is fully implemented, will require retailers to stock seven varieties in each of the four staple foods groups.⁶ Unlike Questions #19 and #20 that allow the retailer to affirm they have met the applicable statutory requirements, Question #18 requires retailers to enter the number of varieties they have in each staple food category, or retailers can check a box if they have 10 or more varieties in a category. **The question is confusing and creates the impression among retailers that they are required to stock 10 varieties in each category even though that is not accurate. And, the question may deter some retailers from applying to accept SNAP if they do not carry 10 varieties of food in each category.**

Retailers should not be required to list the number of varieties. Instead, the question should be rewritten to allow retailers to affirm that they meet the current legal requirement and the application should note what that current legal requirement is. This should not be an open-ended question that has the retailer determine a number (and one that may be quite high in some cases). Simple affirmation as to whether the requirement has or has not been met should be sufficient.

B. Question #21 – Total Retail Sales

⁴ NACS is an international trade association representing the convenience store industry with more than 2,100 retailer and 1,750 supplier companies as members, the majority of whom are based in the United States. SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel.

⁵ Food and Nutrition Service, *Form FNS-252 (10-17) Supplemental Nutrition Assistance Program Application for Stores* (hereinafter "2018 SNAP Retailer Application").

⁶ Agricultural Act of 2014, Pub. L. 113-79, enacted Feb. 7, 2014.

The Associations have concerns with Question #21 as well. That question asks for the total retail sales of the applicant, but then asks for breakdowns by categories that do not make sense. For example, while FNS needs to collect information on the percentage of foods heated on site, cold foods prepared on site are not necessarily ineligible for purchase with SNAP. Those items can be and are sold for home consumption or preparation. Many of the Associations' members, for example, sell sliced fruits or vegetables that have been prepared in the store and are intended for consumption at home. Those types of items and many other cold prepared foods are eligible for purchase with SNAP. Creating a "cold foods prepared on site" category makes it appear that such foods are not eligible for purchase with SNAP. Whether a cold food is prepared on site or in a central kitchen simply is not the test of whether that item may be purchased with SNAP. The question is where that item is intended to be consumed. Including a category for "cold foods prepared on site" is misleading to applicants and may lead to inaccurate eligibility decisions.

NACS and SIGMA would also note that collecting sales percentage information separately for certain specified ineligible items is not required and seems calculated to flag items that convenience stores sell. In particular, the inclusion of the gasoline category appears geared toward highlighting items the Associations' members sell while excluding many items that are sold in other retail channels such as pharmaceuticals, toys, magazines, and others. There is no room in the law or regulations for FNS to make value judgments about the non-food products that SNAP retailers sell. Requesting the percentage of gasoline sales and separately calling out products sold in one retail channel (particularly ones that might be controversial) while ignoring items commonly sold in other channels does not make sense.

FNS should rewrite the question to simply ask for a percentage of sales that combines all ineligible items. Making that change avoids the unnecessary burden of breaking out particular types of sales for retailers and avoids creating the impression that some types of retailers are not welcome in the Program. Alternatively, FNS could resolve these issues by changing the application so that it only asks about the percentage of staple foods sold and the percentage of foods heated on site. Those two categories are directly relevant to eligibility determinations. Asking for data that is not relevant to an eligibility determination will only create confusion about how to answer and/or concern about how eligibility determinations are made.

III. CONCLUSION

NACS and SIGMA appreciate the opportunity to comment on the Agency's proposed application and its efforts to address the shortcomings in the current retailer application. The Associations hope FNS will consider our concerns to Questions #18 and #21 and re-write them accordingly. We would be happy to provide any additional information that would be helpful to your consideration of these issues.

Sincerely,



Douglas S. Kantor
Counsel to NACS and SIGMA