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VIA ELECTRONIC FILING – www.regulations.gov

Shelly Pierce
Chief, Retailer Administration Branch
Retailer Policy and Management Division, Room 438
3101 Park Center Drive
Alexandria, Virginia 22302

RE: Proposed Collection, Store Application Forms FNS-252, FNS-252-E, FNS-252-FE, FNS-252-R, FNS-252-2, and FNS-252-C in the Supplemental Nutrition Assistance Program (No. FNS-2017-0004)

Dear Chief Pierce,

On behalf of the National Association of Convenience Stores (“NACS”) and the Society of Independent Gasoline Marketers of America (“SIGMA”), I write to offer feedback and express some concerns with the U.S. Department of Agriculture’s (“USDA”) Food and Nutrition Service’s (“FNS” or “Agency”) proposal to revise certain application forms used by stores wishing to participate in the Supplemental Nutrition Assistance Program (“SNAP” or the “Program”).¹

Generally speaking, while it is proper for FNS to update its SNAP application forms in light of recent changes to SNAP retailer eligibility requirements, some of the additional proposed questions would be inappropriate insofar as they request information that is irrelevant to whether a store meets the requirements to participate in SNAP and will leave stores susceptible to hacking of their financial data as well as potentially damaging public disclosure of confidential business information. In particular, questions about the name and address of the financial institution where SNAP deposits are made, and questions about whether a store offers any incentives or discounts to SNAP recipients, are concerning.

More detailed comments on the proposed information collection can be found below.

¹ Department of Agriculture, Food and Nutrition Service, 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*, 82 Fed. Reg. 10871 (Feb. 16, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-16/pdf/2017-03078.pdf>.

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

Over 117,000 convenience stores – well over 75 percent of the nation's approximately 154,000 convenience stores – participate in SNAP.² Many of these small format stores are owned and operated by NACS and SIGMA members and are valuable participants in SNAP. These small format stores are often located in small rural communities and urban centers with no access, or limited access, to large format stores.

NACS is an international trade association representing the convenience store industry with more than 2,100 retail and 1,600 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.

NACS' and SIGMA's members provide consumers with convenient locations and extended hours, enabling SNAP beneficiaries to purchase a wide variety of food and beverage items that Congress has determined may be purchased with SNAP benefits. Our 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 1 mile* from a convenience store, and 94 percent of urban Americans and 60 percent of rural Americans live *less than 3 miles* from a convenience store.

In 2015, the fuel retailing industry employed more than 2.7 million workers and posted \$574.8 billion in total sales. In light of the number of transactions this industry processes, one of every 30 dollars spent is in the associations' channel of trade. Yet, the industry is truly an industry of small businesses—approximately 63 percent of convenience store owners operate a single store.

II. COMMENTS ON PROPOSED INFORMATION COLLECTION

NACS and SIGMA generally support FNS' objective to update its SNAP store application forms to align with the new eligibility requirements as required by the Agricultural Act of 2014 ("Farm Bill")³ and finalized in FNS' final rule published last December.⁴ The

² Food and Nutrition Service, *Fiscal Year 2016 At a Glance*, <https://www.fns.usda.gov/sites/default/files/snap/2016-SNAP-Retailer-Management-Year-End-Summary.pdf>.

³ Pub. L. 113-79, enacted Feb. 7, 2014.

⁴ Department of Agriculture, Food and Nutrition Service, Final Rule, *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)*, 81 Fed. Reg. 90675 (Dec. 15, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-15/pdf/2016-29837.pdf>.

associations understand the need to revise the forms' Food Inventory section and add supplementary inventory stock example of perishables and varieties of staple food items to comport with requirements in the Farm Bill and the final rule. The associations also believe it is important and appropriate to update all assistance and instruction materials.

FNS has proposed, however, certain information collection that would be inappropriate and could potentially place FNS and participating retailers at risk. In particular, NACS and SIGMA are troubled by the proposal to collect a store's financial service provider information and whether it offers any incentives or discounts to SNAP recipients. As described in more detail below, financial data (even simple provider data such as name and address) is highly sought after and providing such data to the government could place stores at risk should the agency be hacked.⁵ Moreover, given the ongoing Freedom of Information Act ("FOIA") litigation,⁶ NACS and SIGMA are very concerned that important business confidential data – such as information regarding marketing incentives or discounts – could be made available to the public in the future. Finally, these questions are unnecessary to advance the Program's policy objectives or determine retailer eligibility; they will only result in the application forms taking longer and costing more to complete than estimated.

A. FNS Should NOT Collect Unnecessary Sensitive Financial Information Unless It Can Guarantee It Will Not Be Shared or Stolen.

It is unclear why FNS would want to know the name and address of the financial institution where a particular store makes SNAP deposits. In fact, it is unnecessary for the Agency to have data related to where a store has set up its banking services.⁷ The purpose of the Program is to "alleviate hunger."⁸ Knowing where a store deposits its SNAP receipts will not help the Agency further its mission to ensure food access nor will it assist the Agency in evaluating whether a store is eligible to participate in SNAP.

Rather, such sensitive financial data, if shared with the public or stolen by hackers (particularly if acquired in combination with other store specific data), creates risks for both the Agency and SNAP retailers. Given the ongoing FOIA litigation, it is unclear what information relating to SNAP retailers may be made available to the public in the future. Certainly, one would think that financial information would be protected under FOIA but given the uncertainties that now surround SNAP related data, it does not make sense to collect data that is otherwise unnecessary and irrelevant to a determination regarding whether a particular retailer should participate in SNAP.

⁵ This is particularly true if that data is taken in combination with other store specific data.

⁶ *Argus Leader Media v. U.S. Dep't of Agriculture*, No. 4:11-cv-04121-KES (S.D. SD judgment issued Nov. 30, 2016), <https://www.fns.usda.gov/sites/default/files/snap/Argus-Order-20161130.pdf>. See *SNAP Retailer Data*, U.S. DEP'T OF AGRICULTURE (Mar. 20, 2017) ("Until the pending court case is resolved, FNS will NOT release SNAP retailer redemption data."), <https://www.fns.usda.gov/es/node/635181>.

⁷ Should the Agency suspect SNAP trafficking or fraud is occurring, the Agency can commence an investigation and acquire all necessary data to conclude its investigation.

⁸ 7 U.S.C. §2011.

Moreover, in light of the 2015 data breach of the U.S. Office of Personnel Management, the largest breach of government data in the history of the United States,⁹ it is clear that financial and other sensitive data is attractive to hackers and the government's retention of such data places that data at risk. Not only would collection of such information place the Agency at greater risk for a cyber-attack, it would also place retailers at risk should such data be stolen or inappropriately acquired from the Agency. FNS should not be collecting this unnecessary financial data from SNAP retailer applicants.

B. FNS Should NOT Collect Data About Store Business Practices, Which May Not Be Protected Under FOIA.

The litigation surrounding SNAP data and FOIA has created significant uncertainties regarding what SNAP-related information will be made available to the public. The convenience store industry is highly competitive, operating on razor-thin margins. Whether a store offers incentives or discounts to SNAP recipients is a marketing and business decision that should be protected as confidential business information. Nevertheless, the current FOIA litigation raises questions about whether such data would in fact be protected from disclosure. As such, it would be inappropriate for FNS to collect such business confidential information from SNAP retailer applicants since such data may eventually be shared with the public and place those stores at a competitive disadvantage. Taking into consideration the legal uncertainties currently facing the Program, FNS should not collect data regarding retailer marketing practices.

C. Beyond Increasing Risks To The Agency And SNAP Retailers, Collecting Unnecessary Sensitive Information Will Make It More Burdensome For Retailers To Apply To Participate In SNAP.

In its proposed collection, FNS estimates that the “total burden hours associated with this information collection increased by approximately 2.33 minutes.”¹⁰ NACS and SIGMA believe that the added questions FNS is seeking to include in its forms will require more time to answer than estimated. In addition to responding to more-detailed questions about store inventory – a necessary burden since the final SNAP retailer eligibility rule was promulgated – stores will have to look up specific financial details and review their marketing practices in order to answer accurately. Together, all of these questions will take more than 2.33 minutes. This additional time that businesses must pay employees to complete this information adds to the costs of each response. If the purpose of SNAP is alleviating hunger and ensuring that low-income Americans have access to food, the Agency should be focusing its energy on acquiring information strictly related to whether a retailer meets the requirements to participate in the Program. It should not be making it harder for retailers to apply to participate by making the application process any more difficult or time-consuming than it needs to be.

⁹ Devlin Barrett et al., *U.S. Suspects Hackers in China Breached About 4 Million People's Records, Officials Say*, WALL ST. J. (June 5, 2015 6:33 AM), <https://www.wsj.com/articles/u-s-suspects-hackers-in-china-behind-government-data-breach-sources-say-1433451888>.

¹⁰ 82 Fed. Reg. at 10872.

III. THE AGENCY SHOULD ONLY COLLECT DATA THAT IS NECESSARY TO DETERMINE WHETHER RETAILERS ARE ELIGIBLE TO PARTICIPATE IN THE PROGRAM.

While much of what FNS proposes to update on its SNAP eligibility forms is appropriate, several of the data points FNS proposes to collect are unnecessary and may create vulnerabilities for both the Agency and retailers. The proposed collection of financial and marketing data unreasonably threatens the financial security and confidential business information of stores wishing to participate in the Program. It is also unnecessary for advancement of the Program and, if required, will render the application more time-consuming and complicated. NACS and SIGMA call upon the Agency to narrow the information it proposes to collect to data that is strictly necessary for the Program to function effectively. Furthermore, NACS and SIGMA encourage FNS to focus its energy and resources on enhancing automated electronic application processing that will enhance Program efficiency.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Timothy Columbus", is positioned above the printed name.

R. Timothy Columbus
Douglas S. Kantor
Eva V. Rigamonti
Counsel to NACS and SIGMA