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GOVERNMENT AFFAIRS & PUBLIC POLICY

VIA REGULATIONS.GOV AND E-MAIL (rpmdhq-web@fns.usda.gov)

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: FNS-2018-0034-0001 / 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**

Chief Budzius:

On behalf of Cumberland Farms, Inc. ("Cumberland Farms"), thank you for the opportunity to review and comment on proposed revisions by the Food and Nutrition Service ("FNS") to the above-referenced application forms (the "Forms") required of retailers seeking authorization to participate in the Supplemental Nutrition Assistance Program ("SNAP").

Virtually all Cumberland Farms convenience stores are authorized to accept SNAP benefits, and tens of thousands of SNAP clients rely on those stores every day. And, as our business increasingly focuses on food and beverage products, we expect that our continued participation in SNAP will

only become more valuable to our communities—particularly those located in food deserts, where access to more traditional grocery sources is limited.<sup>1</sup>

From that perspective, Cumberland Farms wishes to express both its sincere appreciation to FNS staff for its work on the Forms thus far, and its remaining concern with certain elements of those Forms as currently proposed:

- **Question 3 and Question 14:** FNS intends to make certain updates to Question 3 (regarding legal business names) and Question 14 (regarding spousal information). Cumberland Farms does not foresee these changes having an appreciable impact on its future applications, and therefore has no comments to offer.<sup>2</sup>
- **Question 18:** FNS intends to delete Question 18 (regarding restaurant licensure). This is an appropriate change. There would be substantial obstacles in attempting to fairly and efficiently define a “restaurant license,” given the variety of different definitions under myriad state and local regulations with primacy on that subject. For the same reason, any such inquiry here by FNS would be of doubtful utility for purposes of identifying an ineligible “restaurant” under the federal SNAP regime.<sup>3</sup> Cumberland Farms strongly supports the deletion of Question 18, as proposed.
- **Question 22:** FNS intends to revise Question 22 (regarding total retail sales). To the extent that it marks a return to percentage-based reporting and a re-aggregation of nonfood items like lottery and tobacco, Cumberland Farms supports such a revision. Beyond that, however, serious concerns remain. As other commenters have doubtless noted, the use of an extra-statutory “cold foods prepared on site” category is unrelated to whether or not a particular food may be purchased with SNAP benefits—nor is it “necessary for FNS to make a restaurant determination” as claimed.<sup>4</sup> Likewise, continuing to segregate the “gasoline” category from the “other nonfood items” category is inappropriate and unnecessary.<sup>5</sup> This approach

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<sup>1</sup> For more background on Cumberland Farms and its participation in SNAP, see the company’s public comments submitted in a recent FNS rulemaking on retailer eligibility standards (FNS-2016-0018) which are available at <https://www.regulations.gov/document?D=FNS-2016-0018-0803>

<sup>2</sup> Reference is made to the Corporation Supplemental Application, which simplifies the application process for second and subsequent retail stores under common corporate ownership (i.e., for “chain” stores such as those operated by Cumberland Farms).

<sup>3</sup> See 7 CFR § 278.1(b)(1)(iv) (defining “restaurants” as “firms that have more than 50 percent of their total gross sales in foods cooked or heated on-site by the retailer...”)

<sup>4</sup> FNS has claimed that the total percentage of “cold foods prepared on site” is “necessary for FNS to make a restaurant determination,” 83 Fed. Reg. 41044 (Aug. 17, 2018). But the relevant definition applies to “cold prepared foods not intended for home preparation or consumption,” 7 CFR § 278.1(b)(1)(iv) (emphasis added). This is a far narrower inquiry than “cold foods prepared on site” in general; the difference is not merely semantic.

<sup>5</sup> The proposition that “gas sales, in particular, will provide FNS with an indicator as to whether a criteria B eligibility or restaurant assessment are necessary” may have superficial appeal, but does not withstand scrutiny. Such an

will cause confusion, increase paperwork burdens, and further stigmatize retailers in the convenience store channel without cause.<sup>6</sup> Cumberland Farms therefore vigorously objects to the collection of such information in the manner proposed.

Again, thank you for your consideration of these and other stakeholder comments throughout the process. Cumberland Farms remains ready and willing to collaborate further as needed.

Sincerely,

CUMBERLAND FARMS, INC.

A handwritten signature in black ink, appearing to read 'Matthew T. Durand', with a stylized flourish at the end.

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assessment concerns whether an applicant has “more than 50 percent of their total gross retail sales” in either “staple food sales” or “in foods cooked or heated on-site” respectively, 7 CFR § 278.1(b)(1). Segregating “gasoline” as its own category, instead of aggregating it within the “other nonfood items” category, has precisely zero impact on either calculation.

<sup>6</sup> See the earlier public comments filed by Cumberland Farms, cited at note 1, supra, for more discussion on the role of convenience stores in SNAP, the unwarranted stigma they confront, and the continuous “blurring” between that channel with other traditionally-distinct channels of trade.