



March 8, 2016

The Honorable Mike Conaway
Chairman
House Agriculture Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Collin Peterson
Ranking Member
House Agriculture Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Conaway and Ranking Member Peterson:

On behalf of the National Association of Convenience Stores (“NACS”),¹ I write to express concern with the recently proposed rule from the U.S. Department of Agriculture’s Food and Nutrition Service (“FNS”) that would change retailer eligibility requirements in the Supplemental Nutrition Assistance Program (“SNAP” or the “Program”).² The proposed rule would make tens of thousands of small businesses ineligible to participate in the Program. Small businesses will be harmed and SNAP beneficiaries, who rely on these small stores in both urban and rural environments, will lose options they need to feed their families.

By way of background, during negotiations over the Agriculture Act of 2014 (the “Farm Bill”), Congress recognized the important role that small format retailers play in SNAP, particularly their role as access points for SNAP beneficiaries. After extensive negotiations between lawmakers and stakeholders, Congress adopted changes to the so-called “depth of stock” requirements – the requirements that address the amount and variety of food a retailer must have in stock to participate in SNAP as a retail food store. By enacting these provisions, Congress sought to enhance depth of stock requirements and to increase choices for SNAP beneficiaries while ensuring that those requirements were not unduly burdensome for retailers. Congress recognized that unduly burdensome eligibility requirements would hurt small businesses and result in restricted access for SNAP beneficiaries. NACS was pleased to support this compromise and supported the final Farm Bill.

On February 17, 2016, FNS published a proposed rule to implement the Farm Bill’s SNAP provisions. Unfortunately, the proposal goes well beyond what the Farm Bill required or contemplated. Significantly, the proposal would alter the definition of a retail food store to exclude any entity with over fifteen percent of its total food sales in items that are “cooked or heated on-site before or after purchase.” It would also exclude any retailer from participating in SNAP if it does business under the same roof as another entity that has more than fifteen percent of its food sales from items that are “cooked or heated on site before or after purchase.” For

¹ NACS is an international trade association representing more than 77,000 convenience and neighborhood stores worldwide.

² Department of Agriculture, Food and Nutrition Service, Proposed Rule, *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)*, 81 Fed. Reg. 8015 (Feb. 17, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-02-17/pdf/2016-03006.pdf>.

example, if a store has a separate restaurant (like a Subway franchise) in the same building, it would be disqualified based on the sales at the Subway. That is true even though the businesses are completely separate, and SNAP benefits cannot be redeemed at the Subway. It apparently would not even matter if the store is in compliance with depth of stock requirements. This provision specifically targets small format retailers and will lead to thousands of stores being pushed out of the Program, which will create serious access concerns for SNAP beneficiaries who often rely on neighborhood retailers when purchasing food.

In addition, the proposed rule implements the Farm Bill's depth of stock provisions that require retailers to offer at least seven different varieties of food items in each of the four staple food categories, including one perishable item in three of those categories. However, the proposal makes other changes to the depth of stock requirements that Congress had not envisioned. For example, it alters the definition of "staple foods" to eliminate countless multi-ingredient items – such as soups, stews, and frozen dinners – from being counted towards depth of stock requirements. It would also expand the definition of "accessory food," which will further limit the number of items that can be counted towards stocking requirements, effectively knocking out healthy items such as apple slices and cheese "to go" packs.³

The proposal would also require that retailers publicly display at least six units of each of the single-ingredient seven food varieties in all four categories, *a total of 168 items to qualify for the program*. Limiting the number of foods that count as staple foods and increasing stocking requirements is particularly harmful to small businesses, which characteristically face delivery constraints and store-size limitations that larger competitors do not.

It appears that FNS is trying to push small retailers out of the SNAP program altogether, for no sound public policy reason. Kevin Concannon, Undersecretary of Food, Nutrition and Consumer Services, recently testified before the House Appropriations Committee that there are more small stores participating in SNAP "than we really need."⁴ Other statements made by Undersecretary Concannon during the hearing indicate that FNS is conflating the issues of health and fraud to ultimately exclude small businesses from the program. Losing these retailers will reduce access to food options for SNAP beneficiaries – in effect, harming the very people the program is designed to assist.

Notably, Undersecretary Concannon claimed tightening retailer eligibility requirements will address fraud in the program. Such an approach is worrisome. During consideration of the Farm Bill, the Committee on Agriculture rejected using depth of stock, store-size, or other sales requirements to address fraud. Instead, the Farm Bill included a provision directing the Department of Agriculture to write rules establishing technology standards that would prevent

³ An apple and cheese "to go" pack would be excluded from the staple food category because it could be considered an "accessory food" and because it has "multiple ingredients."

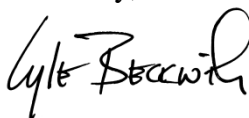
⁴ House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, "Budget Hearing – Department of Agriculture, Food and Nutrition Service" (Feb. 24, 2016), <http://appropriations.house.gov/calendar/eventsingle.aspx?EventID=394393>.

fraud. NACS and its members stand ready to assist FNS in implementing this requirement; however, more than two years after the Farm Bill was signed into law, FNS has yet to issue a proposed rule addressing the new technology standards. It is inappropriate for FNS to use retailer eligibility requirements relating to depth of stock and other items in FNS' proposed rule to address fraud – Congress specifically rejected that approach in the Farm Bill. As long as a store complies with SNAP retailer eligibility requirements, including any subsequent technology requirements that may be imposed, it should be eligible to accept SNAP benefits, regardless of what else the store sells and in what quantities it sells those items.

Small format retailers, including thousands of NACS members, are essential and valuable participants in SNAP. These retailers provide consumers with convenient locations and extended hours, enabling recipients 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.

The FNS proposal unreasonably restricts the number and type of locations at which SNAP beneficiaries can redeem their benefits and obtain the nutrition for which those benefits were intended. If adopted, the proposal would essentially punish SNAP beneficiaries by requiring them to travel outside of their local neighborhoods where larger format retailers may not exist. We urge you to stop this proposal before it hurts small businesses and, more importantly, before it restricts access to food for citizens who already have the fewest options.

Sincerely,



Lyle Beckwith
Senior Vice President, Government Relations

cc: The Honorable Randy Neugebauer
The Honorable Bob Goodlatte
The Honorable Frank D. Lucas
The Honorable Steve King
The Honorable Mike Rogers
The Honorable Glenn Thompson
The Honorable Bob Gibbs
The Honorable Austin Scott
The Honorable Rick Crawford
The Honorable Scott Desjarlais.
The Honorable Chris Gibson
The Honorable Vicky Hartzler
The Honorable Dan Benishek

The Honorable David Scott
The Honorable Jim Costa
The Honorable Timothy J. Walz
The Honorable Marcia Fudge
The Honorable Jim McGovern
The Honorable Suzan DelBene
The Honorable Filemon Vela
The Honorable Michelle Lujan Grisham
The Honorable Ann Kuster
The Honorable Rick Nolan
The Honorable Cheri Bustos
The Honorable Sean Patrick Maloney
The Honorable Ann Kirkpatrick

The Honorable Jeff Denham
The Honorable Doug LaMalfa
The Honorable Ted Yoho
The Honorable Jackie Walorski
The Honorable Rick Allen
The Honorable Mike Bost
The Honorable David Rouzer
The Honorable Ralph Abraham
The Honorable John Moolenaar
The Honorable Dan Newhouse
The Honorable Trent Kelly

The Honorable Pete Aguilar
The Honorable Stacey Plaskett
The Honorable Alma Adams
The Honorable Gwen Graham
The Honorable Brad Ashford

March 8, 2016

The Honorable Robert Aderholt
Chairman
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Sam Farr
Ranking Member
Subcommittee on Agriculture, Rural
Development, Food and Drug
Administration and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Aderholt and Ranking Member Farr:

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By way of background, during negotiations over the Agriculture Act of 2014 (the “Farm Bill”), Congress recognized the important role that small format retailers play in SNAP, particularly their role as access points for SNAP beneficiaries. After extensive negotiations between lawmakers and stakeholders, Congress adopted changes to the so-called “depth of stock” requirements – the requirements that address the amount and variety of food a retailer must have in stock to participate in SNAP as a retail food store. By enacting these provisions, Congress sought to enhance depth of stock requirements and to increase choices for SNAP beneficiaries while ensuring that those requirements were not unduly burdensome for retailers. Congress recognized that unduly burdensome eligibility requirements would hurt small businesses and result in restricted access for SNAP beneficiaries. NACS was pleased to support this compromise and supported the final Farm Bill.

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SNAP if it does business under the same roof as another entity that has more than fifteen percent of its food sales from items that are “cooked or heated on site before or after purchase.” For example, if a store has a separate restaurant (like a Subway franchise) in the same building, it would be disqualified based on the sales at the Subway. That is true even though the businesses are completely separate, and SNAP benefits cannot be redeemed at the Subway. It apparently would not even matter if the store is in compliance with depth of stock requirements. This provision specifically targets small format retailers and will lead to thousands of stores being pushed out of the Program, which will create serious access concerns for SNAP beneficiaries who often rely on neighborhood retailers when purchasing food.

In addition, the proposed rule implements the Farm Bill’s depth of stock provisions that require retailers to offer at least seven different varieties of food items in each of the four staple food categories, including one perishable item in three of those categories. However, the proposal makes other changes to the depth of stock requirements that Congress had not envisioned. For example, it alters the definition of “staple foods” to eliminate countless multi-ingredient items – such as soups, stews, and frozen dinners – from being counted towards depth of stock requirements. It would also expand the definition of “accessory food,” which will further limit the number of items that can be counted towards stocking requirements, effectively knocking out healthy items such as apple slices and cheese “to go” packs.³

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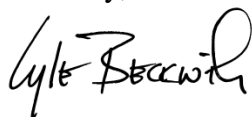
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requirements to address fraud. Instead, the Farm Bill included a provision directing the Department of Agriculture to write rules establishing technology standards that would prevent fraud. NACS and its members stand ready to assist FNS in implementing this requirement; however, more than two years after the Farm Bill was signed into law, FNS has yet to issue a proposed rule addressing the new technology standards. It is inappropriate for FNS to use retailer eligibility requirements relating to depth of stock and other items in FNS' proposed rule to address fraud – Congress specifically rejected that approach in the Farm Bill. As long as a store complies with SNAP retailer eligibility requirements, including any subsequent technology requirements that may be imposed, it should be eligible to accept SNAP benefits, regardless of what else the store sells and in what quantities it sells those items.

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The Honorable Harold Rogers
The Honorable Kevin Yoder
The Honorable Tom Rooney
The Honorable David Valadao
The Honorable Andy Harris
The Honorable David Young
The Honorable Steven Palazzo

The Honorable Nita Lowey
The Honorable Rosa DeLauro
The Honorable Sanford Bishop, Jr.
The Honorable Chellie Pingree