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**VIA ELECTRONIC FILING – www.regulations.gov**

Jessica Shahin  
Acting Administrator  
Food and Nutrition Service  
3101 Park Center Drive  
Alexandria, VA 22302

**RE: Agency Information Collection Activities: Proposed Collection; Comment Request—Understanding the Anti-Fraud Measures of Large SNAP Retailers**

Dear Acting Administrator Shahin,

On behalf of the National Association of Convenience Stores (“NACS”) and the Society of Independent Gasoline Marketers of America (“SIGMA”), I offer these comments on the U.S. Department of Agriculture’s (“USDA”) Food and Nutrition Service’s (“FNS” or “Agency”) proposal to survey large retailers who participate in the Supplemental Nutrition Assistance Program (“SNAP” or the “Program”) on their methods to prevent SNAP fraud and minimize their losses.<sup>1</sup>

Retail participation is critical to SNAP’s success. Likewise, retailer-level SNAP fraud damages the viability of the Program and undermines the reputation of all retailers who participate. For this reason, NACS and SIGMA appreciate why the Agency is proposing to conduct a survey to better understand how large chain retailers, which participate in SNAP, prevent and minimize such abuses. The associations do, however, have three primary concerns with the proposal. First, given the ongoing Freedom of Information Act (“FOIA”) litigation relating to retailer SNAP data,<sup>2</sup> NACS and SIGMA recommend that any survey be created and implemented with caution and that all data be anonymized to ensure that confidential business information cannot be made public. Second, FNS must ensure that survey respondents be the appropriate representative(s) of the retailer. Third, because the survey will only target large chain

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<sup>1</sup> Department of Agriculture, Food and Nutrition Service, Proposed Collection; Comment Request, *Understanding the Anti-Fraud Measures of Large SNAP Retailers*, 82 Fed. Reg. 16570 (Apr. 5, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-04-05/pdf/2017-06669.pdf>.

<sup>2</sup> *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>.

retailers, any resulting policy proposal that may be informed by the survey's results should also take into account small chain and single-store operators who may not have the sophistication, resources, and wherewithal to comply with highly-technical SNAP fraud prevention requirements.

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

## **I. NACS' AND SIGMA'S MEMBERS ARE VALUABLE RETAIL PARTICIPANTS IN SNAP, AND MANY ARE SINGLE-STORE OPERATORS.**

Over 117,000 convenience stores – well over 75 percent of the nation's approximately 154,000 convenience stores – participate in SNAP.<sup>3</sup> 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 convenience and 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 survey large chain retailers on their methods to learn how those retailers prevent SNAP related fraud activity and minimize their

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<sup>3</sup> 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>.

losses.<sup>4</sup> The associations further appreciate the Agency’s desire to gather SNAP related fraud prevention information from large retail chains – who have demonstrated low fraud rates when compared to the industry as a whole – *before* proposing and implementing any potentially costly policy requirements. Nevertheless, NACS and SIGMA have several concerns with the Agency’s proposed survey.

**A. FNS Should NOT Collect SNAP Fraud Prevention Information Unless It Can Guarantee The Information Will Not Be Shared.**

FNS has proposed surveying company SNAP representatives and store managers regarding their organizational structure, roles and responsibilities, and tactics used to limit or eliminate “fraud in general and SNAP fraud specifically.”<sup>5</sup> FNS has further noted that it plans to ask retailers about their loss prevention systems, point of sale systems, analytics, training, surveillance, investigation, and liaison with law enforcement. The proposed information collection is broad—and while connected to fraud prevention, many of the topics to be surveyed go to what makes a store successful, and are confidential business information.

Given the ongoing FOIA litigation in *Argus Leader Media v. U.S. Dep’t of Agriculture*, it is unclear what information relating to SNAP retailers may be made available to the public in the future. Certainly, one would think that information regarding a retailer’s point of sale systems, analytics (including, possibly, financial data), and surveillance techniques would be protected under FOIA, but FNS’ proposal does not guarantee that outcome. Therefore, FNS must be particularly careful before collecting sensitive data, which have broad implications on a company’s success beyond its participation in SNAP. If made public, the sharing of that data would unfairly place the company surveyed at a competitive disadvantage – and may undermine fraud prevention efforts by revealing individual company-level policies.<sup>6</sup>

In order to enhance the quality, utility, and clarity of the information to be collected, FNS must ensure (at minimum) that the survey data will be anonymized and not released to the public even if it is the subject of a FOIA request. Stores will be reticent to share specific data about their SNAP fraud detection and prevention techniques if it is possible to tie the information back to a specific retailer (or even a specific store), or if the information will be publicly disseminated (whether through a FOIA request or hacking).

**B. Surveying Company SNAP Representatives And Store Managers Is Inefficient and Will Lead to Inaccurate Results.**

In its proposed collection, FNS estimates that the company SNAP representative will spend “0.75 hours identifying key informants and compiling information from various organizational units involved in SNAP” and another “0.75 . . . hours completing the survey.”<sup>7</sup>

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<sup>4</sup> Hypothesize that the data may inform policy developments relating to fraud technology requirements in the Agricultural Act of 2014, Pub. L. 113-79, enacted Feb. 7, 2014.

<sup>5</sup> 82 Fed. Reg. at 16570.

<sup>6</sup> It may, arguably, also make it easier for individuals to perpetrate SNAP fraud.

<sup>7</sup> 82 Fed. Reg. at 16571.

Managers will each separately spend an additional “0.75 hours responding to the Store Manager Survey.”<sup>8</sup> NACS and SIGMA believe that FNS has **underestimated** the time it will take for a company to compile the requested information and complete the surveys.

Company SNAP representatives may have to spend significant time corresponding with various organizational units involved in SNAP, and then spend time reviewing the information they receive prior to completing the survey. The representatives may also have to compile information related to fraud prevention generally. The representatives will then have to spend time referring back to their materials in order to answer the survey accurately. Store managers would also have to compile significant information in order to answer their survey accurately, time which FNS does not account for in its “*Estimated Time per Response*.”<sup>9</sup> The time it will take a company representative or a store manager to complete the survey will be a cost to the business.

In addition to the significant time it may take to complete the survey, FNS has proposed surveying store managers, who may not be able to provide the most accurate information. The Agency should allow companies to choose the individual best-suited to respond to the survey. In many cases, although a store manager may effectively execute company policies and procedures at the store level, she or he may not be apprised of the many reasons for why a particular policy was put in place—and therefore may not be the employee best situated to answer SNAP fraud related questions. Moreover, store managers are incredibly busy; requiring them to complete a detailed survey would take time away from their core job duties. Therefore, companies should be able to select the employee who is most informed on SNAP fraud techniques, to respond to the survey.

**C. FNS Must Consider And Should Separately Survey Small Chain And Single-Store Operators Prior To Proposing SNAP Fraud Related Policy Changes.**

Though FNS intends to survey only large chain retailers, any resulting proposals to change fraud-prevention or technology requirements must also take into account small chain and single-store operators who play a valuable role in the Program. Put simply, small chains and single-store operators do not have the same sophistication, resources, and wherewithal as larger chains. While data from large retailers on how they combat SNAP fraud will be useful to inform future policy, the capacity of a small retailer is vastly different from those that will be surveyed. FNS recognizes that “[t]his study does not seek to represent all SNAP retailers,”<sup>10</sup> and therefore must not rely solely on the survey data to inform future SNAP fraud-related policy proposals. Doing so may lead the Agency to propose (and finalize) unduly burdensome requirements that will push small retailers out of the Program—an outcome that will harm SNAP beneficiaries who rely on many small operators for food access. As such, NACS and SIGMA believe FNS should

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 82 Fed. Reg. at 16570.

specifically survey small retailers to uncover what their fraud prevention techniques are and the extent to which those techniques have proven successful. Acquiring data from both large and small retailers would provide the Agency with critical information that would assist the Agency in ensuring that any future policy proposals would not be unduly burdensome on retailers, and small retailers in particular.

**D. The Survey Should Be Designed To Be As User-Friendly as Possible.**

In addition to the concerns highlighted above, NACS and SIGMA also encourage FNS to minimize survey respondents' reporting burden by implementing the following techniques:

- All surveys should be electronically available with the option to “save” the survey and complete it at a later time, so that it does not have to be finished in one sitting.
- The electronic survey should be mobile-friendly, and have a “percent completed” bar at the bottom of each page to let the individual completing the survey know how much he or she has left to complete.
- Live help from the Agency should be available to assist in survey completion.
- As explained above, one company-selected individual should be responsible for the survey.

**III. THE AGENCY SHOULD PROCEED WITH CAUTION WHEN DESIGNING AND IMPLEMENTING THE SURVEY.**

In sum, NACS and SIGMA generally support FNS' objective to survey large chain retailers in order to learn how those retailers prevent SNAP related fraud activity and minimize their losses. However, for the many reasons enumerated above, FNS should proceed with caution and ensure that such data is protected from release. Moreover, the Agency should take retailer diversity into account when developing future policy proposals that may be informed by the results of the survey(s) FNS ultimately administers.

Respectfully,



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