



High-Level Summary of Public Comments on the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) Request for Information on Enhancing Retail Food Store Eligibility under the Supplemental Nutrition Assistance Program (SNAP)

Docket No. FNS-2013-0033

FNS published a request for information on August 20, 2013 asking for comments on issues related to retail food store eligibility requirements for the agency's Supplemental Nutrition Assistance Program (SNAP).¹ Through December 17, 2013, FNS has received a total of 211 public comments on the request for information.² Our analysis of these comment letters has identified a total of 99 unique submissions, 104 form letters, and eight non-germane or duplicate submissions. Nearly all of the form letters were from a single campaign associated with convenience stores. Of the 99 unique letters, a total of 91 were deemed to be substantive.

Today's high-level summary focuses primarily on common suggestions and statements contained within these 91 substantive submissions. In addition, we have included some quantitative data in the form of tallies of the submissions that addressed certain coding structure categories to further demonstrate trends in support or opposition of specific issues. The counts included in the summary bullets below and in the table that follows reflect the approximate total number of submissions (including both unique letters and form letter copies) that weighed in on certain issues. Please note that these tallies may change as we continue to perform a quality control review of our coding prior to delivery of ICF's final reports in January 2014. In addition, references to certain commenter types and footnotes citing specific commenters within the summary bullets are intended to be illustrative and should not be considered exhaustive of the commenters that have expressed a particular position.

General Support and Opposition to Changing Existing Program Eligibility Requirements

- Five commenters, including several private citizens³ and a state agency,⁴ expressed general support for the strengthening of program eligibility requirements. In expressing general support, some of these comments noted that SNAP retailers should be providing healthy food options and that items with little nutritional value (e.g., energy drinks, snack items) should be ineligible for purchase with SNAP resources.
- One food retailer⁵ expressed concern that strengthening program eligibility requirements will have adverse consequences on a substantial number of SNAP beneficiaries and retailers. The retailer argued that increasing standards for retailers will result in the closure of current SNAP authorized dealers, a resulting decrease in jobs, and a decrease in opportunities for SNAP participants to redeem their benefits.

Question #1: Reasonableness of ensuring provision of healthy food options as SNAP store eligibility criterion

- Over 30 commenters agreed that ensuring healthy food options is a reasonable SNAP eligibility criterion; all commenter types were represented in these expressions of support. Only one

¹ 78 FR 51130 (August 20, 2013)

² The total number of submissions received includes 204 submissions, 5 public transcripts, and seven (7) form letter copies that were submitted under one submission.

³ Anne Shanahan, Lucinda Keller

⁴ Virginia Department of Social Services

⁵ 7-Eleven, Inc.

commenter, a large food retailer⁶, argued that current SNAP retail eligibility requirements are sufficient and that FNS should not limit the eligibility requirements further by adding such a criterion.

- Many of the supporters argued that improving participants' access to healthy food supports one of SNAP's program goals of improving nutrition in low-income individuals and families.
- Governmental entities, academics, and advocacy groups in support of FNS' focus on healthy food options referenced published works (e.g., law review articles, scientific journal articles) to support their claims (e.g., that healthier food options are linked to combatting food insecurity,⁷ that provision of healthier food options is within FNS' scope of authority and is possible to obtain⁸).
- Several commenters, including a trade association, advocacy group, and governmental entity, acknowledged that no uniform definition for "healthy food" exists to use as a basis for considering this question. Comment views varied regarding whether the term should or should not be defined, and commenters noted that providing such a definition could prove difficult.⁹

Question #2: Existence of store types that should always be eligible for SNAP participation

- A few dozen comments were received from commenters, such as private citizens, academics, governmental entities, trade associations, and professional associations, in favor of allowing some store types to always be eligible for SNAP participation. A total of 11 commenters, including food banks, governmental entities, trade associations, and private citizens, opposed allowing some store types to always be eligible for SNAP participation.
- Store types identified by commenters as examples of entities which should always be eligible for SNAP participation include: grocery stores, supermarkets, food co-operatives, farmers markets, and produce stores. Approximately 25 commenters argued the merits of always allowing farmers markets to be eligible for SNAP participation. A few commenters in support of allowing certain types of stores to always be eligible stated that the businesses should still meet SNAP program goals and any other business requirements to participate.¹⁰
- Commenters opposed to allowing some store types to always be eligible for participation argued that all stores should be examined on their merits and periodically reviewed for compliance with SNAP requirements.¹¹ The USDA Office of Inspector General stated that no store types can be said to "clearly meet all of the Program goals" and that the only store type in which it has not seen SNAP trafficking was "larger retail stores."¹²

Question #3: Existence of store types that should always be ineligible for SNAP participation

- Roughly 10 commenters, including certain academics, professional associations, governmental entities, and farmers markets, argued in favor of designating store types that should never be allowed to participate in SNAP, while approximately 20 commenters, mostly food retailers, argued against such a proposition.
- Store types cited by commenters as examples of entities which should never be eligible for SNAP participation include: convenience stores, liquor stores, gas stations, and "combination" businesses.¹³

⁶ 7-Eleven, Inc.

⁷ Rudd Center for Food Policy and Obesity

⁸ City of Chicago, Department of Public Health

⁹ Mid-Ohio Valley Health Department, United Council on Welfare Fraud, American Beverage Association

¹⁰ University of California SNAP-Ed Program, Sandra Salcedo

¹¹ Mitchell Klein, Mass Farmers Markets, Center for Disease Control

¹² USDA, Office of Inspector General

¹³ Mississippi Department of Human Services, Rudd Center for Food Policy and Obesity, Michigan Department of Human Services

- Several commenters, including food retailers, governmental entities, and farmers markets, argued that no types of retailers should universally be denied participation in SNAP. Some of these commenters warned that the effect would be to further limit food accessibility to SNAP participants. Many food retailers, specifically convenience store owners, addressed why their specific store should not be categorically excluded from SNAP participation (e.g., located in food desert, store's provision of healthy food options).¹⁴

Question #4: Redefinition of “staple foods”

- About 30 commenters, including private citizens, policy advocates, governmental entities, academics, and trade associations, supported changing the current definition of “staple foods” while fewer than 10 commenters, all representing certain trade associations, argued in opposition.
- Although some commenters argued, generally, for enhanced standards for “staple foods,” many commenters suggested specific changes to the current definition. Many commenters who supported changing the definition requested that FNS align “staple foods” with the five food group categories specified by the Dietary Guidelines for Americans (DGA): breads and cereals, vegetables, fruits, protein, and dairy.¹⁵ Other specific examples for how commenters proposed to change the definition include:
 - Alignment with DGA guidelines for specific categories of ‘prepared food,’ ‘snacks,’ ‘bakery,’ and ‘beverage’ categories;¹⁶
 - Additional requirements for each food category (e.g., Dairy category must include at least one low- or non-fat item, Bread or cereal category must include at least one whole grain item);¹⁷ and
 - Numeric requirements designated within the food categories (e.g., Bread or cereal category would have no more than 10 grams of added sugar, Fruits category would require 4 varieties of fresh fruit as well as 4 varieties of canned or frozen juice, with no sugar added).¹⁸
- The commenters who argued that the current definition for “staple foods” is sufficient offered the following arguments to explain why no change is needed:
 - The current definition meets best practices of established nutrition guidelines;¹⁹
 - Modifying the definition could open the door to future limitations on SNAP consumer choice;²⁰
 - Altering the definition in a way that increases grocery store stocking requirements could further cut into small profit margins and force some food retailers out of business;²¹ and

¹⁴ Land O'Sun Management Corporation, American Natural, Darlene Conner, Tom Thumb Food Stores, Inc., Aloha Petroleum, Ltd.

¹⁵ University of California SNAP Ed-Program, United Fresh Produce Association, Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, ChangeLab Solutions, Craig Moschetti, Society for Nutrition Education and Behavior, Academy of Nutrition and Dietetics

¹⁶ Kevin Kehmna

¹⁷ Philadelphia Department of Public Health, Johns Hopkins Center for a Liveable Future, State of California Health and Human Services Agency Department of Social Services

¹⁸ University of California SNAP Ed-Program. ASNNA also suggested these types of numeric requirements, but generally suggested higher value requirements than University of California SNAP Ed-Program

¹⁹ The Grocers Manufacturing Association

²⁰ Donna Garen, 7-Eleven, Inc.

²¹ Ohio Grocers Association

- Lack of consensus on what is “healthful” and the possible danger associated with deviating from the current “total diet approach.”²²
- Commenters were split regarding whether FNS should exclude items high in sugar, sodium, and saturated fats from “staple foods,” with several commenters (governmental entity, farmers market, private citizen) in favor and others (food retailer and trade associations) opposed.
 - One private citizen specifically argued for the exclusion of sugary beverages from “staple food” consideration.²³
 - Trade associations voiced strong opposition to excluding these foods based on what they deem to be an arbitrary determination and a considerable burden to FNS in assessing all of the products.²⁴
 - A food retailer argued that FNS should not only look at the fat, sugar, and sodium content, but also the underlying nutritional value of a product as well before excluding an item from the “staple foods” consideration.²⁵
- A few commenters argued that any change to the “staple foods” definition and requirements should be grounded in research or come from USDA’s nutritional staff.²⁶

Question #5: Applicability of “staple foods” categories to prepared foods with multiple ingredients

- Approximately 20 submissions discussed multi-ingredient prepared foods as “staple foods.” About half of these commenters, including trade associations and other entities, preferred to maintain the current treatment of counting such foods in up to one “staple food” category. The other half, ranging from private citizens to professional associations and governmental entities, argued for a change in classification.
- Commenters in favor of maintaining current treatment of these prepared foods noted the benefits of such products (e.g., nutrient-dense, calorie- and portion-controlled, cost-effective) and argued that no change is needed in their treatment.²⁷
- Several commenters, including private citizens and farmers markets, argued that “staple foods” categories should only be comprised of single-ingredient foods or foods that are minimally or unprocessed.²⁸ A few of these commenters noted that these foods tend to be high in sodium, saturated fats, and sugar – the same ingredients being considered for exclusion from “staple foods” consideration.²⁹ One governmental entity suggested placing numeric limitations on the amount of particular types of ingredients (e.g., x# of mg of sugar or sodium) to monitor which multiple ingredient foods are allowed to be considered as “staple foods.”³⁰

Question #6: Adequacy of the twelve applicable item minimum under Criterion A

- Over a dozen commenters, including professional associations, an academic, and governmental entities, expressed support for an increase in the minimum applicable item requirements under

²² Lee Sanders

²³ Sandra Salcedo

²⁴ National Grocers Association, Grocery Manufacturers Association

²⁵ Little Caesars Enterprises, Inc.

²⁶ Mitchell Klein, The Food Trust

²⁷ Donna Garen, National Grocers Association, Grocery Manufacturers Association

²⁸ Mitchell Klein, Sandra Saleco, Mass Farmers Markets

²⁹ Sandra Saleco, OTDA

³⁰ OTDA

Criterion A³¹ while only two commenters, including a food retailer,³² asserted that the current 12-item minimum is sufficient.

- Reasons provided by commenters that the 12-item minimum was insufficient³³ included the following:
 - Insufficient variety of foods offered in each food category (e.g., suggested increase to six items required per food category);³⁴
 - The creation of an additional food category to list fruits and vegetables separately;³⁵
 - A professional association suggested altering categorization by including subcategories and aligning categorization more closely with Dietary Guidelines for Americans;³⁶
 - Requirement to stock perishable foods in additional food categories.³⁷
- The food retailer opposed to an alteration of the 12-item minimum argued that the current standards are sufficient in meeting SNAP program goals.

Question #7: Possible change from Criterion A requirement to stock perishable items in two categories

- Nearly 20 commenters, including state government agencies, professional associations, and policy advocacy organizations, expressed support for requiring perishable items in more than two categories.
 - Several commenters stated that FNS should expand the perishable food requirement to all staple food categories.³⁸ Some of these commenters stated that fresh items, distinct from refrigerated and frozen, also should be required.
 - Several commenters stated that perishable foods should be required in three categories (fruits, vegetables, and dairy) or four categories (fruits, vegetables, and two other groups).³⁹
- Multiple commenters supported an increase in the number of required perishable items with exceptions.
 - A state agency argued that there should be an exception for certain types of retailers that sell multiple fresh fruit and vegetable varieties but may not be able, or may find it cost prohibitive, to sell perishable items in more than two categories (e.g., a farmers market retailer).⁴⁰
 - A trade association said FNS should ensure that stores are able to stock perishable items based on consumer demand.⁴¹

³¹ Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, University of California SNAP-Ed Program, Texas Retailers Association, Center for Disease Control, United Council on Welfare Fraud

³² 7-Eleven, Inc.

³³ United States Conferences of Mayors Food Policy Task Force, Mitchell Klein

³⁴ New York City Department of Health and Mental Hygiene, Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

³⁵ Texas Retailers Association, Academy of Nutrition and Dietetics, Center for Disease Control.

³⁶ Society for Nutrition Education and Behavior

³⁷ Rudd Center for Food Policy and Obesity, California Food Policy Advocates

³⁸ California Food Policy Advocates (CFPA), University of California SNAP-Ed Program, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, OTDA, United Council on Welfare Fraud, Commonwealth of Virginia Department of Social Services

³⁹ United Fresh Produce Association, Johns Hopkins Center for a Livable Future

⁴⁰ The Philadelphia Department of Public Health

⁴¹ The National Grocers Association

- Another trade association said FNS should provide flexibility for stores that may face periodic challenges stocking perishable items.⁴²
- A few commenters stated that perishable items should not be required in more than two categories.
 - A state agency noted that quality fruits and vegetables can come in multiple varieties, such as frozen and canned, and are often less expensive and last longer than perishable goods.⁴³
 - One commenter stated that the requirement would be too difficult for small retailers in underserved communities.⁴⁴
 - A private citizen suggested that an increased perishable food requirement may exclude specialty stores that offer healthy foods (e.g., butcher shops, fish mongers).

Question #8: Adequacy of Criterion B 50% sales requirement of “staple foods” in meeting SNAP’s purpose

- While a few commenters on this question supported the current 50% requirement,⁴⁵ many more stated that the requirement is not sufficient.
 - A food retailer suggested that the current application of Criterion B denies SNAP participants the opportunity to purchase healthy food items for home preparation at establishments that specialize in sales of food items.⁴⁶
 - A professional association encouraged FNS to revise the current Criterion B to focus on specialty retailers that offer fresh healthy foods but may not stock the full variety of staple foods required by Criterion A (e.g., farmers’ markets, produce markets, and meat markets).⁴⁷
 - A policy organization stated that, due to the size of some stores, a 50% criterion may not be reached even though thousands of food products may be available.⁴⁸
- Several commenters asserted that the criterion would be sufficient if the definition of “staple foods” is changed to exclude items high in added sugar, sodium, or solid fats.⁴⁹ However, other commenters were opposed to amending the definition to exclude these items because the process of determining whether a staple food contains excess sugar, sodium or solid fats would be burdensome and would lead to confusion.⁵⁰ One of these commenters stated that an easy way to influence food choices would be to prohibit the purchase of food items with more than five ingredients using SNAP funds.⁵¹
- Several commenters stated that the 50% criterion would be sufficient if FNS revised the definition of “staple food” according to their comments on the other questions posed in the RFI.⁵²

⁴² Food Marketing Institute

⁴³ State of California, Health and Human Services Agency Department of Social Services

⁴⁴ The Food Trust

⁴⁵ 7-Eleven, Inc., The Food Trust, Ohio Grocers Association

⁴⁶ Little Caesars Inc.

⁴⁷ Society for Nutrition Education and Behavior

⁴⁸ Food Marketing Institute

⁴⁹ Mass Farmers Markets

⁵⁰ National Grocers Association, Food Marketing Institute, United Council on Welfare Fraud, Commonwealth of Virginia Department of Social Services

⁵¹ Commonwealth of Virginia Department of Social Services

⁵² California Food Policy Advocates (CFPA), University of California SNAP-Ed Program, State of California, Health and Human Services Agency Department of Social Services, OTDA, Rudd Center for Food Policy and Obesity

- A few commenters suggested that the “accessory foods” category could be expanded to include other foods with minimal nutritional value where fat and sugar are the principal ingredients by weight. These commenters also suggested that “accessory foods” should continue to be excluded from total receipts with definitions updated and expanded for more nutrient-specific criteria.⁵³

Question #9: Eligibility of stores whose primary business is not food sales

- Most of the commenters who responded to this question supported eligibility of stores whose primary business is not food sales, but a few commenters⁵⁴ opposed their eligibility.
- Commenters provided several reasons for their support of these stores.
 - A few commenters, including food retailers, advocacy organizations, and state and local agencies, stated that broadly eliminating SNAP acceptance based solely on venue would restrict food access in food deserts.⁵⁵
 - Two trade associations stated that retailers’ non-SNAP sales are irrelevant to whether they should be able to redeem SNAP benefits.⁵⁶
 - A policy organization stated that, due to the format of some stores, the primary source of inventory may not be food even though thousands of food products may be available.⁵⁷
 - A food retailer stated that analysis of items sold by stores in determining retailer eligibility would not be an appropriate use of scarce agency resources.⁵⁸
- Some commenters offered proposed standards for contingent support for eligibility of stores whose primary business is not food sales.
 - A few government agencies and a policy advocacy organization stated that, as long as the retailer meets the minimum eligibility requirements of SNAP, that retailer should be allowed to participate.⁵⁹
 - The University of California SNAP-Ed Program and another commenter argued that such stores should be eligible to participate only if they meet more stringent stocking requirements and there are no other stores authorized to accept SNAP within a specific geographic area.⁶⁰

Question #10: Eligibility of retailers that primarily sell food for immediate consumption, but also sell products cold and heat them for SNAP recipients after purchase

- The response to this question was fairly evenly divided between support for and opposition to the eligibility of stores that primarily sell food for immediate consumption, but also sell products cold and heat them for SNAP recipients after purchase.

⁵³ The University of California SNAP-Ed Program, The Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

⁵⁴ Texas Retailers Association, United Council on Welfare Fraud, Commonwealth of Virginia Department of Social Services

⁵⁵ Aloha Petroleum, Ltd., The Food Trust, National Grocers Association, Chicago Department of Public Health, Rudd Center for Food Policy and Obesity

⁵⁶ National Association of Convenience Stores (NACS) and Society of Independent Gasoline Marketers of American (SIGMA)

⁵⁷ Food Marketing Institute

⁵⁸ 7-Eleven Inc.

⁵⁹ California Food Policy Advocates, Philadelphia Department of Public Health, State of California, Health and Human Services Agency Department of Social Services, CDC

⁶⁰ University of California SNAP-Ed Program, the Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

- A few commenters, including trade associations, an advocacy organization, and a professional association, opposed the general eligibility of these types of retailers, but stated that there are certain circumstances (e.g., natural disasters, food deserts) when hot food should be available.⁶¹
- A food retailer stated that sound policy reasons exist for permitting SNAP vendors to heat foods purchased with SNAP benefits post-sale for home consumption (e.g., SNAP beneficiaries may not have access to adequate or safe cooking facilities at home, foods sold cold are almost always less expensive than purchasing prepared foods).⁶² Similarly, an advocacy organization referenced low-income communities and stated that food insecurity experts would prove valuable to informing eligibility for prepared food retailers.⁶³

Question #11: Granting authorization to all eligible retail stores (regardless of whether sufficient store access is a concern)

- Nearly all commenters on this topic agreed that all eligible retailers should be granted authorization to participate in SNAP.
- A state government agency stated that if a store meets the criteria and there is concern that there is not sufficient store access, the store should not be authorized.⁶⁴

Question #12: Granting SNAP authorization when no store meets basic eligibility criteria in an area

- The responses to this question were split between support for and opposition to granting SNAP authorization when no store meets basic eligibility criteria in an area. Some commenters agreed that evaluation would be useful when no store meets basic eligibility criteria in an area,⁶⁵ but others stated that the current modest regulations are sufficient to ensure access in most cases.⁶⁶
- Some commenters stated that evaluation and scoring systems, including but not limited to CX3 and NEMS, have already been recognized by authorities and could serve as a starting point or be pilot tested for SNAP.⁶⁷
- Multiple commenters, including state government agencies and professional associations, recommended probationary authorization and/or a phase-in for retailers that have trouble meeting updated requirements.⁶⁸ A federal agency suggested an approach used by USDA for other efforts (e.g., National School Lunch Program and the School Breakfast Program), in which short-term waivers are used if a retailer in a “no access” area cannot comply by the initiation date of the new criteria.⁶⁹

⁶¹ Texas Retailers Association, National Grocers Association, Rudd Center for Food Policy and Obesity, United Council on Welfare Fraud

⁶² 7-Eleven Inc.

⁶³ The Food Trust

⁶⁴ Michigan Department of Human Services

⁶⁵ Iowa Food Bank Association, SNAP Outreach Workers, and Feeding America Food Banks in Iowa, The Food Trust, Texas Retailers Association, California Food Policy Advocates

⁶⁶ 7-Eleven Inc., State of California, Health and Human Services Agency Department of Social Services, National Association of Convenience Stores (NACS) and Society of Independent Gasoline Marketers of American (SIGMA), Mississippi Department of Human Services, Commonwealth of Virginia Department of Social Services

⁶⁷ The Food Trust, Rudd Center for Food Policy and Obesity, Academy of Nutrition and Dietetics, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

⁶⁸ Academy of Nutrition and Dietetics, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, Michigan Department of Human Services, OTDA

⁶⁹ CDC

- A trade association and a few policy advocacy organizations said FNS should pose this question to a focus group or advisory committee to identify solutions.⁷⁰

Question #13: Balancing integrity and management priorities against healthy food choice criteria

- Approximately 30 commenters provided various recommendations and elements for balancing integrity and management priorities, including the following:
 - Assess fines to retailers that are repeat offenders;⁷¹
 - Focus investigative efforts on targeting high-risk retailers;⁷²
 - Review current EBT reports to identify red flags for fraud;⁷³
 - Publish FNS retailer enforcement work, make it accessible to the public, and combine this information with the FNS Watch List;⁷⁴
 - Develop a recognition program for retailers who embrace the goals of the Program, provide leadership in the retail community, and find ways to encourage adoption of healthy shopping habits;⁷⁵
 - Share data amongst all government agencies involved in regulating food retailers;⁷⁶
 - Include input from all stakeholders (e.g., convene a working group);⁷⁷
 - Require stores to utilize EBT or POS systems;⁷⁸
 - Review current ALERT process for potential enhancements to identify suspect transactions;⁷⁹
 - Mandatory store visits;⁸⁰
 - Monitor retailer eligibility in areas of limited access (e.g., by mapping eligible retailers against food desert data available in USDA’s Food Environment Atlas);⁸¹
 - Seek additional legislative authority as necessary to reduce fraud and utilize financial penalties;⁸²
 - Use the WIC model to limit the amount of subsidized unhealthy food items;⁸³
 - Partner with interested state and local government entities, and conduct investigations through the expanded use of the State Law Enforcement Bureau (SLEB) program;⁸⁴ and
 - Test strategies using technology-based measures to assess retailers’ compliance.⁸⁵
- Two trade associations stated that the RFI fallaciously conflates SNAP fraud and SNAP beneficiary purchasing decisions.⁸⁶ Similarly, a food retailer stated that USDA should not accept the apparent premise that “fraud” and “healthful food offerings” are somehow intrinsically linked.⁸⁷

⁷⁰ Texas Retailers Association, Community Health Councils, Food Marketing Institute

⁷¹ Iowa Food Bank Association, SNAP Outreach Workers, and Feeding America Food Banks in Iowa

⁷² New York City Department of Health and Mental Hygiene, United Council on Welfare Fraud

⁷³ Commonwealth of Virginia Department of Social Services

⁷⁴ New York City Department of Health and Mental Hygiene

⁷⁵ ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, OTDA

⁷⁶ Rudd Center for Food Policy and Obesity, PHI

⁷⁷ Texas Retailers Association

⁷⁸ National Association of Convenience Stores (NACS) and Society of Independent Gasoline Marketers of American (SIGMA), United Council on Welfare Fraud, Commonwealth of Virginia Department of Social Services

⁷⁹ United Council on Welfare Fraud

⁸⁰ United Council on Welfare Fraud

⁸¹ Academy of Nutrition and Dietetics

⁸² Academy of Nutrition and Dietetics

⁸³ Michigan Department of Human Services

⁸⁴ New York City Department of Health and Mental Hygiene

⁸⁵ PHI

⁸⁶ National Association of Convenience Stores (NACS) and Society of Independent Gasoline Marketers of American (SIGMA)

⁸⁷ Cumberland Farms, Inc.

- The Office of Inspector General (OIG) stated that its recent work demonstrated that FNS does not have clear procedures and guidance to carry out key oversight and enforcement activities to address SNAP retailer fraud, or adequate authority to prevent multiple instances of fraud. According to the OIG, this occurred because FNS had not yet comprehensively updated its regulations and guidance to reflect the changed fraud risks that accompanied the transition from a stamp-based benefit system to the EBT system. OIG asserted that this has led to a retailer authorization process without clear roles and responsibilities for different FNS divisions, inadequate supervisory reviews, and fragmented access to important documents. Finally, OIG stated that FNS does not require retailers to undergo self-initiated criminal background checks.
- OIG also stated that prior audit results found that FNS has not established processes to identify or estimate the total amount of SNAP fraud occurring nationwide by retailers. As a result, OIG concluded that FNS does not have tools to effectively measure a total SNAP fraud rate over time, and the actual extent of trafficking could be over or underestimated. OIG also reiterated its recommendations to FNS regarding the use of suspension and debarment.

Question #14: Additional ways in which eligibility criteria should be changed

- Approximately two dozen commenters noted the value of farmers markets in the healthy food retail landscape and the barriers that farmers markets face when applying for authorization to be a SNAP retailer. These commenters provided the following ways in which FNS could improve SNAP with regard to farmers markets:⁸⁸
 - Create a separate application for farmers markets or remove the structural barriers of the retailer application and additional processing fees;
 - Allow farmers markets to select a Type of Ownership that more closely reflects their organizational structure;
 - Allow farmers markets to provide an Employer Identification Number, instead of an individual's Social Security number;
 - Authorize one managing organization for multiple market locations;
 - Provide an exemption for farmers markets that do not have a business license;
 - Exempt farmers markets from providing sales data;
 - Permit partnering organizations to apply for the market's authorization status with written permission from the decision-making body of the farmers market; and
 - Require states to include in future contracts a provision that provides the same service to retailers using wireless service as to those using traditional, hardwired machines.
- Approximately a dozen commenters provided suggestions for requirements related to marketing, promotion, and education efforts that encourage SNAP participants to purchase health foods. Some of the suggestions include the following:
 - Limit or discourage in-store SNAP marketing on ineligible or non-staple products and on food and beverage signage;⁸⁹
 - Require that SNAP staple foods be visible from the store entrance;⁹⁰
 - Encourage cross-promotion between WIC-allowed and SNAP "staple foods";⁹¹

⁸⁸ Some of the commenters that provided these recommendations include: Michigan Farmers Market Association, Fair Food Network, Johns Hopkins Center for a Livable Future, Farmers Market Coalition, NSAC, Washington State Farmers Market Association

⁸⁹ California Food Policy Advocates, University of California SNAP-Ed Program, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, ChangeLab Solutions, Society for Nutrition Education and Behavior, Leadership for Healthy Communities, OTDA, Trust for America's Health

⁹⁰ University of California SNAP-Ed Program, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

- Post clear labels for unit pricing of all foods and beverages;⁹²
- Allow retailers to offer discounts and bonus values for “staple foods” to SNAP customers;⁹³ and
- Restrict or limit the amount of tobacco product displays or marketing in SNAP eligible stores.⁹⁴
- Some commenters provided other suggestions for ways in which the eligibility criteria should be changed, including the following:
 - Consider beverage provisions and placement options as additional criteria for retailer eligibility.⁹⁵
 - Consider a separate application for smaller retailers to deter trafficking.⁹⁶
 - Use WIC model to require training for SNAP retailers; coordinate store audits with the WIC program; and develop a unified database for tracking WIC and SNAP authorization information.⁹⁷
 - Consider a probation period during which random inspections will be conducted.⁹⁸

Suggestions for implementation support (e.g., pilot studies, technical assistance, and education programs)

- Several commenters, including local governments, state governments, and policy advocacy organizations, generally urged FNS to provide implementation support, including pilot studies, technical assistance, and education programs to SNAP beneficiaries.⁹⁹
- A policy advocacy organization and professional association said USDA should encourage collaboration between the SNAP retailer program and the SNAP nutrition education program (SNAP-Ed).¹⁰⁰
- A professional association said FNS should consider working with the Small Business Administration or other federal entities to offer assistance with issues such as budgeting, sourcing, product selection and handling, and technology.¹⁰¹

Comments about the public listening sessions

- A policy advocacy organization encouraged FNS to review the comments at the Baltimore listening session provided by Maryland Hunger Solutions.

Other comments

- Several policy advocacy organizations recommended that FNS use its existing waiver authority to test and evaluate any proposed changes.¹⁰²

⁹¹ University of California SNAP-Ed Program, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies, Academy of Nutrition and Dietetics

⁹² ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

⁹³ University of California SNAP-Ed Program, ASNNA: Association of SNAP-Ed Nutrition Networks and Other Implementing Agencies

⁹⁴ UNC Gillings School of Global Public Health

⁹⁵ New York City Department of Health and Mental Hygiene

⁹⁶ State of California, Health and Human Services Agency Department of Social Services

⁹⁷ Rudd Center for Food Policy and Obesity

⁹⁸ United Council on Welfare Fraud

⁹⁹ National WIC Association, ChangeLab Solutions, Leadership for Healthy Communities, Society for Nutrition Education and Behavior, New York City Department of Health and Mental Hygiene, The Food Trust, United States Conference of Mayors Food Policy Task Force, Academy of Nutrition and Dietetics

¹⁰⁰ PHI, Academy of Nutrition and Dietetics

¹⁰¹ Academy of Nutrition and Dietetics

¹⁰² The Society for Nutrition Education and Behavior, the National WIC Association, PHI

- An educational institution encouraged FNS to develop SNAP standards that are in line with WIC requirements.¹⁰³
- A few commenters, including a trade association, a state government agency, and a professional association said state-supplied EBT POS equipment should be eliminated, and that retailers should be required to purchase their own POS wireless devices as a cost of doing business (except for farmers markets).¹⁰⁴
- A food retailer said the Health Incentives Pilot and similar incentive-based programs are the best method to increase healthy choices among SNAP participants.¹⁰⁵
- A trade association stated that the imposition of government restrictions on SNAP recipients' food decisions would significantly expand federal bureaucracy, increase burdens on small business and retailers, and play no role in lowering obesity rates.¹⁰⁶
- A professional association stated that more data is needed to analyze the ability of SNAP recipients to access SNAP-eligible retailers, and to determine whether enhanced eligibility requirements would negatively impact that access.¹⁰⁷

¹⁰³ Johns Hopkins Center for a Livable Future

¹⁰⁴ Texas Retailers Association, United Council on Welfare Fraud, Commonwealth of Virginia Department of Social Services

¹⁰⁵ Cumberland Farms, Inc.

¹⁰⁶ American Beverage Association

¹⁰⁷ Academy of Nutrition and Dietetics

Tallies of Submissions by Coding Structure Category

The table below indicates how many comment submissions addressed each coding structure category. The first set of counts indicates how many unique submissions (including one representative or “master” version of each form letter variety) addressed a category, while the second count includes all letters analyzed (including form letter copies). Counts listed for a “parent” issue reflect comments that addressed the parent issue generally but that could not be assigned into a more specific sub-issue (i.e., counts do not “roll up” to the parent issues).

| Coding Structure Category Number | Category Title | Count of Unique Submissions (including one copy of each form letter) | Count of All Submissions (including form letter copies) |
|----------------------------------|---|--|---|
| 1 | General feedback on the RFI | 0 | 0 |
| 1.1 | General support for making changes to existing program eligibility requirements (w/o substantive rationale) | 5 | 5 |
| 1.2 | General opposition to making changes to existing program eligibility requirements (w/o substantive rationale) | 1 | 1 |
| 1.3 | Other general comments | 1 | 1 |
| 2 | Responses to Questions Posed by FNS | 0 | 0 |
| 2.1 | Question #1: Reasonableness of ensuring provision of healthy food options as SNAP store eligibility criterion | 0 | 0 |
| 2.1.1 | Agreement that provision of healthy food options is a reasonable eligibility requirement | 34 | 34 |
| 2.1.2 | Disagreement that provision of healthy food options is a reasonable eligibility requirement | 1 | 1 |
| 2.1.3 | Other comments on reasonableness of healthy food provision eligibility requirement | 6 | 6 |
| 2.2 | Question #2: Existence of store types that should always be eligible for SNAP participation | 0 | 0 |

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| Coding Structure Category Number | Category Title | Count of Unique Submissions (including one copy of each form letter) | Count of All Submissions (including form letter copies) |
|----------------------------------|---|--|---|
| 2.2.1 | General support for eligibility of particular store types | 6 | 6 |
| 2.2.2 | General opposition to eligibility of particular store types | 11 | 11 |
| 2.2.3 | Suggestions for store types that should always be eligible for participation | 1 | 1 |
| 2.2.3.1 | Grocery stores | 9 | 9 |
| 2.2.3.2 | Supermarkets | 8 | 8 |
| 2.2.3.3 | Farmers Markets | 25 | 26 |
| 2.2.3.4 | Food co-operatives | 1 | 1 |
| 2.2.3.5 | Others | 3 | 3 |
| 2.2.4 | Other comments on whether some store types should always be eligible for SNAP participation | 12 | 12 |
| 2.3 | Question #3: Existence of store types that should always be ineligible for SNAP participation | 0 | 0 |
| 2.3.1 | General support for ineligibility of particular store types | 4 | 4 |
| 2.3.2 | General opposition to ineligibility of particular store types | 10 | 10 |
| 2.3.3 | Suggestions for store types that should always be ineligible for participation | 0 | 0 |
| 2.3.3.1 | Convenience stores | 7 | 7 |
| 2.3.3.2 | Gas stations | 3 | 3 |
| 2.3.3.3 | Liquor store | 4 | 4 |
| 2.3.3.4 | Pharmacies | 1 | 1 |
| 2.3.3.5 | Dollar stores | 0 | 0 |
| 2.3.3.6 | Others | 2 | 2 |
| 2.3.4 | Other comments on whether some store types should never be eligible for SNAP participation | 27 | 123 |
| 2.4 | Question #4: Redefinition of "staple foods"• | 0 | 0 |
| 2.4.1 | A different definition of "staple foods" would help ensure more healthy food choices | 1 | 1 |

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|----------------------------------|---|--|---|
| 2.4.1.1 | Proposed changes to definition | 24 | 24 |
| 2.4.1.2 | Support/references for need to change definition | 1 | 1 |
| 2.4.1.3 | Other comments in support of a new definition for "staple foods" | 7 | 7 |
| 2.4.2 | Redefining "staple foods" would not ensure more healthy food choices | 0 | 0 |
| 2.4.2.1 | Current definition is sufficient | 6 | 6 |
| 2.4.2.2 | FNS should only focus on trafficking/redefining staple foods will not impact trafficking | 0 | 0 |
| 2.4.2.3 | Other comments in opposition to a new definition for "staple foods" | 6 | 6 |
| 2.4.3 | Treatment of foods high in added sugar, sodium, or solid fats | 0 | 0 |
| 2.4.3.1 | Support for exclusion of these items as "staple foods" | 2 | 2 |
| 2.4.3.2 | Opposition to exclusion of these items as "staple foods" | 3 | 3 |
| 2.4.3.3 | Other comments regarding treatment of foods high in added sugar, sodium, or solid fats | 3 | 3 |
| 2.4.4 | Other comments on redefining "staple foods" | 4 | 4 |
| 2.5 | Question #5: Applicability of "staple foods"• categories to prepared foods with multiple ingredients | 0 | 0 |
| 2.5.1 | Support for maintaining current treatment of multiple ingredient foods (i.e., to be considered in one "staple food" category as long as it has one ingredient that meets "staple foods"• definition). | 8 | 8 |
| 2.5.2 | Support for changing treatment of multiple ingredient foods (e.g., only considering single ingredient foods as staple foods) | 6 | 6 |

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|----------------------------------|---|--|---|
| 2.5.3 | Other comments on multiple ingredient foods as "staple foods"• | 16 | 16 |
| 2.6 | Question #6: Adequacy of the twelve applicable item minimum under Criterion A | 0 | 0 |
| 2.6.1 | Support for maintaining current twelve applicable item minimum for eligibility | 3 | 3 |
| 2.6.2 | Support for changing applicable item minimum eligibility requirements | 0 | 0 |
| 2.6.2.1 | Support for increase in minimum applicable item requirements | 15 | 15 |
| 2.6.2.2 | Support for increased flexibility in categorization | 2 | 2 |
| 2.6.2.3 | Other comments on proposed changes for applicable item minimum eligibility requirements | 9 | 9 |
| 2.6.3 | Other comments on the potential increase of the Criterion A twelve applicable item minimum | 3 | 3 |
| 2.7 | Question #7: Possible change from Criterion A requirement to stock perishable items in two categories | 0 | 0 |
| 2.7.1 | Support for requiring perishable items to be stocked in more than two categories | 20 | 20 |
| 2.7.2 | Opposition to requiring perishable items to be stocked in more than two categories | 1 | 1 |
| 2.7.2.1 | Current program is sufficient in meeting program goals | 2 | 2 |
| 2.7.2.2 | Increasing the required number of categories of perishable items would be too difficult | 1 | 1 |
| 2.7.2.3 | Other comments opposing the requirement of perishable items in more than two categories | 4 | 4 |

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|----------------------------------|--|--|---|
| 2.7.3 | Other comments on changing the required number of categories of perishable items | 3 | 3 |
| 2.8 | Question #8: Adequacy of Criterion B 50% sales requirement of "staple foods" in meeting SNAP's purpose | 0 | 0 |
| 2.8.1 | Current requirement for 50% sales of staple foods is sufficient | 3 | 3 |
| 2.8.2 | Requirement for 50% sales of staple foods is not sufficient | 6 | 6 |
| 2.8.3 | Sufficiency of Criterion B 50% sales requirement if "staple foods" definition is changed to exclude items high in added sugar, sodium, or solid fats | 7 | 7 |
| 2.8.4 | Comments on the treatment of "accessory foods" | 2 | 2 |
| 2.8.5 | Other comments on Criterion B percentage sales requirement | 15 | 15 |
| 2.9 | Question #9: Eligibility of stores whose primary business is not food sales | 0 | 0 |
| 2.9.1 | Support for allowing these stores to be eligible | 1 | 1 |
| 2.9.1.1 | Food deserts | 11 | 11 |
| 2.9.1.2 | Contingent support | 0 | 0 |
| 2.9.1.2.1 | Access to other SNAP providers in the area (e.g., food deserts) | 0 | 0 |
| 2.9.1.2.2 | Proposed standards for contingent support | 7 | 7 |
| 2.9.1.2.3 | Other comments on contingent support for eligibility | 0 | 0 |
| 2.9.1.3 | Other comments in support of allowing these retailers to be eligible | 6 | 6 |
| 2.9.2 | Opposition to allowing these stores to be eligible | 5 | 5 |

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|----------------------------------|--|--|---|
| 2.9.3 | Other comments on eligibility of stores whose primary business is not food sale | 2 | 2 |
| 2.10 | Question #10: Eligibility of retailers who primarily sell food for immediate consumption, but also sell products cold and heat them for SNAP recipients after purchase | 0 | 0 |
| 2.10.1 | Support for continuing eligibility for these stores | 7 | 7 |
| 2.10.2 | Opposition for continuing eligibility for these stores | 7 | 7 |
| 2.10.3 | Other comments on eligibility of these stores | 8 | 8 |
| 2.11 | Question #11: Granting authorization to all eligible retail stores (regardless of whether sufficient store access is a concern) | 0 | 0 |
| 2.11.1 | Support for granting authorization to all eligible retail stores | 27 | 27 |
| 2.11.2 | Opposition to granting authorization to all eligible stores | 2 | 2 |
| 2.11.3 | Other comments regarding granting authorization to all eligible stores (e.g., request for definition of "sufficient store access") | 3 | 3 |
| 2.12 | Question #12: Granting SNAP authorization when no store meets basic eligibility criteria in an area | 0 | 0 |
| 2.12.1 | Evaluation and scoring system applied | 0 | 0 |
| 2.12.1.1 | Criteria used in evaluation and scoring system | 7 | 7 |
| 2.12.2 | Other comments on granting SNAP authorization when no stores meet basic eligibility criteria | 23 | 23 |

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|----------------------------------|--|--|---|
| 2.13 | Question #13: Balancing of integrity and management priorities against healthy food choice criteria | 0 | 0 |
| 2.13.1 | Suggestions regarding balancing integrity and management priorities against healthy food choice criteria | 25 | 25 |
| 2.13.2 | Suggested elements to be used to assess integrity risks | 4 | 4 |
| 2.13.3 | Suggestions regarding application of integrity risk elements | 6 | 6 |
| 2.14 | Question #14: Additional ways in which eligibility criteria should be changed | 0 | 0 |
| 2.14.1 | Separate application criteria for farmer's markets | 22 | 23 |
| 2.14.2 | Suggestions for requirements related to marketing, promotion, and education efforts that encourage SNAP participants to purchase healthy foods and beverages | 12 | 12 |
| 2.14.3 | Other comments regarding ways to change eligibility criteria | 11 | 11 |
| 3 | Other comments on the RFI | 0 | 0 |
| 3.1 | Suggestions for implementation support (e.g., pilot studies, technical assistance, and education programs) | 16 | 16 |
| 3.2 | Comments on public listening sessions | 1 | 1 |
| 3.3 | Other comments on RFI | 16 | 16 |
| 4 | Comments Outside the Scope of the RFI (e.g., labeling requirements, GMOs) | 3 | 3 |