

May 18, 2016

Ms. Vicky T. Robinson
SNAP Retailer Management and Issuance Branch Chief
USDA Food and Nutrition Service (FNS)
3101 Park Center Drive, Room 426
Alexandria, VA 22302

Re: Proposed Rule on Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP), Docket RIN 0584-AE27

Dear Ms. Robinson:

On behalf of Hunger Free Colorado, please accept these comments on the United States Department of Agriculture's (USDA's) Food and Nutrition Service (FNS) Proposed Rule on Enhancing SNAP Retailer Standards.

I. Background

Hunger Free Colorado leads efforts to connect families and individuals to food and nutrition resources, and to create positive changes in systems, policies and social views, so no Coloradan goes hungry. Hunger Free Colorado brings a unified, statewide voice to the issue and solutions surrounding hunger. We believe nutritious food is a basic human right and that hunger is solvable, unnecessary and unjust.

Hunger is both widespread and often invisible in Colorado. More than 1 in 4 working families in Colorado do not have enough food to meet their basic needs. About 23,500 veterans in Colorado live in households that participated in food stamps at some point during the past 12 months. More than 1 in 7 Colorado seniors struggle with hunger, often leading to choices between food and medication.

II. SNAP Is Vitrally Important

A strong and effective SNAP is crucial for ending hunger and improving health in Colorado and across America. Research shows that SNAP plays a critical role in alleviating poverty and food insecurity and in improving dietary intake, weight outcomes, and health, especially among the nation's most vulnerable children.

One of SNAP's key strengths is the public/private partnership that allows it to operate through normal channels of commerce for redemption of benefits via Electronic Benefit Transfer (EBT) cards at authorized food retailers. The SNAP delivery system is efficient and provides a mainstream way for low-income consumers to obtain their food with dignity. In Colorado, forty-two percent of SNAP-authorized stores are those targeted by these proposed rule changes: convenience and corner stores. These smaller stores are a critical part of the fabric of SNAP and in many urban and rural communities are the primary or only SNAP retailer available within a reasonable distance or for those with mobility or transportation issues.

While the Proposed Rule has potential to improve the retail landscape across the country, not just for SNAP participants but for all who purchase items in SNAP retail locations, Hunger Free Colorado

believes that portions of the proposed rules could also have unintended, negative consequences. This letter will further detail and explain our support, our concerns and our implementation recommendations.

III. Recommendations for the Final Rule

Hunger Free Colorado supports the proposed rule provision implementing the 2014 Farm Bill mandate requiring authorized SNAP food retailers to carry a greater variety of foods within the four staple food groups and more perishables within those groups.

These improvements will support good nutrition and enhance the variety of foods available for SNAP customers. Increasing the stocking requirements from a minimum of three to a minimum of seven staple food groups, and the number of staple food groups that contain perishable foods from a minimum of two up to a minimum of three staple food groups will have a positive impact.

We are concerned, however, by several proposed provisions that require stocking larger amounts of the newly defined staple foods but not allowing stores to count their frozen or prepared items that are both often relied upon by SNAP customers and are considered part of the USDA's "thrifty food plan".

Excluding convenient, multiple ingredient foods is out of step with the USDA's own recognition of the important role they play for SNAP customers who may lack access to a kitchen, or have time constraints, work schedules and family situations such as relying on older children being able to prepare their own meals. USDA recognized how essential convenient, multiple ingredient foods are to food purchasing and preparation among SNAP participants when it incorporated more convenience foods in the 2006 revision of the Thrifty Food Plan.

We fear these exclusions under the new definitions of "staple foods" could undercut food access for low-income consumers by making it too difficult for a significant number of stores to continue as SNAP retailers.

Many of Colorado's SNAP retailers are small footprint stores. The additional stocking requirements in conjunction with not being able to count multiple ingredient items toward those depth of stock requirements may prove too difficult for those with limited shelf space and refrigeration. Given where many of these smaller footprint stores are located, these provisions could have a disproportionate effect on consumers who reside in "food deserts" and those who struggle with a lack of transportation or with mobility issues, worsening access to healthy food, rather than improving access as intended.

The Rocky Mountain Food Industry Association, the association of independent food retailers in Colorado and Wyoming estimates the cost of complying with this proposed rule will be much more than the suggested \$140 per store price tag that FNS has calculated. They fear it could be so challenging that some stores would be unable to continue to participate in SNAP.

So long as retail food stores are meeting the increased amounts, variety of staple items and perishable items called by the statute, there is no compelling purpose to exclude multiple ingredient items from counting (as they do under current regulations) under one of the SNAP staple food categories. In addition, we believe the proposed complex two-tiered classification system for multiple ingredient foods is impractical and will create more confusion than the current system. Instead, we recommend USDA work within the current regulations to determine the best way to allocate multiple ingredient foods to a single

staple food category based on the main ingredient, rather than excluding them. The final rule and guidance should assure SNAP vendors appropriately classify multiple ingredient foods into the one staple food category that best represents the product.

Hunger Free Colorado is also concerned by the change in threshold for sales of prepared items from 50% to 85%. To avoid inadvertently losing retailers in high need areas, we caution the Department against setting a threshold that would cause stores to drop out of SNAP and lessen food access, particularly for low-income consumers in food desert areas, with mobility issues, such as those who are elderly, have disabilities, and/or lack affordable transportation. We are concerned about any unintended consequences on food access from the proposal to consider businesses that operate under one roof and share certain commonalities (such as “shared space”) as “a single establishment when determining eligibility to participate in SNAP as retail food stores.” We understand that this may undercut SNAP authorization for otherwise eligible retailers located in certain locations such as shopping plazas or with co-located restaurant franchises that cannot accept SNAP. We urge the Department to consider information it receives about any undue negative impact of the proposed rule on retailers operating under one roof and to revise the language to avoid any negative impacts on food access for SNAP consumers.

Even under the changes we have suggested for the proposed rule change, there is still a significant potential burden on some smaller, independent stores. Hunger Free Colorado encourages FNS to provide a phased-in approach to compliance, clear guidance on implementation and a waiver process for retailers unable to comply. Specifically, in addition to the criteria in the Proposed Rule, we recommend that FNS grant waivers based on well-defined, transparent, clearly communicated criteria.

Research shows that there are many factors driving store and food choice in addition to store proximity and availability, including the resources of customers; price of products; availability, selection, and quality of food; personal preferences; taste; convenience; store safety and cleanliness; customer service; transportation; and food marketing. More specifically, food access is not only a matter of distance to food retailers, especially for individuals who are elderly, have disabilities and/or lack transportation. Another SNAP retailer located several blocks or more away from an elderly SNAP consumer may not be a realistic alternative to the corner store on her block. For SNAP participants who are stretching their resources, having to spend an extra round trip bus fare may take as much out of their budgets as their daily SNAP benefit allotments. Moreover, having to travel further for an occasional purchase such as a gallon of milk may be problematic for working families juggling work schedules, child care and other responsibilities.

Convenience also is a matter of time and money, not simply geography. Therefore, having a multiplicity of SNAP retailer options is important to low-income consumers in urban, rural and suburban communities.

The proposed rule also lacks detail about the process for retailers to seek and gain approval of any such exemption, including the time frame for approvals and the status of SNAP retailer authorizations pending the resolution of the exemption process and any appeals process and review. Avoiding undue delay in retailer authorizations for nutrition benefit redemptions can be important to the ability of retailers to succeed in low-income communities, a factor that matters for decreasing the number of food deserts in the

U.S. For smaller retailers, an application and/or appeal process on an exemption for meeting the new requirements could be burdensome and costly. Moreover, we believe that any such process should take into account the views of the public, especially SNAP consumers and other national and local community stakeholders. The final rule should better ensure a waiver/exemption process that will garner necessary input in a meaningful and timely way before a SNAP retailer authorization is denied.

We urge the Department to provide adequate time for retailers to transition their operations to comply with the new requirements. The Agency proposes to make the requirements detailed under “Staple Food” and “Determination of Authorization” effective for all new applicants within 120 days of the effective date of a final rule, and for existing SNAP authorized retailers within 365 days of the effective date of a final rule.

Research and anecdotes from healthy corner store initiatives, for example, indicate that stores often struggle to make improvements to their food offerings, and often under far less demanding standards than proposed in this rule. It’s also worth noting that these are voluntary initiatives and more able stores self-select into the programs. Implementation of the proposed regulations will require significant administrative changes. Given the diverse backgrounds of small retailers, USDA’s materials should be available in multiple languages, not only English and Spanish. Stores will need to evaluate their current stock and operations and determine how to increase stock and make other necessary changes to comply. More adequate time for transition can help avoid disruption of food access for consumers.

Successful implementation will require clarity for SNAP retailers regarding the stocking requirements, effective strategies for marketing and storing healthy foods, and the eligibility of food for purchase with SNAP benefits. The rule preamble explains clearly that, whether categorized as “staple” or “accessory,” food will remain eligible for purchase with SNAP benefits. The proposed rule, however, drops the explicit language in the current regulations that accessory foods are still eligible for purchase with SNAP benefits. That current rule language should be restored in the final rule.

We appreciate your consideration of these views.

Sincerely,

Cate Blackford
Director of Public Policy
Hunger Free Colorado