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September 18, 2017

**VIA EMAIL**

Ruth Brown  
Departmental Information Clearance Officer  
Office of the Chief Information Officer  
United States Department of Agriculture  
Stop 7602, Room 405-W  
355 E Street, SW  
Washington, DC 20024-3221

**RE: Department of Agriculture: Submission for OMB Review; Comment Request—Scanner Capability Assessment of SNAP-Authorized Small Retailers (SCANR) Study**

Dear Ms. Brown,

The National Association of Convenience Stores (“NACS”) and the Society of Independent Gasoline Marketers of America (“SIGMA”)(hereinafter “the associations”) offer these comments on the U.S. Department of Agriculture’s (“USDA”) Food and Nutrition Service’s (“FNS” or the “Agency”) submission for Office of Management and Budget (“OMB”) review regarding a future information collection to study the scanning technology capability of small retailers who participate in the Supplemental Nutrition Assistance Program (“SNAP” or the “Program”).<sup>1</sup>

Congress enacted technology requirements in the Agricultural Act of 2014 (“Farm Bill”) in order to address SNAP fraud at the point of sale (“POS”).<sup>2</sup> Under those relevant provisions, USDA is required to promulgate regulations that establish standards “to set and enforce sales restrictions based on benefit transfer payment eligibility by using scanning or product lookup entry; and to deny benefit tenders for manually entered sales of ineligible items.”<sup>3</sup> Unless FNS has a baseline understanding of the current retailer POS landscape, FNS will be unable to

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<sup>1</sup> Department of Agriculture, Submission for OMB Review; Comment Request, *Scanner Capability Assessment of SNAP-Authorized Small Retailers (SCANR) Study*, 82 Fed. Reg. 159 (Aug. 18, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-08-18/pdf/2017-17472.pdf>

<sup>2</sup> Section 4002(c) of the Agricultural Act of 2014, Pub. L. 113-79, enacted Feb. 7, 2014.

<sup>3</sup> 7 U.S.C. 2016(h)(2)(C)(ii).

propose a rulemaking to implement technology requirements found in the Farm Bill. For that reason, NACS and SIGMA generally support FNS' objective to survey small retailers to determine how many of those retailers use POS scanning technologies, how many lack such scanning systems, the costs of adopting and maintaining those scanning systems, and the barriers small retailers face in adopting those technology requirements.

In light of the description of the future information collection, however, the associations do have concerns about the quality, utility, and clarity of the information that will be collected and the expected burden on survey respondents. These concerns are addressed in further detail below.

NACS and SIGMA hope that the comments provided will help inform and strengthen any future survey the Agency performs—for without a comprehensive understanding of the realities and obstacles that small retailers face, FNS may propose (and finalize) unduly burdensome requirements that will push small retailers out of the Program. Such an outcome would not only harm SNAP beneficiaries who rely on many small format operators for food access, it would go against Congress's intent in the Farm Bill, which endeavored to enhance the Program without impeding access for SNAP beneficiaries.

## **I. NACS' AND SIGMA'S MEMBERS ARE VALUABLE RETAIL PARTICIPANTS IN SNAP.**

Over 117,000 convenience stores – well over 75 percent of the nation's approximately 154,000 convenience stores – participate in SNAP.<sup>4</sup> 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.<sup>5</sup> 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.

While convenience and fuel retailers serve about 160 million people per day – or around half of the U.S. population – the industry is truly an industry of small businesses. Seventy-five percent of NACS members operate chains of 10 stores or less, and 63 percent of all convenience stores are run by single-store owners and operators. Many of these small chains and single store operators lack scanning systems that can be used to redeem SNAP benefits.

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<sup>4</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>.

<sup>5</sup> NACS is an international trade association representing the convenience store industry with more than 2,200 retailer 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.

## II. COMMENTS ON INFORMATION COLLECTION

In order for the Agency to fulfill its statutory mandate under the Farm Bill and promulgate a technology rulemaking, it must collect information about the POS technology currently licensed SNAP retailers are using. That being said, NACS and SIGMA are concerned that any future information collection will not be sufficient if it does not take into account the comments provided below.

### **A. To Gather Meaningful Data, FNS Must Clarify What It Considers “Scanning” Equipment**

The Farm Bill requires the Agency to promulgate requirements that establish standards “to set and enforce sales restrictions based on benefit transfer payment eligibility by using scanning or product lookup entry; and to deny benefit tenders for manually entered sales of ineligible items.” There is a variety of technology currently available that may, to varying degrees, serve as scanning or product lookup equipment. For example, scanning technology could encompass a barcode scanner that reads barcodes in order to identify products or much more complex scanner equipment, which is totally integrated with a POS system that not only identifies products but also shows sale price and the number of those items in a retailer’s inventory. Not only do these different scanning systems vary in technological capability,<sup>6</sup> they also vary in installation, adoption, and maintenance costs. Thus, NACS and SIGMA encourage FNS to carefully differentiate and explain the technology it is requesting input on in any survey it performs. Simply asking a retailer what sort of “scanning technology” he or she may have will likely produce inaccurate results. Moreover, asking a retailer who does not have this technology to speculate on the costs of adopting, installing, and maintaining that technology seems fruitless.<sup>7</sup> Retailers who are inexperienced with such technology will be unable to provide accurate estimates of the costs.

In addition, NACS and SIGMA urge FNS to ask survey participants to share examples of products or situations where POS scanning technology cannot be utilized and where manual entry is required. For example, often pieces of fresh produce cannot be scanned and a clerk must manually enter the item in order to process the transaction.<sup>8</sup>

### **B. Only Surveying Small Retailers May Lead To Inaccurate Results**

FNS has proposed surveying small retailers regarding their store’s scanning capability. As described above, NACS and SIGMA anticipate many small retailers may not be familiar (or may only be nominally familiar) with different scanning technologies. In order to be able to

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<sup>6</sup> For example, some technology may only be able to identify an item and its cost; other technology may be able to determine how many of such items exist in a retailer’s inventory; and yet other technology may be able to flag whether an item is SNAP eligible or not.

<sup>7</sup> Retailers should also have to factor in the costs of training their staff to use such technology.

<sup>8</sup> Alternatively, during the recent hurricanes in the southern U.S. and the subsequent electrical outages, many retailer POS systems were down for several days. Likewise, USDA issued a hot foods exemption, which – if a system prevented manual overrides – would have meant that retailers could not process those transactions.

accurately respond to FNS’s survey, therefore, these small retailers will need to spend significant time researching their answers—and that is not likely to happen. Put simply, small chains and single-store operators do not have the sophistication, resources, and wherewithal to spend significant time researching scanning systems that are currently available on the market in order to respond to a survey from FNS. Furthermore, even if small retailers were able to learn about such systems, it is highly unlikely they would be able to accurately assess the cost and time burden to adopt and maintain any of the available scanning systems in their stores. Consequently, the retailer may respond quickly to FNS’ survey in order to complete the task but will provide inaccurate results.

Because of this, NACS and SIGMA maintain FNS should not rely solely on the survey data it receives from small retailers to inform future rulemakings on scanner technology. In addition to small retailers, therefore, FNS should consider surveying larger retail chains, retail associations, and technology suppliers that might have better knowledge of the scanning technology currently available and the cost associated with installing and maintaining those systems.<sup>9</sup>

### **C. FNS Has Underestimated The Total Burden Of A Future Information Collection**

In its submission to OMB, FNS estimates that the total time burden of a future survey is 370 hours.<sup>10</sup> The number of hours is based upon 1,443 survey respondents, which works out to be slightly more than 15 minutes per survey response. In light of the complex data the Agency is collecting and the associations’ suggestions to strengthen and expand the survey, NACS and SIGMA believe that FNS has underestimated the time it will take for small retailers to compile the requested information and accurately complete the surveys. Furthermore, NACS and SIGMA believe the surveys should be administered to more than 1,443 respondents – including organizations with better knowledge of scanner technology than small retailers – to receive an accurate assessment to inform a rulemaking.

### **D. To Minimize The Information Collection Burden, 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 accessible 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.

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<sup>9</sup> Of course, given the sophistication of larger retailers (as well as their economy of scale), FNS should take into account that the costs to small retailers will undoubtedly be larger than those of large retailers.

<sup>10</sup> 82 Fed. Reg. 159 (Aug. 18, 2017).

- Live help from the Agency should be available to assist in survey completion.

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

In sum, NACS and SIGMA generally support FNS' objective to survey small retailers as a precursor to developing a proposed rule requiring scanning technologies at the point of sale to redeem SNAP benefits. However, for the many reasons enumerated above, FNS should proceed with caution as it designs its survey and work to ensure that the survey is designed to gather effective information in an efficient manner.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Timothy Columbus". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Timothy Columbus  
Eva V. Rigamonti  
Counsel to NACS and SIGMA