FMI

THE VOICE OF FOOD RETAIL

Feeding Families Enriching Lives

October 15, 2012

Andrea Gold
Director, Benefit Redemption Division
Rm. 426, 3101 Park Center Drive
Alexandria, Virginia 22302

Re: Proposed Rule Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions; 77 Fed. Reg. 48461 (August 14, 2012)

Docket ID: FNS-2012-0037

Dear Ms. Gold:

On August 14, 2012, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) announced proposed changes to the Supplemental Nutrition Assistance Program (SNAP) retailer sanction regulations. FMI appreciates the opportunity to comment on the proposed rule and looks forward to working with the Agency to identify areas where waste fraud and abuse can be eliminated from the program.

FMI conducts programs in public affairs, food safety, research, education and industry relations on behalf of its nearly 1,250 food retail and wholesale member companies in the United States and around the world. FMI's U.S. members operate more than 25,000 retail food stores and almost 22,000 pharmacies with a combined annual sales volume of nearly $650 billion. FMI's retail membership is composed of large multi-store chains, regional firms and independent operators. Its international membership includes 126 companies from more than 65 countries. FMI's nearly 330 associate members include the supplier partners of its retail and wholesale members.

As the voice of the food retail, FMI is committed to ensuring that the industry's interests are considered when new rules and regulations are being promulgated. The proposed rule is directed specifically to the retailer and in turn we have concerns with its scope and the practical application particularly with the new terminal ID requirement.

7 CFR Part 278--Participation of Retail Food Stores

Denial and Withdrawals

This section mandates that retailers must purchase or lease point of sale equipment that is identified by a unique terminal ID number and that the information is reported to FNS along with the transaction. The retail industry is concerned as to how FNS defines

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a "unique lane ID" and how many stores will need to update their systems to comply with the proposed rule. This requirement could be extremely difficult as the retail industry does not currently have a uniform standard or definition with regard to terminal IDs. For instance, some chains may have a unique terminal ID for an entire store location or a grouping of registers, but not specific registers. Other retailers have unique identifiers for specific lanes, but that information is not currently transmitted into the file that is sent to FNS, so a new field would have to be programmed and populated and standards adopted to do this consistently. It is important for FNS to consider the cost to merchants to comply with the new mandate and to do this in a fashion that is consistent in timing and scope with what will be required in a commercial transaction. Retailers will shoulder the burden of paying to update existing systems to comply with the new mandate or have to go back into the market and purchase new equipment that will be able to handle the requirement.

FMI respectfully requests that FNS allow the industry to establish a standard for commercial transactions before imposing the new requirements for EBT transactions. Currently, MasterCard is working with retailers to build a system that will allow for unique terminal identification. Part of this process is to define what constitutes a "terminal ID". Retailers expect other card networks to follow MasterCard in establishing unique terminal IDs. By allowing industry to move forward first, there would be less likelihood of duplication of efforts, or retailers having to try and comply with varying standards and definitions.

Retailers are interested in what FNS is looking to accomplish with the lane ID requirement. Most retailer equipment is standardized within the network to sell permissible products and flag those that are not eligible regardless of which register is processing the transaction. Also if FNS's goal is to be able to identify the cashier that is working in a particular lane as was referenced in the FNS discussion surrounding the need for this provision, this proposal will not accomplish this goal. While uncommon, human error could occur in the process, but it is unlikely that terminal IDs will solve the problem. In general, stores do not have associates assigned to the same lanes consistently every time they are working. Associates are often randomly assigned to lanes for a shift, or will open up a lane for a short time during high volume hours. Many companies utilize cashiers in multiple lanes during the same shift depending upon needs. The specific associate's information would not be stored within the terminal ID.

Finally, with regards to both the terminal ID language and the other proposed changes to the retailer sanctions, the industry would like to work with FNS to find a balance to ensure that while bad actors are disciplined, the retailers in good standing should be protected from arbitrary punishment. There are a number of internal audit applications that retailers utilize to identify inconsistencies and investigate those to ensure that only eligible items are sold using SNAP benefits. In the event that there is a technical error in a system, FNS should work with a specific retailer and allow them to correct a problem before the retailer faces fines or loss of a SNAP license.

FMI appreciates the opportunity to comment on this important matter. Our members share your commitment to ensure SNAP is run as efficiently and without error as possible. Thank you for your consideration and we look forward to continue working with you on this and other opportunities to maintain the integrity and efficiency of SNAP.

Sincerely,

Erik R. Lieberman
Regulatory Counsel