



United States Department of Agriculture

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Food and
Nutrition
Service

SUBJECT: Supplemental Nutrition Assistance Program Provisions of the
Agricultural Act of 2014 – Implementing Memorandum

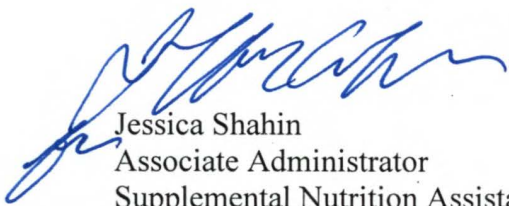
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TO: Regional Administrators
Food and Nutrition Service

On February 7, 2014, the Supplemental Nutrition Assistance Program (SNAP) was reauthorized as part of The Agricultural Act of 2014 (the Act), P.L. 113-79. Attached is an implementing memorandum describing SNAP provisions. Regulations reflecting revisions to SNAP made by the Act will be published as soon as possible. Please forward the attached memorandum to your State commissioners.

Please keep us advised of any implementation problems and how States choose to implement these changes. If you have any questions, please contact the appropriate person from the list below:

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Attachment

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The Agricultural Act of 2014 - Implementation Memorandum

The Supplemental Nutrition Assistance Program (SNAP) was recently reauthorized as part of The Agricultural Act of 2014 (the Act), P.L. 113-79, enacted February 7, 2014. The law contains various provisions that affect SNAP eligibility, benefits, and program administration, including changes mandated by the law and those that provide additional flexibility for State agencies. All provisions in the Act related to SNAP are effective as of the date of enactment, unless otherwise stated.

This memorandum describes the various SNAP related provisions and the implementation action required. In some cases, the provisions can be fully or partially implemented prior to final regulations being issued, while other provisions require regulations before implementation can be enforced. The provisions are grouped below by the implementation action required and listed chronologically within each group.

As with previous legislative changes to the Program, the Food and Nutrition Service (FNS) will, as appropriate, hold States harmless for Quality Control (QC) purposes for a certain period to be determined to allow implementation. Additional details will be forthcoming.

AGRICULTURAL ACT OF 2014 PROVISIONS AND EFFECTIVE DATES

A. Provisions that States must implement immediately

Section 4001. Preventing Payment of Cash to Recipients of Supplemental Nutrition Assistance Benefits for the Return of Empty Bottles and Cans Used to Contain Food Purchased with Benefits Provided Under the Program.

This provision prevents SNAP benefits from being used to purchase any deposit fee in excess of the State fee reimbursement required to purchase food in a returnable bottle or can. This exclusion applies even to cases where the fee is included in the shelf price for the product. This provision will be implemented by FNS working directly with SNAP authorized retailers.

However, it is also important that States are aware of this change for the purposes of recipient integrity and understand their responsibility to provide up-to-date information to recipients with regards to eligible purchases.

Section 4002. Retailers.

This Section makes many changes to SNAP retailer qualifications and administration of SNAP Electronic Benefits Transfer (EBT). While implementation of other provisions within this section will be described later in this Implementation Memorandum, the following provisions are to be implemented immediately as described:

- 1) Requires that manual vouchers no longer be used or accepted as payment in EBT systems, except in disasters or in the event of an EBT system failure. The provision also allows for the Secretary to exempt specific categories of retailers based on established criteria. This provision becomes effective immediately for any new retailer. However, until regulations are promulgated, the Secretary is exempting: (a) any retailer that is exempt under Section 4002 (b)(1) of the Act (e.g., farmers markets and other direct-to-consumer markets, and organizations, programs or group living arrangements so described); and (b) any current retailer currently accepting manual vouchers as a means to conduct ongoing business – i.e., for purposes other than disasters or EBT system failure – until regulations can be promulgated. The Secretary is also exempting any new retailer that purchases a store that has one of the above exemptions. It is the intent of the Secretary to largely eliminate manual vouchers as a means to conduct ongoing business through regulations, but will use the regulatory process to fully define the extent continued usage will be permitted.

FNS recognizes that States will need to make suitable arrangements with contractors to no longer provide new retailers with the ability to utilize manual vouchers except under the conditions noted in (a) above or in the event of disasters or EBT system failures. Therefore, FNS will begin holding States accountable for implementing changes associated with this provision 60 days from the issuance date of this memorandum.

- 2) Requires non-exempt retailers to pay for EBT equipment and supplies, implementation, and related services. Other than for those the Secretary has authority to exempt -- i.e. farmer's markets, direct marketing farmers, military commissaries, non-profit food buying cooperatives, and establishments, organizations, programs or group living arrangements described in paragraphs (3), (4), (5), (7), (8) and (9) of section 3(k) in the Food and Nutrition Act, as amended -- this provision will be effective immediately:
 - a. for all retailers who become newly SNAP authorized following issuance of the implementing memo; and
 - b. for all current manual-voucher retailers who are now no longer permitted to utilize manual vouchers to conduct EBT transactions.

FNS recognizes that States will need to make suitable arrangements with contractors and retailers to no longer subsidize the cost of equipment for authorized EBT-only retailers outside of the exceptions noted above. FNS also recognizes that retailers who currently receive EBT-only State equipment would need to make other arrangements if they wish to continue participating in the Program. Therefore, FNS will begin holding States accountable for implementing the changes

associated with this provision six months from the issuance date of this memorandum.

A regulation will follow which will more fully consider those establishments that the Secretary has authority to exempt that should be exempt from this requirement.

- 3) With the removal of the requirement that the costs of EBT equipment and supplies not be imposed on retailers (item # 2 above), came the removal of the requirement that retailers with 15 percent or more of their sales in SNAP must have operational EBT equipment at all its registers. Instead, the Act now requires that retailers ensure they provide adequate EBT service, defined as having EBT equipment at a sufficient number of registers to provide comparable check-out service to SNAP and non-SNAP customers.

As required by existing regulations, this provision is intended to ensure that SNAP customers are treated in the same manner as non-SNAP customers at store level.

- 4) Prohibits charging interchange fees for any SNAP EBT transaction. This provision reinforces an existing statutory provision and is already in effect, however, rulemaking will codify this requirement.

Section 4013. Improved Wage Verification Using the National Directory of Hires

This provision requires States to verify applicant wage data through the National Directory of New Hires to determine eligibility and the correct amount of SNAP benefits at the time of certification.

To comply with this provision, States will need to enter into contracts with the Department of Health and Human Services (HHS) to use the National Directory of New Hires.

Section 4015. Mandating State Immigration Verification.

Section 4015 makes two changes to eligibility determinations. The piece regarding income and eligibility determination is discussed in category B. The provision also requires States to establish an immigration verification system to verify immigration status. FNS expects that most, if not all, States have procedures in place that would meet this requirement.

Section 4018. Prohibiting Government-Sponsored Recruitment Activities.

Section 4018 makes several changes to recruitment activities allowed with Federal funding. Some of the changes will be implemented immediately by States, whereas, others will require rulemaking before implementation. States are to implement immediately the following provisions. Federal funds are banned from being used for television, radio, or billboard advertisements that are designed to promote SNAP benefits and enrollment. In addition, Federal funding is banned from being used for any agreements with foreign governments designed to promote SNAP. These prohibitions do not apply to D-SNAP.

Section 4019. Tolerance Level for Excluding Small Errors.

This provision changes the Quality Control (QC) tolerance level from \$50 to \$37. As this affects all fiscal year (FY) 2014 active cases, FNS locked all released State active QC reviews in the SNAP Quality Control System (SNAP-QCS) as of February 11, 2014. The data lock is a temporary measure while formal guidance is developed, which FNS expects to release shortly.

Section 4020. Quality Control Standards.

This provision eliminates the Department of Agriculture's (USDA) ability to waive any portion of a State's Quality Control liability. FNS may continue to require reinvestments and hold money at risk as provided for in statute and regulations; good cause adjustments still apply per 7 CFR 275.23(f).

Section 4021. Performance Bonus Payments.

This provision requires high performance bonus payments to be used only for SNAP expenses including investments in technology, improvements in administration and distribution, and actions to prevent fraud, waste and abuse.

This provision will take effect for the high performance bonus payments awarded in 2014 (i.e., the performance bonus payments for high or improved performance in FY 2013).

Section 4023. Cooperation with Program Research and Evaluation.

This provision requires State agencies, local agencies, institutions, facilities such as data consortiums, and contractors participating in programs authorized under the Act to cooperate with USDA and its contractors on evaluations and research. The provision ensures privacy protections for SNAP households continue to apply.

B. Provisions that are not to be implemented until Federal rulemaking occurs

Section 4002. Retailers.

This Section makes many changes to SNAP retailer qualifications and administration of SNAP EBT. The following provisions are not to be implemented until Federal rulemaking occurs, whereas other provisions, listed in categories A and D, must be implemented as directed or, in the latter case, are already SNAP policy.

- 1) In order to meet SNAP retailer eligibility criteria A, which currently requires stocking perishable items in 2 staple food categories and stocking 3 varieties of staple foods in 4 categories, this provision requires stocking at least 7 varieties of staple foods in each of the 4 staple food categories and stocking perishable foods in at least 3 categories;
- 2) Requires a unique Terminal ID for each EBT transaction;
- 3) Requires retailers to employ scanning or product look-up systems that also prohibit manually entered sales of ineligible items in SNAP authorized locations to ensure that only SNAP eligible items are sold; exceptions to scanning requirements are limited to firms determined by the Secretary to be located in areas with limited access to food; and
- 4) Allows discretion in the approval of retailers who do not meet the statutory and regulatory eligibility requirements to participate, but are located in areas with limited access to food.

Section 4003. Enhancing Services to Elderly and Disabled SNAP Recipients.

The provision expands the definition of “Retail food store” in the Act to include governmental or private nonprofit food purchasing and delivery services that purchase and deliver food to the elderly and/or disabled. The provision requires the service entity to inform the participant of any delivery fees, specifies that these fees are ineligible to be paid for with SNAP benefits, and prohibits the service entity from increasing the price of food for SNAP recipients beyond what the service entity paid. USDA is limited to approving no more than 20 entities prior to rules being released.

Section 4007. Eligibility Disqualifications.

This provision addresses student eligibility by clarifying that participants in a SNAP Employment and Training Program are still eligible if they are enrolled in a course or program of study that is part of a career and technical education program (as defined in Section 3 of the Carl D. Perkins Education Act of 2006), or are participating in remedial courses, basic adult education, literacy instruction, or English as a Second Language.

Section 4008. Eligibility Disqualifications for Certain Convicted Felons.

This provision prohibits anyone convicted of aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault as defined in the Violence Against Women Act of 1994, or a similar State law, and who is also not in compliance with the terms of their sentence or a fleeing felon from receiving SNAP benefits. During the application process the individual will have to attest whether he or she, or any other member of the household, has been convicted of such a crime. If such an individual is in an otherwise eligible household, the income and resources of the individual will be considered when determining eligibility. Convictions for conduct that occurred on or before the date of enactment do not apply.

Section 4009. Ending Supplemental Nutrition Assistance Program Benefits for Lottery or Gambling Winners.

This provision states that any household in which a member receives substantial gambling or lottery winnings (as determined by USDA) will immediately lose eligibility for SNAP benefits until they again meet normal income and resource standards. In addition, States shall establish agreements with entities responsible for gaming in their State to identify individuals who have received substantial lottery or gambling winnings.

Section 4010. Improving Security of Food Assistance.

This provision allows USDA to require States to decline to issue a replacement EBT card to households who make excessive requests for card replacements unless the households provide an explanation for the loss of the card. The provision provides protections for vulnerable persons (such as the homeless, persons with disabilities, and victims of crimes). The provision does not allow State refusal of card replacement to mean denial or limitation of eligibility.

A final rule providing States with the option to implement this process was issued on August 21, 2013. The Department will determine whether any additional regulatory action is warranted.

Section 4014. Restaurant Meals Program.

This provision requires States to submit plans and reports to USDA if they elect to operate a restaurant meal program. The plans must show how the State program meets the needs of homeless, elderly, and disabled clients in particular geographic areas, limits participation to only the necessary private establishments, and meets any other conditions USDA may prescribe. The provision requires annual reports from the State agencies on the number served and whether the program is meeting established needs. Only private establishments that are determined by the Secretary to meet an established need are

authorized to participate. USDA must report annually (starting within 90 days of September 30, 2014) to Congress.

Section 4015. Mandating State Immigration Verification.

Section 4015 makes two changes to eligibility determinations. The piece regarding immigration status is discussed above in category A. The second piece requires that the State establish an income and eligibility verification system in accordance with standards set by the Secretary. These standards will be established through rulemaking.

Section 4016. Data Exchange Standardization for Improved Interoperability.

This provision requires USDA to consult with an interagency workgroup established by the Office of Management and Budget to create data exchange standards for information required to be reported by States under the Act. The provision establishes a series of data exchange requirements. A proposed rule implementing the standards is due two years from the date of enactment.

Section 4018. Prohibiting Government-Sponsored Recruitment Activities.

This provision makes several changes to recruitment activities allowed with Federal funding. Some of the provisions will be implemented immediately by States (see category A), whereas others will require rulemaking before implementation. USDA will issue rules before implementing the provision that bans Federal funds from being used for recruitment activities that are “designed to persuade an individual to apply for SNAP.” In addition, USDA is required by the Act to issue regulations that would forbid outside entities from receiving funds under the Food and Nutrition Act if compensation for any person at the outside entity is based on the number of individuals that person recruits to apply for SNAP.

Section 4022. Pilot Project to Reduce Dependency and Increase Work Requirements and Work Effort under SNAP.

This provision makes several changes to the SNAP Employment and Training Program (SNAP E&T). Several of these changes are included in category C, however, the provision also requires the Secretary to develop performance measures to monitor how well SNAP E&T prepares participants for employment and the number who obtain employment after participation. The Secretary can require States with inadequate performance outcomes to modify their E&T plans. These measures are to be released as an interim rule.

Section 4032. Annual State Report on Verification of SNAP Participation.

This provision requires States to submit an annual report to USDA verifying that the State did not issue benefits to individuals who are deceased or disqualified from SNAP as a result of an intentional program violation (IPV). USDA shall reduce State administration funds by up to half if the State does not submit the report. Standards for these reports and the process for deciding on administrative fund reductions will be established through rulemaking. This provision also directs FNS to report on a pilot program on duplicate participation. This pilot is discussed in category C below.

C. Provisions that require FNS action only

Section 4005. Exclusion of Medical Marijuana from Excess Medical Expense Deduction.

This provision requires FNS to issue rules ensuring that medical marijuana is not treated as a medical expense for the purposes of determining the excess medical expense deduction. This provision is not new SNAP policy. It directs FNS to codify its longstanding policy in regulation.

Section 4011. Technology Modernization for Retail Food Stores.

The provision allows for redemption of benefits through mobile devices. Approved retailers must: establish recipient protections; pay for the technology themselves; price food the same as that bought under other payment methods; and document authorized transactions. The provision requires demonstration projects testing the feasibility and implications of mobile technology to be completed by July 1, 2016. If these demonstration projects are successful, mobile technology will be authorized in all States by January 1, 2017. If the demonstration projects are unsuccessful, the Secretary must report to Congress.

The provision also allows retailers to accept benefits through online transactions. The provision requires demonstration projects testing the feasibility of online transactions by July 1, 2016. Retailers must provide the same protections as above, including ensuring security of transactions. States must ensure that their EBT system allows for online purchases. If successful, online purchasing will be available to all States on January 1, 2017. If unsuccessful, the Secretary must report to Congress on the results.

Section 4012. Use of Benefits for Purchase of Community-Supported Agriculture Share.

This provision allows EBT to be accepted in advance of food delivery by agricultural producers who market directly to consumers.

Section 4017. Pilot Projects to Improve Federal State Cooperation at Identifying and Reducing Fraud in SNAP

This provision requires FNS to carry out pilot projects to identify, investigate, and reduce retailer fraud in SNAP (including allowing States to operate retailer investigations). The provision defines selection criteria, including a State's current activities to address recipient fraud, and requires an evaluation of pilot projects with a report to Congress due by September 30, 2017.

Section 4022. Pilot Project to Reduce Dependency and Increase Work Requirements and Work Effort under SNAP.

This section makes many changes to SNAP E&T, some of which will be implemented via rulemaking (category B), while other actions will be implemented by FNS soon after enactment and are discussed here. The provision funds SNAP E&T annually at \$90 million a year. This funding shall be available for 24 months from the date of allocation and the Secretary can reallocate unexpended funds to States in such a way as to allow at least 270 days to spend the reallocated funds.

The provision creates up to ten 3-year pilot projects to raise the number of work registrants with unsubsidized employment, increase earned income, and reduce reliance on public assistance. Pilot projects should target those with low skills, urban and rural communities, opportunities for quick employment, and both mandatory and voluntary E&T programs. The Secretary must develop and publish the process for selecting pilot projects within 180 days of enactment.

The provision also requires an independent evaluation of the pilot projects and annual reports. The provision provides \$200 million for E&T pilots (\$10 million in FY 2014; \$190 million in FY 2015). Funds are available until the end of FY 2018.

In addition, the provision requires the Secretary to review, at least every 5 years, research and practice that best connects SNAP participants to work. The standards for these reviews will be developed through the rulemaking process.

Section 4025. Review, Report, and Regulation of Cash Nutrition Assistance Benefits Provided in Puerto Rico.

This provision requires the Secretary to review cash nutrition assistance benefits in Puerto Rico by studying: the history of cash benefits, barriers to redemption with non-cash benefits, usage of cash benefits for the purchase of nonfood items, and other factors. This report is due 18 months after enactment and \$1 million is provided for the report.

The provision also restricts the Secretary from approving any nutrition assistance plan for FY 2017 that provides more than 20 percent of benefits in cash. In FY 2018 cash is limited to 15 percent of benefits; in FY 2019 cash is limited to 10 percent of benefits; in FY 2020 cash is limited to 5 percent; and in FY 2021 no benefits shall be in the form of cash. The Secretary may make exemptions if discontinuation of cash benefits will have significant adverse effects.

Section 4029. Retail Food Store and Recipient Trafficking.

This provision authorizes \$5 million annually beginning in FY 2014 through FY 2018 for USDA to fund retail food store and recipient integrity activities, especially through the use of information technology. The provision also provides \$15 million in mandatory funds for FY 2014 to remain available until expended.

Section 4031. Commonwealth of the Northern Mariana Islands (CNMI) Pilot Program.

This provision authorizes \$1 million in each of FY's 2014 and 2015 to conduct a feasibility study on implementing SNAP (in a manner similar to SNAP in the States) in CNMI. If as a result of this study, the Secretary deems that a pilot project to implement SNAP is feasible, a pilot project will be conducted with funding limited to \$13.5 million (FY 2016) and \$8.5 million (for each of FY's 2017 and FY 2018). A report to Congress on the pilot project is due by June 30, 2019. The provision permits CNMI to keep any unspent pilot funds as part of their block grant, if the pilot is deemed not feasible.

Section 4032. Annual State Report on Verification of SNAP Participation.

Among the requirements in Section 4032 discussed in category B, the provision also requires USDA to conduct a pilot testing the detection and the prevention of duplicate participation. A report is due within 90 days of completion that outlines the feasibility, effectiveness, and cost of a nationwide expansion of efforts to prevent duplicate participation. FNS is currently conducting a pilot on duplicate participation in five States that meets the requirements of this provision.

Section 4212. Review of Sole-source Contracts in Federal Nutrition Programs

This provision requires the Secretary to conduct an evaluation of sole-source contracts in Federal nutrition programs, and the effect such contracts have on program participation, program goals, non-program consumers, retailers, and free-market dynamics. The findings must be reported back to Congress within one year from enactment.

D. Provisions that are already in effect.

Section 4002. Retailers

Section 4002 makes many changes to SNAP retailer qualifications and administration of SNAP EBT. The provision that permits requiring purchase invoice or program-related records of applicant retailers is already in Federal regulations at 7 CFR 278.1(b), so no further action is required. Other provisions are listed in categories A and B.

Section 4028. Nutrition Education.

This provision authorizes physical activity as a nutrition education activity.

It is consistent with the definition of nutrition education and obesity prevention specified in the SNAP-Ed interim rule published on April 5, 2013.