United States Department of Agriculture

Food and Nutrition Service

1320 Braddock Place
Alexandria VA 22314

Retailer Policy and Management Division, SNAP
RPMD Policy Memorandum 2020-07

Subject: **Retailer Eligibility - Restaurants**

Legislation: Food and Nutrition Act of 2008, Sections 3 and 9

Regulations: 7 CFR 271.2 (definition of "retail food store") and 278.1(b)(1)(iv)

Rule: *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)*
Proposed - 81 FR 8015 (17 February 2016)
Final - 81 FR 90675 (15 December 2016)

Supersedes: RPMD Policy Memo 2017-01, "Retailer Eligibility - Restaurants"

Implementation: Upon Publication

OVERVIEW: This memorandum clarifies policy related to the implementation of the final rule, "Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)," which amended SNAP regulations, at 7 CFR §§ 271.2 and 278.1(b)(1)(iv), related to firms that are ineligible to be SNAP authorized because they are restaurants. FNS considers as restaurants firms with more than 50 percent of their total gross sales from hot or cold prepared foods not intended for home preparation and/or home consumption (including prepared foods consumed on the premises or sold for carryout). This is known as the "Restaurant Threshold."

The final rule added "foods cooked or heated on-site by the retailer before or after purchase" to the types of sales that must be counted when determining whether a firm exceeds the Restaurant Threshold. Firms may be required to submit documentation to FNS to demonstrate they do not exceed the Restaurant Threshold per 7 CFR § 278.1(b). Firms that exceed the Restaurant Threshold are denied authorization or, if already authorized, withdrawn from SNAP, under 7 CFR §§ 271.2 and 278.1(b)(1)(iv). Currently participating firms that fail to submit this documentation, or that submit inadequate documentation, will be withdrawn from the program under 7 CFR §§ 278.1(b) and (m)(2).

The contents of this document do not have the force and effect of law and are not meant to bind the public or FNS in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

USDA is an Equal Opportunity Provider, Employer and Lender

CLARIFICATION: FNS considers as restaurants firms with more than 50 percent of their total gross sales from hot and/or cold prepared foods not intended for home preparation or home consumption (including prepared foods consumed on the premises or sold for carryout). This is known as the "Restaurant Threshold." Firms that exceeded the Restaurant Threshold are prohibited from becoming SNAP authorized.

However, SNAP regulations previously did not address firms that sold cold food and heated it after sale. These firms are often referred to as using the "you buy, we fry" business model, though foods might be cooked or heated by any method (e.g., baking, grilling) at such firms. Contrary to the spirit of SNAP regulations, this omission allowed such firms to become authorized, if they met all other eligibility criteria. The final rule prevented such firms from becoming or remaining authorized.

The final rule *added* "foods cooked or heated on-site by the firm before or after purchase" to the types of food that must be counted when determining whether a firm exceeds the Restaurant Threshold. The final rule did not change the requirement that prepared foods be counted towards the Restaurant Threshold.

FNS will request sales documentation from firms that appear to be restaurants. This information is necessary for FNS to determine if a firm exceeds the Restaurant Threshold. Failure to submit this requested information, or submission of inadequate information may result in withdrawal from SNAP for currently participating firms, while newly applying firms' applications may be withdrawn from further processing. If the firm submits sales documentation and this documentation shows that the firm's sales exceed the Restaurant Threshold, the firm will be denied authorization or withdrawn from SNAP under 7 CFR § 278.1(b)(1)(iv). Likewise, any firm that self-identifies as a restaurant will be denied or withdrawn from SNAP under 7 CFR § 278.1(b)(1)(iv).

It should be noted that while program regulations, at 7 CFR § 278.1(b)(6), permit FNS to authorize certain firms that do not meet Criterion A or Criterion B if the firm is located in an area with significantly limited access to food, this flexibility is not available to restaurants, which are ineligible regardless of location, per 7 CFR § 278.1(b)(1)(iv).

Any questions regarding this policy should be directed to: SM.FN.RPMDHQ-WEB@usda.gov.

SHELLY PIERCE

Digitally signed by SHELLY PIERCE
Date: 2020.07.13 19:57:34 -04'00'

Shelly Pierce
Acting Director
Retailer Policy and Management Division
Supplemental Nutrition Assistance Program