



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

JUL 30 2014

SUBJECT: Supplemental Nutrition Assistance Program-Retailer, Issuance and Electronic Benefits Transfer Provisions of the Agricultural Act of 2014 – Questions and Answers

TO: All Regional Directors
Supplemental Nutrition Assistance Program

The attached questions and answers is the second of a series intended to address inquiries received concerning certain retailer provisions of the Agricultural Act of 2014, P.L.113-79. These questions and answers serve as formal guidance for use by FNS Regional Offices, State agencies, and affected stakeholders as they implement the retailer provisions of the Agricultural Act of 2014.

Additional questions and answers pertaining to the retailer provisions will be forthcoming. Thank you for your patience. If further questions arise related to the implementation of these provisions, please contact Vicky Robinson at vicky.robinson@fns.usda.gov.

Andrea Gold
Director
Retailer Policy and Management Division

Attachment

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

Agricultural Act of 2014
Retailer, Issuance and Electronic Benefits Transfer
Q&AsVer2

A. Section 4001 -Bottle Deposits

A7. The State of Delaware does not currently have a Bottle Deposit. They changed it to a Bottle Fee back in 2010. The Retailer Notice states SNAP benefits cannot be used to pay bottle/can deposits unless it is a State-required fee. The Retailer Notice lists ten States that have a State deposit fee requirement, but does not include Delaware. Currently we have them as being SNAP eligible since their contents are edible. Would they now be ineligible based on this ruling?

Answer: The Agricultural Act of 2014 prohibits the use of SNAP funds for "any deposit fee in excess of the amount of the State fee reimbursement (if any) required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for the food or food product."

Because the Delaware bottle fee is not a State fee reimbursement covered under Section 4001 of the Agricultural Act of 2014, Section 4001 does not affect how the Delaware bottle fee is currently treated.

A8. May Oregon retailers allow SNAP customers to use SNAP benefits to pay for deposits on beverages covered by the Oregon Bottle Bill (ORS 459A.700- .740)? Oregon law does not require the customer to pay the deposit or a "fee"; surprisingly, the statute only establishes a "refund value" (five cents) to be paid by retailers to customers for each container that is brought in.

Answer: The Agricultural Act of 2014 prohibits the use of SNAP funds for "any deposit fee in excess of the amount of the State fee reimbursement (if any) required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for the food or food product."

Oregon retailers are not mandated by State law to charge a deposit fee; however, the State law does require a reimbursement or "refund value". Therefore, SNAP benefits may be used to pay for the deposit fee that is not in excess of the reimbursement amount under Oregon law (five cents) on containers covered under the Oregon law.

A9: We sell milk in bottles at the Fresh Grocer stores in Philadelphia. There is a bottle deposit on the returnable bottle so will that also fall under this new guideline and not be SNAP eligible?

Answer: The milk is still an eligible food and may be paid with SNAP benefits. If there is no State fee reimbursement requirement, the deposit cannot be paid for with SNAP benefits.

AIO: Do States need to educate clients on the return of empty bottles and cans? Is the requirement different for States that have bottle deposit laws and those that do not? Does the responsibility to provide up-to-date information to recipients regarding eligible purchases mean that the information needs to be included in the application or EBT flyer? What exactly must States do to satisfy this requirement?

Answer: FNS expects States to inform SNAP clients about this change, in order to minimize confusion when shopping at authorized retailers. The new legislation has an impact on every SNAP household in the nation. In States without container deposit laws, households must now pay for ALL deposit fees in cash, rather than with SNAP benefits, even if that fee is included in the shelf price of the eligible food item. In States that do require deposits, there is greater potential for confusion and more detailed information may be warranted.

States may share this information with clients in whatever manner they believe would be most effective. FNS would consider EBT informational materials to be an appropriate method of information sharing for new recipients. States may also wish to issue a special mailing to current households, addressing this and other changes resulting from the Agricultural Act of 2014.

B. Section 4002 - Retailers - Eligibility Requirements

B2: Under the new law, stores will have to stock staple items in perishable form in 3 of the 4 following categories instead of two: dairy products; meat, poultry, or fish; fruits or vegetables; and bread or cereals. This poses a number of problems for rural Alaskan stores. Many rural Alaskans depend on their subsistence hunting, fishing, and gathering-not their local store-for many of the "perishable staples" emphasized under the SNAP program. In addition, some staples-especially fresh fruit, vegetables, and liquid milk-are very expensive or unavailable in rural Alaska due to transportation and utilities costs. Do you have any thoughts on this provision? Are there other States that are very concerned about this?

Answer: To date, this concern has not been raised by other States. However, this situation will be addressed in the regulations. The statutory changes resulting from the Agricultural Act of 2014 affect only one of the eligibility criteria associated with SNAP retailer authorization. The alternate SNAP retailer eligibility criterion, allowing for the participation of stores that sell more than 50 percent staple foods, remains unchanged by statute. Further, a special existing provision in the Food and Nutrition Act of 2008 allows for the SNAP authorization of stores that sell hunting and fishing equipment and

includes the designated hunting and fishing items in the statutory definition of "food" exclusively in Alaska. Finally, the Agricultural Act of 2014 amended the Food and Nutrition Act of 2008 to allow FNS to consider whether an applicant retailer is located in an area with significantly limited access to food when considering that applicant for authorization. FNS will consider all of these provisions when developing regulations.

F. Section 4002-Retailers-Communications on New Requirements

F1: Who will respond to retailer inquiries regarding Farm Bill changes?

Answer: FNS will take primary responsibility for answering retailer inquiries. However, to the extent that EBT processors are able to provide information through their retailer help desks, they should continue to do so.

F2: Will FNS be sending notification to the SNAP retailers regarding the Agriculture Act of 2014? When? Which provisions will this cover? Will it go to all affected retailers?

Answer: FNS began issuing a notice to every authorized retailer on April 15, 2014, providing explanations of the relevant retailer provisions in the Farm Bill. The notice addresses Farm Bill changes related to retailers paying for their own EBT equipment, bottle deposits, manual vouchers and community supported agriculture and included a link to the Implementing Memo where all of the Agricultural Act provisions are described. This notice can be found at www.fns.usda.gov/sites/default/files/snap/Retailer-Notice-Farm-Bill-2014.pdf

F3: Can States/EBT processor share the Implementing Memo's language from Part A section 4002 with the retailers when they start contacting them, and if so can FNS provide the original language in Word format?

Answer: We ask that States/EBT processors refer retailers to this document, available at www.fns.usda.gov/sites/default/files/snap/Retailer-Notice-Farm-Bill-2014.pdf which includes a link to the Implementing Memo.

G. Section 4002 -Retailers-Scanning Technology

G1: The mandated scanning technology will need far greater clarification in order to get this properly implemented. How will FNS go about this? When must retailers comply?

Answer: The EBT Auditability provision will be addressed through the regulatory process. Affected parties will be given the opportunity to comment

on the proposed rule which will address system requirements, implementation timeframes and exemptions for retailers in areas with significantly limited access to food. Final regulations will provide adequate time for retailers to implement the new requirements.

G2: The requirement for all retailers to "scan" all of their food items at checkout will have an adverse impact on Alaskan retailers located in smaller villages, who do not have computer scanning devices. This could create an undue financial hardship on the smaller retailers to buy and implement such systems. Are we interpreting this new regulation correctly?

Answer: The Agricultural Act of 2014 amended the Food and Nutrition Act to require the Secretary to issue final regulations that require all retailers to use scanning or product lookup systems. The Agricultural Act of 2014 provides FNS the authority to exempt retailers located in areas with significantly limited access to food from this requirement. FNS has not yet issued any regulations implementing this provision of the Agricultural Act of 2014 to require all retailers to use scanning or product lookup systems. This legislative requirement will not be implemented until FNS promulgates final regulations, and the public will have an opportunity to submit comments during the rulemaking process.

J. Section 4012- Community Supported Agriculture (CSAs)

J1: Will there be demonstration projects and/or additional funding to allow EBT to be accepted in advance of food delivery by agricultural producers who market directly to consumers?

Answer: The Agricultural Act of 2014 does not specifically authorize any demonstration projects for allowing EBT to be accepted in advance of food delivery, nor does it specifically authorize any funding for demonstration projects for such activities. Section 4012 of the Agricultural Act of 2014 does authorize nonprofit food buying cooperatives and agricultural producers who market agricultural products directly to consumers to accept payment in advance of delivery of food. Pursuant to the Agricultural Act of 2014, FNS now allows nonprofit food buying cooperatives, as well as agricultural producers who market products directly to consumers and that operate using a CSA model to accept payment up to 14 days in advance in accordance with existing regulations guiding advance payments to retailers. The April 15, 2014 began sending a notice to all retailers advising them of this change. FNS may consider alternative payment timeframes in future regulations.

J2: Does the new regulation apply to actual CSAs where the produce shares are being offered by the person growing them? Or can programs where someone aggregates produce from local growers but isn't a farmer themselves participate?

Answer: Section 4012 of the Agricultural Act of 2014 applies to "agricultural producers who market agricultural products directly to consumers" and "private nonprofit cooperative food purchasing ventures". Since aggregators are not producers, they are not considered "agricultural producers who market agricultural products directly to consumers".. However, they may qualify to accept SNAP as a non-profit cooperative.

K. Section 4014-Restaurant Meals Program

KI: Who should the restaurant meals program plans and reports be submitted to?

Answer: FNS is preparing a proposed rule to address State restaurant meals program requirements. At this time, we expect that States will submit the annually required plans and reports to Regional SNAP Directors.