

Advocacy Suggests Improvements to the Food and Nutrition Service's Rule Changing Standards in the Supplemental Nutrition Assistance Program (SNAP)

On May 17, 2016, the Office of Advocacy's Chief Counsel, Darryl L. DePriest, sent a letter to the United States Department of Agriculture's Food and Nutrition Service (FNS) suggesting improvements in the agency's Regulatory Flexibility Act analyses contained in the Enhancing Retailers Standards in the Supplemental Nutrition Assistance Program (SNAP) proposed rule. A copy of Advocacy's comment letter may be accessed at www.sba.gov/advocacy.

On February 17, 2016, the FNS published the aforementioned rule in the *Federal Register* (81 Fed. Reg. 8015) that proposed changes to the SNAP as required by the 2014 Farm Bill by increasing the requirement that certain SNAP authorized retail food stores have available on a continual basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. It also increased the minimum number of categories in which perishable foods are required from two to three. FNS utilized its existing authority to modify depth of stock requirements, and amend the definitions of "staple foods", accessory foods" and "retail food store" (clarifying when a retailer is a restaurant rather than a retail food store). While FNS stated that it did not believe that the rule would have a significant impact on a substantial number of small entities, it complied with the Regulatory Flexibility Act's (RFA) requirement that it complete an Initial Regulatory Flexibility Analysis (IRFA) that analyzed the rule's economic impact on small entities.

A number of small businesses, including convenience stores, specialty grocery stores, food distributors, and their representatives approached Advocacy worried that the proposed regulation would have a negative impact on their businesses. They were primarily concerned about the definitional changes in the rule which would require them to increase their product categories, significantly change their business practices, and require them to invest additional sums to increase floor space and refrigeration. Advocacy wrote the comment letter to provide the FNS with the aforementioned industry concerns and to suggest ways that the agency could improve its IRFA. Advocacy believed that the FNS could do a better job identifying and analyzing small retailers' costs and revenues against the rule's new requirements. Advocacy also suggested that FNS should entertain reasonable alternatives that would reduce the regulation's economic burden.

For more information, visit Advocacy's webpage at _____, or contact Linwood Rayford at (202) 205-6533.