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## NACS PARTNER BENEFIT – NOT FOR WIDE DISTRIBUTION

January 29, 2017<sup>1</sup>

TO: NACS

FROM: Douglas S. Kantor  
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RE: **CONDENSED OVERVIEW – Final Rule, Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (RIN 0584-AE27)**

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**PLEASE NOTE:** This document is intended to provide NACS partners, including many corner stores, with information on the SNAP retailer final rule. **It is NOT intended to serve as a legal opinion.** Small format stores are encouraged to reach out to the U.S. Department of Agriculture’s Food and Nutrition Service with any questions on the final rule. Retailers can contact the SNAP Retailer Service Center at 1-877-823-4369.

A more detailed compliance guide is available for NACS members on the NACS website: <http://www.nacsonline.com/advocacy/Issues/SNAP/Pages/default.aspx>.

### **EXECUTIVE SUMMARY**

On December 15, 2016, the U.S. Department of Agriculture’s (“USDA”) Food and Nutrition Service (“FNS” or “Agency”) published a final rule altering the eligibility requirements for retailers participating in the Supplemental Nutrition Assistance Program (“SNAP” or “the program”).<sup>2</sup> The final rule contained several substantial improvements over the proposed rule, which, if it had been enacted as drafted, would have pushed tens of thousands of NACS’ members and other small format retailers out of the program.<sup>3</sup>

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<sup>1</sup> Updated October 13, 2017 and September 10, 2019.

<sup>2</sup> U.S. Department of Agriculture, Food and Nutrition Service, Final Rule, *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)*, 81 Fed. Reg. 90675 (Dec. 15, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-15/pdf/2016-29837.pdf> [hereinafter *Final Rule*].

<sup>3</sup> U.S. Department of Agriculture, Food and Nutrition Service, Proposed Rule, *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)*, 81 Fed. Reg. 8015 (Feb. 17, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-02-17/pdf/2016-03006.pdf>. [hereinafter *Proposed Rule*]

The final rule will make several changes to the regulations governing SNAP retailer eligibility, namely: to participate in SNAP, convenience stores will be required to stock at least *seven* different “varieties” of food items in each of the four “staple food” categories and at least one perishable food item in **three** of the staple food categories. Retailers will also be required to keep 3 units of every required item on shelf at some time in any given 21 day period. To ensure they can prove they are in compliance with the stocking requirements, retailers should retain all invoices for at least one-year.

Finally, if 50 percent or more of a store’s total *gross* sales are sales of items that are cooked or heated on site by the retailer before or after purchase, the retailer will be ineligible to participate in SNAP.

Compliance and Effective Dates:

- Retailers (currently licensed retailers and new applicants) will be required to be in compliance with the cooked or heated foods threshold beginning **October 16, 2017**.
- Retailers (currently licensed retailers and new applicants) will have until **January 17, 2018** to come into compliance with the rule’s stocking *unit* requirements (e.g., 3 items of each of the 3 varieties in the 4 staple food categories on shelves). In addition, the final rule’s updated definition of “accessory food” will go into effect on January 17, 2018.
- The stocking variety requirements – e.g., the 7 *varieties* of foods in 4 staple food categories (and expanded perishable requirement) – has been put on hold until FNS rewrites that part of the rule.
- All other provisions in the rule (e.g., definition of “firm” and public sanction provisions) went into effect on **January 17, 2017**.

The following sections are included in this overview:

- Part I:** Condensed Summary of the Final Rule
- Part II:** The New SNAP Requirements: A Quick Overview for Retailers
- Part III:** Compliance Dates
- Part IV:** Conclusion
- Appendix 1:** Final Rule Visual

## I. Condensed Summary of the Final Rule

The final rule would make several significant changes to the regulations governing SNAP retailer eligibility, namely:

- Codify the “depth-of-stock” provisions in the Agricultural Act of 2014 (“2014 Farm Bill”),<sup>4</sup> the requirements that address the amount and variety of food that a retailer must have in stock in order to participate in SNAP as a retail food store. Pursuant to the 2014 Farm Bill requirements, retailers will be required to stock at least *seven* different “varieties” of food items in each of the four “staple food” categories and at least one perishable food item in **three** of the staple food categories. [THESE PROVISIONS ARE CURRENTLY ON HOLD UNTIL FNS REVISES THE DEFINITION OF VARIETY.]
- Require retailers to stock **three** different units per variety of food item in order to meet requirements that they offer foods meeting the depth of stock obligations on a “continuous basis.” If short an item during a site inspection, however, retailers will be able to prove they had the requisite items in stock by submitting supporting documentation (e.g., invoices) dated within 21 days of the store inspection.
- Redefine the term “accessory foods” to limit the items that may count as staple foods (e.g., crackers no longer considered a staple food).
- Redefine the term “variety” as it applies to what retailers can stock to participate in SNAP.
- Amend the definition of retail food store so that if 50 percent or more of a store’s total *gross* sales come from items that are cooked or heated on site by the retailer before or after purchase, then FNS will consider the establishment to be a restaurant rather than a retail food store. Restaurants are ineligible to participate in SNAP except under select circumstances.
- Expand the factors FNS may consider when evaluating retailer eligibility to include food access considerations.
- Permit the public disclosure of SNAP retailer sanction information.
- Create a definition for the term “firm.”

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<sup>4</sup> Pub. L. 113-79, enacted Feb. 7, 2014, *available* at <http://www.fns.usda.gov/sites/default/files/snap/Food-And-Nutrition-Act-2008-wFB-provisions.pdf>.

## II. The New SNAP Requirements: A Quick Overview for Retailers

### A. What Qualifies as a Staple Food?

To participate in SNAP,<sup>5</sup> retailers must stock on a “continuous basis,” 7 different varieties in each of the **4** staple food categories: (1) meat, poultry, or fish; (2) bread or cereals; (3) vegetables or fruits; and (4) dairy. **Staple foods** are those food items intended for home preparation and consumption, and do not include “accessory foods” such as coffee, tea, cocoa, soda, non-carbonated drinks, etc. (discussed further below), hot foods, and/or other foods that are “ready to go” or “made to take out” (e.g., prepared salad or sub).<sup>6</sup> Of those staple food items (7 varieties in the 4 categories), retailers must stock at least 1 *perishable* food item in 3 of the staple food categories. “**Perishable**” foods are items which are frozen, fresh, unrefrigerated or refrigerated staple food items that will spoil, or suffer significant deterioration in quality within 2-3 weeks.

### B. Understanding Variety

Retailers must offer 7 different varieties in each of the 4 staple food categories. To count towards variety, food items must be different types of food—different brands, nutrient values, flavorings, packaging types or package sizes of the same or similar foods do not count as different varieties of staple foods. For example, tomatoes and tomato juice would only count as one variety (tomato); brown rice and white rice would only count as one variety (rice); ground beef and beefsteak would only count as one variety (beef); and low fat cow’s milk and whole cow’s milk would only count as one variety (cow’s milk).

**Multiple ingredient** items may count towards a retailer’s staple food (and variety) requirements. To count as one variety in a particular staple food category, however, the main/primary/predominant ingredient must be from that particular staple food category. For example, if the main ingredient of a can of chicken noodle soup is chicken, it could count as one item in the meat, poultry, or fish staple food category.<sup>7</sup> If the main ingredient were the noodles, it could count as one item in the breads or cereals category.

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<sup>5</sup> To be eligible to redeem SNAP benefits, a food retailer must sell food for home preparation and consumption and meet one of the following two criteria: (1) offer for sale, “on a continuous basis, a variety of foods in each of the 4 categories of staple foods . . . including perishable foods in at least 3 of the categories,” or (2) have “over 50 percent of the total sales of the establishment or route in staple foods . . .” See 7 U.S.C. § 2012(p)(1), 7 C.F.R. §271.2 (definition of “retail food store”). Because staple foods are unlikely to constitute more than half of a convenience store’s total sales, the industry has relied primarily on the first prong. The grocery industry relies on the second prong.

<sup>6</sup> See 7 U.S.C. § 2012(r)(1); 7 C.F.R. § 271.2. Commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will normally be included in the staple food category of the main ingredient as determined by FNS. Hot foods are not eligible for purchase with SNAP benefits and, therefore, do not qualify as staple foods for the purpose of determining eligibility under §278.1(b)(1) of this chapter.

<sup>7</sup> When the main ingredient of a multiple ingredient item is water, FNS will count the second most common ingredient when making a determination of which staple food category it qualifies under.

The following chart lists some examples of acceptable varieties (perishable and non-perishable) in each of the four staple food categories. This is not an exhaustive list.<sup>8</sup> **THE DEFINITION OF “VARIETY” WILL CHANGE WHEN FNS UPDATES THE DEFINITION OF VARIETY.**<sup>9</sup>

Staple Food Category	Variety	Examples of Variety (only 1 of the items for each variety would could towards stocking requirements)
<b>Meat, Poultry, or Fish</b>	Beef	<ul style="list-style-type: none"> <li>• All beef (or majority beef) hotdog</li> <li>• Ground beef</li> <li>• Steak</li> <li>• Beef Jerky</li> <li>• Can of beef &amp; vegetable soup (if primary ingredient is beef)</li> </ul>
	Pork	<ul style="list-style-type: none"> <li>• Sliced Ham</li> <li>• Bacon</li> <li>• All pork (or majority pork) hotdog</li> </ul>
	Goat	<ul style="list-style-type: none"> <li>• Fresh/frozen goat chops/ribs</li> </ul>
	Lamb/Mutton	<ul style="list-style-type: none"> <li>• Fresh lamb chops</li> <li>• Ground lamb</li> </ul>
	Chicken	<ul style="list-style-type: none"> <li>• Frozen chicken breast</li> <li>• Chicken fingers/nuggets</li> <li>• Can of chicken noodle soup (if primary ingredient is chicken)</li> </ul>
	Turkey	<ul style="list-style-type: none"> <li>• Sliced deli turkey</li> <li>• Ground turkey</li> </ul>
	Duck	<ul style="list-style-type: none"> <li>• Fresh/canned duck</li> </ul>
	Eggs	<ul style="list-style-type: none"> <li>• Fresh eggs</li> <li>• Liquid egg whites</li> </ul>
	Tuna	<ul style="list-style-type: none"> <li>• Fresh tuna steak</li> <li>• Canned tuna</li> </ul>
	Salmon	<ul style="list-style-type: none"> <li>• Packaged smoked salmon</li> <li>• Canned salmon</li> </ul>
	Shrimp	<ul style="list-style-type: none"> <li>• Frozen shrimp scampi meal</li> <li>• Fresh shrimp cocktail</li> </ul>
	Soy-based protein	<ul style="list-style-type: none"> <li>• Tofu</li> <li>• Soy-based vegan chicken alternative</li> </ul>
	Beans	<ul style="list-style-type: none"> <li>• Canned or dried kidney beans</li> <li>• Canned or dried pinto beans</li> <li>• Hummus dip</li> </ul>
Peas	<ul style="list-style-type: none"> <li>• Canned split pea soup (with a first listed ingredient of split peas)<sup>10</sup></li> <li>• Canned or dried black-eyed peas</li> </ul>	

<sup>8</sup> Final Rule, 81 Fed. Reg. at 90692-90694. *See also* FNS, List of Acceptable Varieties, <https://www.fns.usda.gov/sites/default/files/snap/Varieties.pdf> (last visited Dec. 30, 2017).

<sup>9</sup> At this time, it is unclear when FNS will issue a proposal to redefine the term “variety.”

<sup>10</sup> If water is the first ingredient, then if split peas are the second listed ingredient, the soup would count as 1 variety of peas.

	Nuts/Seeds	<ul style="list-style-type: none"> <li>• Peanut butter</li> <li>• Sunflower seeds</li> <li>• Bag of almonds</li> </ul>
<b>Vegetables or Fruits</b>	Apples	<ul style="list-style-type: none"> <li>• Applesauce</li> <li>• Fresh/dried apples (Fuji, Gala, etc.)</li> <li>• Precut Apple to-go pack</li> </ul>
	Bananas	<ul style="list-style-type: none"> <li>• Fresh/frozen bananas</li> <li>• Dried banana slices</li> </ul>
	Oranges	<ul style="list-style-type: none"> <li>• 100% orange juice</li> <li>• Fresh oranges (or fresh orange slices)</li> </ul>
	Grapes	<ul style="list-style-type: none"> <li>• 100% fresh grape juice</li> <li>• Fresh grapes (or dried raisins)</li> </ul>
	Strawberries	<ul style="list-style-type: none"> <li>• Fresh/frozen strawberries</li> <li>• Strawberry jam</li> </ul>
	Peaches	<ul style="list-style-type: none"> <li>• Canned, fresh, or frozen peaches</li> </ul>
	Pineapple	<ul style="list-style-type: none"> <li>• Canned or fresh pineapple</li> </ul>
	Potatoes	<ul style="list-style-type: none"> <li>• Fresh potatoes</li> <li>• Frozen tater tots</li> </ul>
	Tomatoes	<ul style="list-style-type: none"> <li>• Canned tomato soup</li> <li>• Fresh or canned tomatoes</li> </ul>
	Lettuce	<ul style="list-style-type: none"> <li>• Fresh lettuce</li> <li>• Pre-cut/bagged romaine lettuce</li> </ul>
	Spinach	<ul style="list-style-type: none"> <li>• Frozen spinach</li> <li>• Pre-washed bag of spinach</li> </ul>
	Avocados	<ul style="list-style-type: none"> <li>• Fresh avocado</li> <li>• Ready-made guacamole</li> </ul>
	Celery	<ul style="list-style-type: none"> <li>• Fresh whole celery or pre-cut celery to-go packs</li> </ul>
	Cucumber	<ul style="list-style-type: none"> <li>• Fresh cucumber or jarred pickles</li> </ul>
	Carrots	<ul style="list-style-type: none"> <li>• Fresh whole carrots OR frozen sliced carrots</li> <li>• Pre-cut carrot to-go pack</li> </ul>
	Garlic	<ul style="list-style-type: none"> <li>• Fresh garlic<sup>11</sup></li> </ul>
	Beans	<p>(See above under meat, poultry, or fish)</p> <p>* If a retailer stocks beans and/or peas, s/he may ONLY count those items as 1 variety each under the (1) meat, poultry, or fish OR (2) vegetables or fruits categories. They cannot be counted separately in both categories. For example, a retailer cannot count a can of kidney beans in the meat category <u>and</u> a can of black beans in the vegetable category. Rather, he could count a can of kidney beans in the meat category and a can of peas in the vegetable category (or vice versa).</p>
Peas		
Cabbage	<ul style="list-style-type: none"> <li>• Fresh cabbage OR jarred kimchi</li> </ul>	
<b>Dairy</b>	Yogurt	<ul style="list-style-type: none"> <li>• Fresh whole milk vanilla yogurt</li> <li>• Fresh nonfat peach yogurt</li> </ul>
	Soy Yogurt	<ul style="list-style-type: none"> <li>• Strawberry soy yogurt</li> </ul>

<sup>11</sup> NB: dried powdered garlic would be considered a spice, and therefore an accessory food, not a staple food.

<b>Dairy</b>	Almond Yogurt	<ul style="list-style-type: none"> <li>Mixed-berry almond yogurt</li> </ul>
	Perishable Cow Milk	<ul style="list-style-type: none"> <li>2% milk or whole milk</li> </ul>
	Shelf-Stable Liquid Cow Milk	<ul style="list-style-type: none"> <li>Condensed or evaporated cow milk</li> </ul>
	Shelf-Stable Powdered Cow Milk	<ul style="list-style-type: none"> <li>Powdered cow milk</li> <li>Whey powder</li> </ul>
	Cow Milk-Based Infant Formula	
	Soy-Based Infant Formula	
	Butter	<ul style="list-style-type: none"> <li>Frozen sweet cream butter</li> <li>Fresh salted butter</li> </ul>
	Butter Substitute	<ul style="list-style-type: none"> <li>Margarine or non-dairy spread</li> </ul>
	Sour Cream	<ul style="list-style-type: none"> <li>Fresh lite sour cream</li> </ul>
	Almond Milk	<ul style="list-style-type: none"> <li>Refrigerated or shelf-stable almond milk</li> </ul>
	Soy Milk	<ul style="list-style-type: none"> <li>Refrigerated or shelf-stable soy milk</li> </ul>
	Rice Milk	<ul style="list-style-type: none"> <li>Refrigerated or shelf-stable rice milk</li> </ul>
	Firm/Hard Cheese	<ul style="list-style-type: none"> <li>Fresh deli-sliced cheddar cheese</li> <li>Grated parmesan cheese</li> </ul>
	Soft cheese	<ul style="list-style-type: none"> <li>Fresh curd cheese</li> <li>Cream cheese</li> <li>Pre-wrapped American cheese slices</li> </ul>
	Goat Cheese	<ul style="list-style-type: none"> <li>Fresh plain goat cheese</li> </ul>
Perishable Goat Milk	<ul style="list-style-type: none"> <li>Full or low-fat</li> </ul>	
<b>Bread or Cereals<sup>12</sup></b>	Wheat	<ul style="list-style-type: none"> <li>Whole wheat flour</li> <li>Wheat germ</li> </ul>
	Corn/Maize	<ul style="list-style-type: none"> <li>Cornmeal or cornbread</li> </ul>
	Rice	<ul style="list-style-type: none"> <li>Brown, white, or basmati rice</li> </ul>
	Oats	<ul style="list-style-type: none"> <li>Oatmeal or honey oat bread</li> </ul>
	Barley	<ul style="list-style-type: none"> <li>Pearled barley or barley meal</li> </ul>
	Rye	<ul style="list-style-type: none"> <li>Raw rye or rye bread</li> </ul>
	Millet	<ul style="list-style-type: none"> <li>Millet flour or raw millet</li> </ul>
	Quinoa	<ul style="list-style-type: none"> <li>Raw quinoa or Quinoa pasta</li> </ul>
	Teff	<ul style="list-style-type: none"> <li>Raw Teff or injera</li> </ul>
	Bread	<ul style="list-style-type: none"> <li>Loaf of rye, white, or multi-grain bread</li> </ul>

<sup>12</sup> Final Rule, 81 Fed. Reg. at 90694, stating:

Most bread or cereals food items sold and consumed in America primarily derive from one of the following four grains: Wheat, corn, rice, and/or oats. Based on the limited types of common grains and the new breadth of stock requirements, therefore, it is impractical to define “variety” for the purposes of this staple food category based exclusively on the product kind or exclusively on the main ingredient, as is the standard for two of the other staple food categories.

<b>Bread or Cereals</b>	Pasta	<ul style="list-style-type: none"> <li>• Gluten-free spaghetti</li> <li>• Whole wheat rotini</li> </ul>
	Baking mixes	<ul style="list-style-type: none"> <li>• Pancake mix or cornbread mix</li> </ul>
	Tortillas	<ul style="list-style-type: none"> <li>• Corn or flour tortillas</li> </ul>
	Bagels	<ul style="list-style-type: none"> <li>• Fresh or frozen bagels</li> </ul>
	Pitas	<ul style="list-style-type: none"> <li>• Low-carb or whole wheat pita</li> </ul>
	Cold breakfast cereal	<ul style="list-style-type: none"> <li>• Rice-based or oat-based cereal</li> </ul>
	Hot breakfast cereal	<ul style="list-style-type: none"> <li>• Cream of Wheat or Farina</li> </ul>
	Buns/rolls	<ul style="list-style-type: none"> <li>• Frozen dinner rolls or hotdog buns</li> </ul>
	Infant cereal	<ul style="list-style-type: none"> <li>• Wheat or oat-based infant cereal.</li> </ul>
	English Muffins	<ul style="list-style-type: none"> <li>• Whole or honey wheat muffins</li> </ul>

### C. Example of How to Meet “Variety” Requirements in Your Store

The following chart provides a list of examples of what a retailer could stock to meet the depth of stock requirements. This chart is just an example and should not be construed to be a directive about what SNAP retailers should stock. As a reminder, retailers must stock **7** different varieties in each of the 4 staple food categories—and of those items, there must be at least 1 perishable food item in **3** of the staple food categories. “Perishable” foods are items which are either frozen staple food items or fresh, unrefrigerated or refrigerated staple food items that will spoil, or suffer significant deterioration in quality within 2-3 weeks. Perishable items in the examples below are denoted by the color **blue**.

It is important to remember that multiple ingredient items do count towards a retailer’s stocking requirements. For any multiple-ingredient item to count as one variety in a particular staple food category, however, the main ingredient must be from that particular staple food category. For example, a Szechuan beef and vegetable frozen dinner would only count in the meat, poultry, or fish category if the beef were the primary ingredient in the frozen meal. If vegetables were the main ingredient, it would count as a variety in the vegetables or fruits staple food category.

<b>EXAMPLE</b>	
<b>Staple Food Category</b>	<b>Possible Varieties</b> (7 items, at least 1 <b>perishable</b> in 3 categories)
<b>Meat, Poultry, or Fish</b>	<ul style="list-style-type: none"> <li>• Canned Tuna</li> <li>• <b>Sliced deli ham</b></li> <li>• <b>Eggs</b></li> <li>• Beef jerky</li> <li>• Can of chicken-noodle soup (if main ingredient is chicken)</li> <li>• Peanut butter</li> <li>• Can of beans</li> </ul>
<b>Vegetables or Fruits</b>	<ul style="list-style-type: none"> <li>• Applesauce (large jar or individual single-serving containers)</li> <li>• <b>Bananas</b></li> <li>• <b>Ready-made guacamole</b></li> <li>• <b>Pre-cut carrot to-go pack</b></li> </ul>

	<ul style="list-style-type: none"> <li>• Celery – ranch dressing to-go pack</li> <li>• Canned tomato soup</li> <li>• 100% orange juice</li> </ul>
<b>Dairy</b>	<ul style="list-style-type: none"> <li>• Butter</li> <li>• 2% cow milk</li> <li>• Shelf-Stable Soy milk</li> <li>• Low-fat yogurt cup</li> <li>• Sour cream</li> <li>• Cow-milk based infant formula</li> <li>• Individual cheese sticks</li> </ul>
<b>Bread or Cereals</b>	<ul style="list-style-type: none"> <li>• Flour/Corn Tortillas</li> <li>• Cold breakfast cereal</li> <li>• Instant oatmeal packets</li> <li>• Hot dog buns</li> <li>• English muffins</li> <li>• White bread</li> <li>• Boxed spaghetti pasta</li> </ul>

#### **D. Understanding Accessory Foods**

By definition, accessory foods are not staple foods. Therefore, accessory foods do not count towards a retailer’s stocking requirements. FNS considers the items listed below to be accessory foods. This list is just a set of examples and is not exhaustive. As a general matter, any food product with a main ingredient that is an accessory food will be considered an accessory food item. For example, a cheese and cracker to-go pack contains cheese (a staple food) and crackers (an accessory food). If the main ingredient of the to-go pack is crackers (i.e., there are more crackers than cheese), the item would count as an accessory food, not a staple food. If, on the other hand, the cheese were the main ingredient, the item would count as a variety in the dairy category.<sup>13</sup>

<b>ACCESSORY FOODS</b> (These items CANNOT count as staple foods)	
<b>Snack and Dessert Food Items</b>	<ul style="list-style-type: none"> <li>• Potato, corn, wheat, tortilla, pita, and vegetable chips, crisps, sticks, and straws; onion ring snacks; corn nuts, snack mixes; crackers; pork rinds; pretzels; pre-popped or un-popped popcorn; and cheese puffs or curls.</li> <li>• Doughnuts, cupcakes, cookies, snack cakes, muffins, pastries, sweet rolls, pies, cakes, pudding, churros, scones, gelatin desserts, and any packaged mixes intended to create any of the aforementioned products</li> <li>• Mints, chocolate, marshmallow, gum, toffee, brittle, fudge, marzipan, nougat, candy bars, and candy of all kinds</li> <li>• Ice cream, ice milk, frozen yogurt, custard, whipped cream, sherbet, sorbet, gelato, granita, Italian ices, frozen carbonated beverages, snow cones, and ice pops</li> </ul>

<sup>13</sup> Final Rule, 81 Fed. Reg. at 90694-90696. See also FNS, List of Accessory foods, <https://www.fns.usda.gov/sites/default/files/snap/Accessory-Food-Items.pdf> (last visited Dec. 30, 2016).

<p><b>Food Items That Complement or Supplement Meals</b></p>	<ul style="list-style-type: none"> <li>• Powdered, dried, or extracted spices or seasonings</li> <li>• Baking soda and baking powder</li> <li>• Sugar, honey, maple syrup, aspartame, molasses, high fructose corn syrup, and any other natural or artificial sweeteners</li> <li>• Soda pop, sports or energy drinks, iced tea, fruit punch, mixers for alcoholic beverages, water, and all other carbonated or uncarbonated beverages (except milk, plant-based milk alternatives, and 100% fruit or vegetable juice)</li> <li>• Monosodium glutamate, sodium nitrate, olestra, and any other food additives or any food product that is edible but non-caloric and non-digestible</li> <li>• Vegetable oil, olive oil, shortening, lard, safflower oil, and any other solid or liquid oils or fats (except butter)</li> <li>• Ketchup, mayonnaise, salad dressing, hot sauce, mustard, vinegar, relish, horseradish, chutney, duck sauce, marmite, and all other condiments</li> <li>• Vanilla extract or other flavor extracts and cooking wine</li> <li>• Gravy and bouillon</li> </ul>
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**E. Stocking on a “Continuous Basis”**

As mentioned above, to participate in SNAP a retailer must stock the requisite number of “qualifying staple foods on a *continuous basis*,” meaning: the SNAP retailer must, on any given day of operation, offer for sale and normally display in a public area, “a minimum of **three** stocking units for each qualifying staple variety.”<sup>14</sup> This means a retailer must always have in stock **three** different units per variety of food item—a total of **84** items (7 varieties x 4 staple food categories x 3 stocking units = 84).

Should a retailer sell an item or experience stocking shortfalls that might coincide with a formal inspection, however, FNS added a provision to the final rule that will allow retailers to prove they had the requisite items in stock by submitting supporting documentation dated within 21 days of the store inspection.<sup>15</sup> Acceptable supporting documentation would include invoices and receipts. According to FNS’ *Training Guide for Retailers*, retailers “should retain all invoices for **at least one-year** for program eligibility and integrity purposes” (emphasis added).<sup>16</sup>

<sup>14</sup> 7 C.F.R. §278.1(b)(1)(ii)(A)(emphasis added).

<sup>15</sup> The final rule states:

Documentation to determine if a firm stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the firm has made reasonable stocking efforts to meet the stocking requirement. Such documentation can be achieved through verifying information, when requested by FNS, such as invoices and receipts in order to prove that the firm had ordered and/or received a sufficient amount of required staple foods up to 21 calendar days prior to the date of the store visit. Failure to provide verifying information related to stock when requested may result in denial or withdrawal of authorization. Failure to cooperate with store visits shall result in the denial or withdrawal of authorization. Final Rule, 81 Fed. Reg. at 90699.

<sup>16</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Training Guide for Retailers* (Revised Jan. 2019), <https://fns-prod.azureedge.net/sites/default/files/media/file/Retailer-Training-Guide.pdf>.

## **F. Ineligible Firms – The “Hot Foods” Threshold**

Even if a store were to meet all of the stocking requirements described above, if more than 50 percent of a store’s total *gross* retail sales come from foods that are “cooked or heated on site by the retailer before or after purchase,” the store would be ineligible to participate in SNAP. Gross retail sales include sales of fuels, tobacco, and other items that are not eligible for purchase with SNAP benefits. When calculating total gross sales, FNS will consider “**co-located**” firms, i.e. firms that “include separate businesses that operate under one roof and share all three of the following commonalities: ownership, sale of similar foods, and shared inventory” to be a single firm for purposes of determining eligibility.<sup>17</sup>

## **G. Other Provisions**

**Access** – If a retailer, who cannot meet the stocking requirements described above, is located in an area with significantly limited access to food, it may still be possible for the retailer to participate in SNAP provided the store meets certain “access” criteria. Specifically, FNS is allowed to consider “access” factors such as (1) distance from the nearest SNAP authorized retailer, (2) transportation options, (3) the extent of the store’s stocking deficiencies, and (4) whether the store furthers the purpose of the program during the SNAP authorization process. At this time, however, it is unclear how this access exception will work in practice and it is likely that FNS will try to utilize this access exception sparingly.

**Public Sanctions** – FNS will be allowed to publically disclose certain information about retailers that have been disqualified or otherwise sanctioned for SNAP violations.<sup>18</sup> FNS would only be allowed to disclose the name and address of the store, the owner name(s), and information about the sanction in question—and FNS would only be permitted to disclose that information after the time for administrative and judicial appeals has expired. Moreover, FNS will only be allowed to disclose sanction information for “as long as the duration of the period of disqualification or until the civil penalty has been paid in full, whichever is longer.”

## **III. Compliance Dates**

- Currently licensed SNAP retailers and new applicants (i.e., all retailers who plan to apply to participate in SNAP) will be required to be in compliance with the “hot foods” threshold and the “co-located” firm provisions beginning **October 16, 2017**.
- Retailers (currently licensed retailers and new applicants) will have until **January 17, 2018** to come into compliance with the rule’s stocking *unit* requirements (e.g., 3 items of each of the 3 varieties in the 4 staple food categories on shelves). In addition, the final rule’s updated definition of “accessory food” will go into effect on January 17, 2018.

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<sup>17</sup> 7 C.F.R. §271.1 (definition of “retail food store” as revised by final rule).

<sup>18</sup> Public disclosure may include posting a list of sanctioned retailers on a public website.

- The stocking variety requirements – e.g., the 7 *varieties* of foods in 4 staple food categories (including 1 perishable in 3 staple food categories) has been put on hold until FNS rewrites that part of the Rule. (Further information will be provided as it becomes available.)
- All other provisions in the rule (e.g., definition of “firm” and public sanction provisions) went into effect on **January 17, 2017**.

#### **IV. Conclusion**

**This guidance document is not legal advice.** It is attended only to inform NACS partners, including corner stores, of the changes to the SNAP retailer eligibility requirements. Small format stores are encouraged to reach out to the U.S. Department of Agriculture’s Food and Nutrition Service with any questions on the final rule. Retailers can contact the SNAP Retailer Service Center at 1-877-823-4369.

**APPENDIX 1**  
**Understanding the Final SNAP Rule**

**Pre-2014 Farm Bill**

**3 varieties in each of 4 staple food categories = 12 items**

Meat, Poultry, or Fish	Breads or Cereals	Vegetables or Fruits	Dairy

**2014 Farm Bill**

**7 varieties in each of 4 staple food categories = 28 items**

Meat, Poultry, or Fish	Breads or Cereals	Vegetables or Fruits	Dairy

**FNS Final Rule**

**3 units of each of 7 varieties in 4 staple food categories = 84 items**

Meat, Poultry, or Fish	Breads or Cereals	Vegetables or Fruits	Dairy