

FNS's Proposed Rule on SNAP Retailer Eligibility Requirements Will Harm Small Businesses and Limit Where Low-Income Americans Can Buy Food

The Supplemental Nutrition Assistance Program (SNAP) provides low-income Americans with assistance to purchase food. On February 17, the U.S. Department of Agriculture's Food and Nutrition Service (FNS) published a Proposed Rule altering eligibility requirements for retailers participating in SNAP.¹

The Proposal would make it much harder for neighborhood retailers to participate in the program. This would hinder food accessibility for the many SNAP recipients that use their benefits at these small businesses. There is reason to believe FNS recognizes this and is trying to push small retailers out of SNAP; Undersecretary of Food, Nutrition and Consumer Services Kevin Concannon recently testified that there are more small stores participating in SNAP "than we really need."

The Proposed Rule Would Kick Tens of Thousands of Small Stores out of the Program.

- Under the Proposal, any entity with more than 15% of its total food sales in items that are "cooked or heated on site before or after purchase," would be ineligible to participate in SNAP.
- If a store also has a separate restaurant (like a Subway franchise) in the same building, it would be disqualified based on the sales at the Subway. That is true even though the businesses are completely separate and SNAP cannot be used at the Subway.
- Many stores make some foods—fresh breads, sandwiches, etc.—in the store. Now, they will be punished for doing this by being made ineligible to accept SNAP benefits.

The Proposal Specifically Targets Small-Format Retailers.

- The Proposal would require retailers to offer at least **seven** different varieties of food items in each of the **four** staple food categories (before the 2014 Farm Bill, retailers had to stock three different varieties in each staple food category), including at least **one** perishable item in **three** of the staple food categories.²
- The Proposal would then require that retailers have to publicly display at least **six** units of each of the **seven** food varieties in all **four** categories.
- This means retailers—just to qualify for the program—will have to display **168** of FNS's special-approved items (note limits on that below).

¹ 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>.

² The four staple food categories are: (1) meat, poultry, or fish; (2) bread or cereal; (3) vegetables or fruits; and (4) dairy. Pursuant to the 2014 Farm Bill, the Proposal would also require retailers to offer at least one perishable food item in three of the staple food categories (pre-Farm Bill, one perishable food was only required in two categories). **Please note:** The National Association of Convenience Stores and the Society of Independent Gasoline Marketers supported the 2014 Farm Bill.

- This requirement will make it impossible for many small neighborhood stores to participate in SNAP given their limited store space.

The Proposal Dramatically Limits Approved Staple Foods.

- Under the Proposal, multiple ingredient items (e.g. soups, stews or frozen dinners) would not count towards depth of stock requirements.
- The Proposal makes these changes despite the fact that these foods have counted as staple foods in SNAP for years, and that many people (especially when they are busy) feed their families with staple foods like soup.
- Today, for example, if a retailer stocks chicken noodle soup with chicken as the main ingredient, the item could count towards one item in the meat, poultry, or fish staple food category. Under the Proposal, this multi-ingredient item and many others would be totally excluded from depth of stock determinations.
- The Proposal would make many healthy foods into non-staples:
 - For example, a packet of apple slices and cheese would likely be considered a snack, and therefore an “accessory food” under the new definitions in the Proposal, or a multi-ingredient item. In either case, the item could not count towards depth of stock requirements.
- These limits on foods that count as staples hurt small businesses in particular. These businesses have more difficulty than their big competitors getting regular delivery of some fresh items. They also lack the larger floor plans to stock the required items under the Proposal, especially when you consider that they also want to stock high-demand items that may not count towards depth of stock requirements.

The Proposal Hurts Low-Income Americans—Especially Those Who Work.

- The Proposal will result in tens of thousands of stores exiting SNAP.
- This will make it much harder for people who use SNAP to find convenient places to buy the foods they need and want.
- This could disproportionately impact low-income workers whose work schedules limit their ability to patronize large format retailers.
- Many consumers in rural areas and inner cities will have no reasonable options to buy food—especially at night.
- By substituting its judgment for a consumer’s ability to choose, FNS will hurt low-income Americans in the program.