

THE U.S. DEPARTMENT OF AGRICULTURE
FOOD AND NUTRITION SERVICE

Providing Regulatory Flexibility for
Retailers in the Supplemental
Nutrition Assistance Program
(SNAP)

Docket No. FNS-2019-0003

COMMENTS OF THE
CENTER FOR SCIENCE IN THE PUBLIC INTEREST

Julia McCarthy, J.D.
Senior Policy Associate

Colin Schwartz, M.P.P.
Deputy Director, Legislative Affairs

Margo G. Wootan, D.Sc.
Vice President for Nutrition

1220 L Street, N.W.
Suite 300
Washington, D.C. 20005
(202) 777-8352



June 4, 2019

Vicky Robinson
Chief, Retailer Management and Issuance Branch
Retailer Policy and Management Division
Food and Nutrition Service, U.S. Department of Agriculture
3101 Park Center Drive, Room 418
Alexandria, VA 22302

Docket ID: FNS-2019-0003

Re: Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)

Dear Ms. Robinson:

The Center for Science in the Public Interest (CSPI) appreciates the opportunity to comment on the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) proposed rule regarding stocking requirements for retail food stores that participate in the Supplemental Nutrition Assistance Program (SNAP). CSPI is a nonprofit organization with approximately 500,000 members and subscribers to *Nutrition Action Healthletter*. Since 1971, we have worked to improve food and nutrition policies and provide educational resources on nutrition and food safety. Increasing access to healthy food, especially for low-income families, is a core priority for CSPI and a necessary step to reduce health disparities among Americans.

The SNAP program has great potential to increase healthy food access for millions of families. Given this unfulfilled potential, CSPI has serious concerns with the proposed rule. While the SNAP stocking standards have long been flawed, USDA's current proposal would weaken them further. The proposed rule would substantially undermine the purpose of SNAP stocking standards and could lead to greater SNAP use at outlets with limited options and outlets that sell primarily unhealthy foods, such as liquor, dollar, and corner stores. We encourage the agency to substantially revise its proposal and use nutrition to define variety among foods.

In the 2014 Farm Bill, we supported the "breadth of stock" provision that increased from three to seven the minimum number of food varieties that retailers must stock in each of four "staple food" categories.¹ That provision also increased from two to three the number of staple food categories that must contain at least one perishable staple food variety. The goal of the breadth of stock measures was to increase SNAP participants' access to healthy food.

¹ 7 U.S.C. § 2012(o)(1)(A).

In 2017 and 2018, Congress temporarily barred USDA from requiring retailers to stock an increased variety of staple foods.^{2,3} CSPI opposed these appropriations riders, as they undermined the breadth of stock statutory provisions.

USDA's proposed rule would so dilute the meaning of "variety" that it would, in essence, invalidate the 2014 Farm Bill breadth of stock improvements. By diluting the meaning of "variety," the proposed rule also would undermine the statutory definition of "retail food store." The statute authorizing SNAP makes clear that to be considered a "retail food store," the store must "sell food for home preparation and consumption."⁴

In enacting the 2014 breadth of stock improvements, Congress intended to address the problem of "retailers that meet the minimum of the existing regulations as a way to gain entry into SNAP for the sole purpose of expanding sales of excepted items, including liquor and tobacco, which is decidedly contrary to the intent of the program."⁵ The proposed rule would open up Criterion A SNAP eligibility (staple food stock) to more convenience, liquor, dollar, drug, and other non-food stores. These locations do not carry ample food for home preparation and consumption, nor do they enable SNAP recipients to complete a weekly shopping trip to feed a family a healthy diet.

In the following sections, we describe concerns with the proposed rule and suggest ways for FNS to craft regulations that are clear, support nutrition, and increase access to healthy, staple foods.

Section I explains how the current proposed rule represents a missed opportunity for the program to support health.

Section II describes why the proposed rule will not improve SNAP participants' access to healthy options. Specifically, this section discusses how:

- a. Many of the proposed varieties within staple food categories are arbitrary;
- b. The proposed rule will not encourage retailers to stock a meaningful variety of staple products;
- c. The proposed changes are designed to benefit limited service stores, which are not primary sources of SNAP participants' food;
- d. Loosening "variety" requirements for staple foods could allow fraud-prone retailers to become SNAP-authorized; and
- e. The proposed rule calculates the costs and benefits for small businesses, but not for public health.

² Consolidated Appropriations Acts of 2017, Pub.L. 115–31, Sec. 765.

³ Consolidated Appropriations Acts of 2018, Pub.L. 115–141, Sec. 728.

⁴ 7 U.S.C. § 2012(o)(1).

⁵ H.Rept. 113-333.

Section III recommends how FNS should define varieties for staple food categories to improve SNAP participants' access to healthy food. **To support low-income families and other consumers who shop at SNAP-authorized retailers, we urge FNS to:**

- a. Expand the use of nutrition as a key factor when defining “variety;”
- b. Clarify that certain foods are accessory foods and do not count as staple food varieties; and
- c. Provide technical assistance, training, and support for retailers to stock and promote healthier options.

As Healthy Eating Research recommends, FNS should count only healthy foods as staple food items when determining varieties.⁶ Stronger SNAP retailer requirements would eliminate multiple ingredient foods that are high in added sugars, sodium, saturated fat, and refined grains—foods like frozen pizza and boxed macaroni and cheese—from counting as staple foods. (Importantly, a change in the stocking standards would not change the eligibility of these foods under SNAP; it would only disqualify them from counting toward retailers' staple food requirements.)

Should FNS choose not to eliminate multiple ingredient foods high in added sugars, sodium, and saturated fat from counting toward variety requirements, FNS should use nutritional content to distinguish varieties. FNS already proposed three definitions that use the nutritional value of products as a key defining factor for variety: a definition for 100 percent whole grain products as a bread variety, reduced-fat milk as a dairy variety, and reduced-fat yogurt as an additional dairy variety.

To further distinguish varieties by nutritional qualities, FNS should look to the *Dietary Guidelines for Americans*. The *Dietary Guidelines* outline foods that contribute significantly to Americans' intake of saturated fat, sodium, and added sugars, as well as those Americans under-consume, such as whole grains.⁷ The *Guidelines* recommend nutrient-dense foods, “vegetables, fruits, whole grains, seafood, eggs, beans and peas, unsalted nuts and seeds, fat-free and low-fat dairy products, and lean meats and poultry—when prepared with little or no added solid fats, sugars, refined starches, and sodium.”⁸

⁶ Healthy Eating Research. *Minimum Stocking Levels and Marketing Strategies of Healthful Foods for Small Retail Food Stores*. February 2016. http://healthyeatingresearch.org/wp-content/uploads/2016/02/her_minimum_stocking_final.pdf. Accessed April 27, 2019.

⁷ U.S. Department of Agriculture and U.S. Department of Health and Human Services. *U.S. Dietary Guidelines 2015-2020: A Closer Look at Current Intakes and Recommended Shifts*. <https://health.gov/dietaryguidelines/2015/guidelines/chapter-2/a-closer-look-at-current-intakes-and-recommended-shifts/>. Accessed April 27, 2019.

⁸ U.S. Department of Agriculture and U.S. Department of Health and Human Services. *U.S. Dietary Guidelines for Americans 2015-2020*. https://health.gov/dietaryguidelines/2015/resources/2015-2020_dietary_guidelines.pdf. Accessed April 27, 2019.

I. Context: A Missed Opportunity to Improve Health

Overweight and obesity rates across the country, especially for low-income populations and certain racial and ethnic groups, remain alarmingly high. Excess weight puts millions of Americans at increased risk for type 2 diabetes, heart disease, stroke, cancer, and other chronic diseases. The typical American diet is low in fruits, vegetables, and whole grains, but high in sodium, saturated fat, and added sugars. Americans' eating patterns fuel higher disease prevalence, premature mortality, and disabilities.⁹

Diet-related diseases cost billions in preventable healthcare spending. In 2016, direct healthcare costs from obesity-related chronic diseases topped \$480 billion.¹⁰ With more than 70 percent of adults and 35 percent of children overweight or obese,^{11,12} programs like SNAP are essential to reduce food insecurity, as well as obesity and other nutrition-related diseases.

There is a critical need to improve SNAP participants' access to healthy options. Access to healthy food increases food security, facilitates healthier eating behaviors, and supports health.

Research shows that access to retail food stores varies dramatically by socioeconomic, racial and ethnic, and geographic status.¹³ Communities with predominantly white residents have two to four times more large grocery stores than do communities of color.¹⁴ These differences impact health; a review of the evidence suggests that regardless of SNAP participation status, neighborhood residents who have better access to supermarkets and limited exposure to convenience stores tend to have healthier diets and lower levels of obesity.¹⁵

⁹ U.S. Department of Agriculture and U.S. Department of Health and Human Services, *U.S. Dietary Guidelines for Americans 2015-2020*.

¹⁰ Waters H, Graf M. *America's Obesity Crisis: The Health and Economic Costs of Excess Weight Gain*. Milken Institute. October 26, 2018. <https://www.milkeninstitute.org/publications/view/944>. Accessed April 27, 2019.

¹¹ Fryar CD, Carroll MD, Ogden CL. *Prevalence of Overweight, Obesity, and Extreme Obesity Among Adults Aged 20 and Over: United States, 1960-1962 through 2013-2014*. National Center for Health Statistics. July 2016. https://www.cdc.gov/nchs/data/hestat/obesity_adult_13_14/obesity_adult_13_14.pdf. Accessed April 27, 2019.

¹² Fryar CD, Carroll MD, Ogden CL. *Prevalence of Overweight, Obesity, and Severe Obesity Among Children and Adolescents Aged 2—19 Years: United States, 1961-1965 through 2015-2016*. National Center for Health Statistics. September 2018. https://www.cdc.gov/nchs/data/hestat/obesity_child_15_16/obesity_child_15_16.pdf. Accessed April 27, 2019.

¹³ Powell L, Slater S, Mirtcheva D, et al. Food store availability and neighborhood characteristics in the United States. *Prev Med*. 2007;44:189-195.

¹⁴ Morland K, Wing S, Diez Roux A, Poole C. Neighborhood characteristics associated with the location of food stores and food service places. *Am J Prev Med*. 2002;22(1):23-29.

¹⁵ Larson NI, Story MT, Nelson MC. Neighborhood environments: disparities in access to healthy foods in the U.S. *Am J Prev Med*. 2009;36(1):74-81.

Figure 1: Dollar Stores in Low-Income Communities Do Not Necessarily Increase Access to Healthy Food

Store shelves and coolers in this dollar store had sparse and unhealthy options. (Washington, D.C., 5/7/19)

Low-income communities and communities of color tend to have more small retail food outlets, such as corner, convenience, and liquor stores.^{16,17} Small retail food stores are less likely than supermarkets to sell healthful varieties of staple foods, including fresh fruits and vegetables, whole grain-rich foods, and low-fat dairy products.^{18,19,20,21,22} A recent landmark study indicates that a diet of highly processed foods, like those found in convenience stores, leads to greater calorie intake and weight gain compared to a diet of fresh fruits, vegetables, and other unprocessed foods.²³ Though supermarkets are a major purveyor of highly processed food, they also sell a wide variety of fresh produce, whole grains, and other minimally processed foods.

II. The Proposed Rule Fails to Improve SNAP Participants' Access to Healthy Options

There are serious, systemic flaws in the agency's proposal that would undermine the purpose of the law. As required by the 2014 Farm Bill, the agency's 2016 rule expanded and defined varieties of food in each of the four staple food categories. This proposed rule would amend

¹⁶ Morland, 2002.

¹⁷ Cannuscio CC, Tappe K, Hillier A, Bутtenheim A, Karpyn A, Glanz K. Urban food environments and residents' shopping behaviors. *Am J Prev Med.* 2013;45(5):606-614.

¹⁸ Cavanaugh E, Mallya G, Brensigner C, Tierney A, Glanz K. Nutrition environments in corner stores in Philadelphia. *Prev Med.* 2013;56(2):149-151.

¹⁹ Lucan SC, Karpyn A, Sherman S. Storing empty calories and chronic disease risk: Snack-food products, nutritive content, and manufacturers in Philadelphia corner stores. *J Urban Health.* 2010;87(3):394-409.

²⁰ Laska MN, Borradaile KE, Tester J, Foster GD, Gittelsohn J. Healthy food availability in small urban food stores: A comparison of four US cities. *Public Health Nutr.* 2010;13(7):1031-1035.

²¹ Laska MN, Caspi CE, Pelletier JE, Friebur R, Harnack LJ. Lack of healthy food in small-size to mid-size retailers participating in the Supplemental Nutrition Assistance Program, Minneapolis-St. Paul, Minnesota. *Prev Chronic Dis.* 2015;12:E135.

²² Caspi CE, Pelletier JE, Harnack L, Erickson DJ, Laska MN. Differences in healthy food supply and stocking practices between small grocery stores, gas-marts, pharmacies and dollar stores. *Public Health Nutr.* In Press. DOI: dx.doi.org/10.1017/S1368980015002724.

²³ Hall KD, et al. Ultra-processed diets cause excess calorie intake and weight gain: an inpatient randomized controlled trial of ad libitum food intake. *Cell Metabolism.* May 16, 2019. [https://www.cell.com/cell-metabolism/fulltext/S1550-4131\(19\)30248-7](https://www.cell.com/cell-metabolism/fulltext/S1550-4131(19)30248-7). Accessed May 24, 2019.

those definitions.²⁴ Many of the discrete varieties that the proposed rule adds do not align with Federal efforts to support healthy eating, reduce nutrition and health disparities, or improve public health.

In lower income neighborhoods across the country, dollar stores and liquor stores already compete fiercely for shopper's attention and money. The proposal would fuel this sector because the proposed changes would, generally speaking, make it easier for smaller, limited-services stores that carry less healthful foods to accept SNAP. At the same time, the proposed changes would make it harder for SNAP shoppers to purchase more nutritious foods for home preparation and consumption. The proposed rule would thus harm the retail landscape for SNAP participants. Moreover, these changes would impact anyone who purchases items in SNAP retail locations by undermining the incentives the program provides retailers to expand healthier options.

a. Many Proposed Varieties within the Staple Food Categories Are Arbitrary and Include Inappropriate Foods

In many cases, the proposed rule would arbitrarily divide a current single variety and allow similar products to count as different varieties. For example, in the dairy category, FNS proposes to further subdivide the “soft” cheese variety into “fresh cheese” and “soft and semi-soft cheese” varieties. (Unhelpfully, the examples of fresh cheese that FNS lists are cheeses with textures a consumer would also describe as “soft.”)

FNS's proposal to divide cheese into four arbitrary varieties—fresh, soft, hard, and cheese product—is confusing. It is also unhelpful to retailers and consumers. The product examples that FNS cites, most notably canned spray cheese and canned cheese dipping sauce, would encourage retailers to stock more unhealthy, highly processed cheese products. These are foods consumed as snacks (and with snacks, such as chips and crackers) rather than for home preparation, as the law intends.²⁵

This erosion of the standards could allow retailers that stock such items—retailers such as corner stores—to become SNAP-eligible retailers without offering a meaningful variety of “basic items of food that make up a significant portion of an individual's diet and are usually prepared at home and consumed as a major component of a meal.”²⁶

b. The Proposed Rule Fails to Encourage Retailers to Stock a Meaningful Variety of Staple Products

The proposed rule fails to encourage retailers to stock a meaningful variety of products for home preparation and consumption. For example, a retailer could stock olives, limes, lemons, maraschino cherries, juice, Craisins, and trail mix—all items commonly found in a liquor store—to fulfill the vegetable and fruit variety requirements set out in this proposed rule. Tables 1 and 2

²⁴ 81 FR 90675.

²⁵ 7 U.S.C. § 2012(o)(1).

²⁶ 81 FR 90675.

provide examples of how a retailer could stock either healthy or only unhealthy items and still satisfy the proposed stocking standards.

Table 1: Healthy Stocking Options that Meet the Proposed Variety Requirements

Meat, poultry, or fish	Dairy products (includes plant-based alternatives)	Fruit or vegetables	Bread or cereals
sliced turkey (perishable turkey)	fat-free milk (fat-reduced perishable milk)	apples (apple)	whole-wheat bread (bread)
frozen chicken (perishable chicken)	Parmalat 1% Milk (liquid shelf-stable cow milk)	oranges (orange)	corn tortillas (corn-based tortillas)
canned tuna fish (shelf-stable tuna)	unsweetened soy milk (plant-based milk substitute)	bananas (banana)	rye bread (rye)
fresh catfish (perishable catfish)	cow's milk-based infant formula (cow milk-based infant formula)	lettuce (lettuce)	whole-wheat spaghetti (pasta)
tofu (plant-based alternative meat)	2% milk mozzarella cheese (soft cow milk-based cheese)	tomatoes (tomato)	brown rice (rice)
canned beans (beans)	parmesan cheese (cow milk-based hard cheese)	cucumbers (cucumber)	bran flakes (cold breakfast cereal)
almonds (nuts)	plain non-fat yogurt (fat-reduced cow milk-based yogurt)	carrots (carrot)	oatmeal (hot breakfast cereal)

Table 2: Less-Healthful Stocking Options that Meet the Proposed Variety Requirements

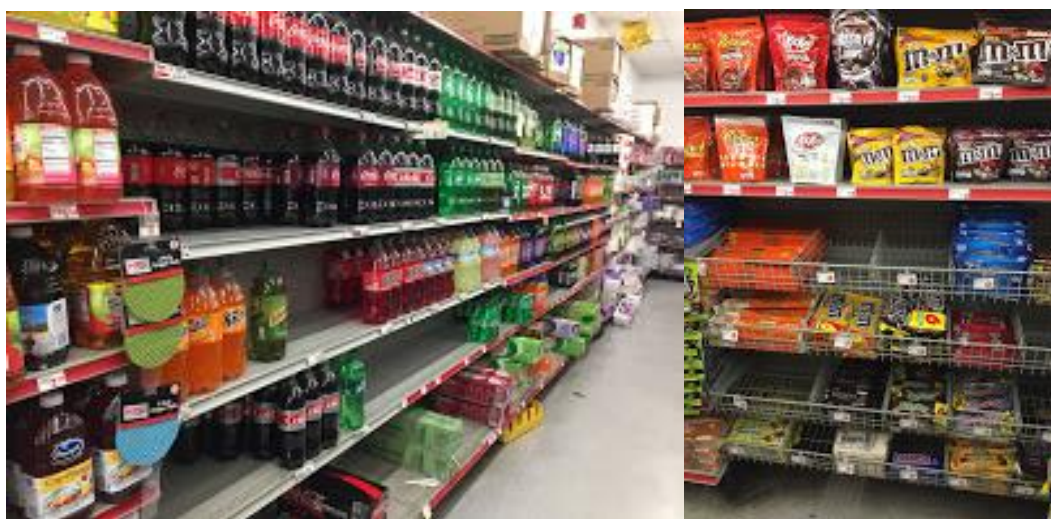
Meat, poultry, or fish	Dairy products (includes plant-based alternatives)	Fruit or vegetables	Bread or cereals
Slim Jim (shelf-stable beef)	Reddiwhip (cream)	lemon juice (lemon)	DiGiorno Stuffed Crust Pizza (general wheat-based product)
ground beef (perishable beef)	Carnation Sweetened Condensed Milk (liquid shelf-stable milk)	Ocean Spray Craisins (cranberry)	Kraft Mac and Cheese (pasta)
SPAM (shelf-stable pork)	cream cheese (soft milk cheese)	maraschino cherries (cherry)	cinnamon raisin bagel (bagels)
bacon (perishable pork)	canned cheese spray (cheese products)	pimento-stuffed olives (olives)	Jimmy Dean English Muffin Sausage, Egg, and Cheese (English muffin)
Vienna chicken sausage (shelf-stable chicken)	Sour-Patch Go Gurt (yogurt drink)	Campbell's Cream of Broccoli Soup (broccoli)	frozen croissants (crescent bread)
egg salad (eggs)	Yo Crunch Oreo Cookies N Cream Lowfat Yogurt (yogurt)	tater tots (potato)	Froot Loops (cereal)
trail mix with chocolate (nuts/seeds)	Muscle Milk (powdered cow milk)	Farm Rich Crispy Fried Dill Pickles (cucumber)	White Castle Microwaveable Frozen Cheeseburgers (buns)

c. The Proposed Changes Are Designed to Benefit Limited Service Stores, which Are Not Primary Sources of SNAP Participants' Food

USDA data show that people purchase a significantly larger proportion of their food at supermarkets and super stores than at limited service outlets like convenience and dollar stores; SNAP shoppers redeem 82 percent of their benefits at larger format stores.²⁷ Large format stores routinely carry a wide variety of items in all four of the SNAP staple food categories.²⁸

Although convenience stores make up 41 percent of SNAP-authorized retailers, they redeem only about five percent of SNAP benefits.²⁹ Food in these stores is less healthful.³⁰ Limited service stores carry a larger proportion of unhealthy, ultra-processed products, like snack foods, which are not products consistent with home preparation and consumption.³¹

Figure 2: Limited Service Stores Carry a Larger Proportion of Unhealthy, Ultra-Processed Products



Dollar store shelves are stocked with unhealthy items like soda and candy.
(Mount Ranier, MD and Washington, D.C., 5/7/19)

Because grocery stores and supercenters have little problem meeting current stocking requirements, changes to loosen requirements will have little effect on these stores. The proposed changes to SNAP stocking standards will instead provide a boost to smaller stores that carry less healthful foods.

²⁷ U.S. Department of Agriculture. *Retailer Policy & Management Division 2012 Annual Report*. 2012. <https://fns-prod.azureedge.net/sites/default/files/snap/2012-annual-report.pdf>. Accessed April 27, 2019.

²⁸ U.S. Department of Agriculture, *Retailer Policy & Management Division 2012 Annual Report*, 2012.

²⁹ U.S. Department of Agriculture, *Retailer Policy & Management Division 2012 Annual Report*, 2012.

³⁰ Barnes TL, Pelletier JE, Erickson DJ, Caspi CE, Harnack LJ, Laska MN. Healthfulness of foods advertised in small and nontraditional urban stores in Minneapolis–St. Paul, Minnesota, 2014. *Prev Chronic Dis*. 2016;13:160149.

³¹ Rose D, Bodor JN, Swalm CM, Rice JC, Farly TA, Hutchinson PL. Deserts in New Orleans? Illustrations of urban food access and implications for policy. 2009. <https://pdfs.semanticscholar.org/abc8/b418aa0783c8f3b0a0c4fca8f137ad806e0a.pdf>. Accessed April 27, 2019.

Weakening the stocking standards would prime the pump for greater proliferation of limited option stores, like dollar stores, and exacerbate a troubling trend already underway. The Government Accountability Office (GAO) reports that the number of SNAP-authorized stores increased from 162,000 in 2007 to 250,000 in 2017, and that much of this increase came from small retailers like convenience, drug, and dollar stores.³²

Limited option stores compete with and threaten small, independent grocers that provide a wider variety of healthier options. Weakened stocking standards would allow stores that primarily sell sugar-sweetened beverages and snack foods to redeem a greater share of SNAP dollars, undermining dietary advice. USDA should revise its proposal to ensure more limited service stores that do not offer a meaningful variety of food for home preparation and consumption do not become authorized SNAP retailers, ultimately reducing participants' access to healthy food.

d. Loosening “Variety” Requirements for Staple Foods Would Allow Fraud-Prone Retailers to Become SNAP-Authorized

Allowing arbitrary, non-discrete varieties to satisfy the seven-variety threshold undermines Congressional intent. By increasing the variety from three to seven in the 2014 Farm Bill, Congress intended to limit certain retailers' entry into SNAP. The retailers that Congress was attempting to exclude were identified as those seeking to increase sales of excepted items, including liquor and tobacco.³³

Congressional concerns are well-founded. A GAO report identified SNAP minimum stocking requirements “as a factor potentially contributing to retailer trafficking, as the standards may make it easier for small, fraud-prone retailers that do not primarily sell food to enter the program.”³⁴ Reports from the Congressional Research Service corroborate this, finding that smaller retailers received the bulk of FNS sanctions in FY2015.³⁵

e. The Proposed Rule Includes the Costs and Benefits for Small Businesses, but Incorrectly Omits Costs for Public Health

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and to craft regulations that maximize net benefits, specifically benefits to public health and equity.^{36,37}

The proposal fails to discuss public health benefits, nor potential healthcare costs, for consumers. The savings that FNS estimates would occur would flow only to limited service retailers and are

³² U.S. Government Accountability Office. *Supplemental Nutrition Assistance Program: Actions Needed to Better Measure and Address Retailer Trafficking*. December 2018. <https://www.gao.gov/assets/700/696433.pdf>. Accessed April 27, 2019.

³³ H.Rept. 113-333.

³⁴ U.S. Government Accountability Office. *Food Stamp Trafficking: FNS Could Enhance Program Integrity by Better Targeting Stores Likely to Traffic and Increasing Penalties*. October 2006. <https://www.gao.gov/assets/260/252570.pdf>. Accessed April 27, 2019.

³⁵ Congressional Research Service. *Updated Standards for SNAP-Authorized Retailers*. August 4, 2017. https://www.everycrsreport.com/files/20170804_R44650_72842885b20e2bd0f7e16ded3811831ffbb0dbe0.pdf. Accessed April 27, 2019.

³⁶ Executive Order 12866, September 30, 1993.

³⁷ Executive Order 13563, January 18, 2011.

modest—\$22.5 million over five years. FNS must assess the public health implications of the proposed weakened stocking standards prior to finalizing the rule, as these costs could render the rule cost-ineffective.

III. FNS Should Improve SNAP Stocking Standards and Participants' Access to Healthier Options

More clearly defining varieties based on nutritional content would help make healthy staple foods more accessible to low-income families. The discrete varieties of staple foods FNS recognizes should: 1) be clear, rather than arbitrary; and 2) define categories by nutritional quality.

Instead, FNS has proposed inconsistent ways to group products within and between staple food categories. For example, in the dairy category, FNS proposed to further split milk by nutrition content, but subdivide cheese by texture and freshness.

FNS's proposal to group some foods together, but consider others as discrete varieties, is confusing. Under the proposed rule, retailers will need to remember that *some—but not all*—similar foods count as distinct varieties and that *some—but not all*—packaging types or processing methods qualify as distinct items. For example, under the new rule, cheddar is classified as a different variety of cheese than Muenster, but jarred Alfredo sauce and American cheese slices are the same variety. A retailer would need to commit to memory which cheeses qualify as hard, soft, fresh, or cheese-product.

Rather than carving out arbitrary groupings, FNS should use nutritional content to provide a meaningful, workable basis for variety, which would further the program's legal purposes.

a. FNS Should Expand Its Use of Nutrition When Defining "Variety"

As Healthy Eating Research recommends, FNS should count only healthy foods as staple food items when counting varieties.³⁸ Stronger SNAP retailer requirements would eliminate multiple ingredient foods that are high in added sugars, sodium, saturated fat, and refined grains—foods like frozen pizza and boxed macaroni and cheese—from counting as staple foods. (Importantly, a change in the stocking standards would not change the eligibility of these foods under SNAP; it would only disqualify them from counting toward retailers' staple food requirements.)

Should FNS choose not to eliminate multiple ingredient foods high in added sugars, sodium, and saturated fat from counting toward variety requirements, FNS should use nutritional content as a key determinant to distinguish varieties. FNS already proposed three definitions that use the nutritional value of products as a key defining factor for variety: a definition for 100 percent whole grain products as a bread variety, reduced-fat milk as a dairy variety, and reduced-fat yogurt as an additional dairy variety.

To further distinguish varieties by nutritional qualities, FNS should look to the *Dietary Guidelines for Americans*. The *Dietary Guidelines* outline foods that contribute significantly to

³⁸ Healthy Eating Research, 2016.

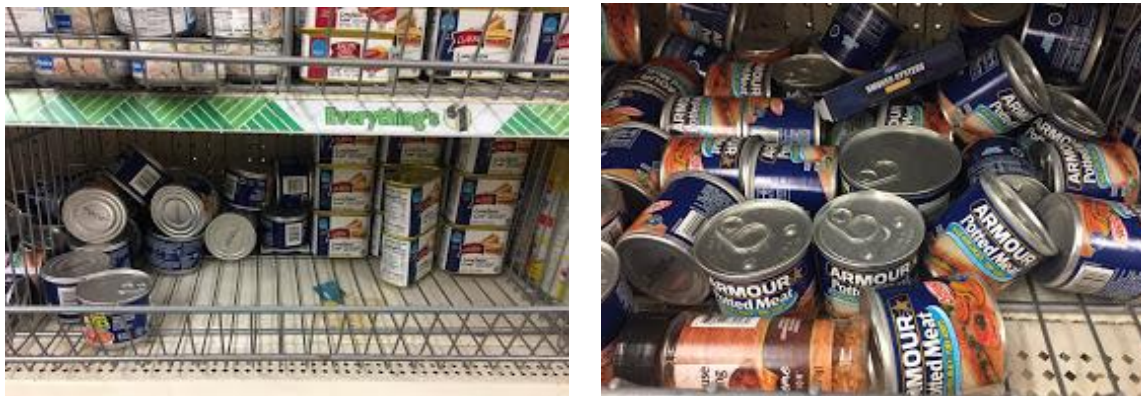
Americans' intake of saturated fat, sodium, and added sugars, as well as those Americans under-consume, such as whole grains.³⁹ The *Guidelines* recommend nutrient-dense foods, “vegetables, fruits, whole grains, seafood, eggs, beans and peas, unsalted nuts and seeds, fat-free and low-fat dairy products, and lean meats and poultry—when prepared with little or no added solid fats, sugars, refined starches, and sodium.”⁴⁰

FNS should also consider the food packages for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and standards for the National School Lunch and Breakfast programs. Both programs provide nutrition support for participants and could inform retailer requirements to increase SNAP participants' access to healthier options. Below we suggest ways FNS could use nutrition to help define and strengthen the varieties that count toward staple food requirements.

1. *FNS Should Use Nutritional Content to Distinguish Varieties in the Meat, Poultry, or Fish Staple Food Category*

In the proposed rule, FNS illogically groups frozen meat with fresh meat, rather than with canned meat products. In lieu of such an arbitrary distinction, we urge the agency to use nutritional content as a key factor to distinguish varieties within the category.

Figure 3: Much of the Meat in Limited Service Stores Is Shelf-Stable



Shelf-stable potted meat, Vienna bites, and Luncheon Loaf were common meat products in this dollar store. (Washington, D.C., 5/7/19)

The *Dietary Guidelines* recommends lower intake of saturated fat to reduce the risk of heart disease, and red meat is a major source of saturated fat in Americans' diets. We therefore recommend that FNS use the USDA definition of extra lean to establish regular and extra lean varieties for red meats. Distinguishing extra lean from regular meat would incentivize retailers to stock extra lean meat options and thus increase SNAP participants' access to healthier varieties.

³⁹ U.S. Department of Agriculture and U.S. Department of Health and Human Services. *U.S. Dietary Guidelines 2015-2020: A Closer Look at Current Intakes and Recommended Shifts*, 2015.

⁴⁰ U.S. Department of Agriculture and U.S. Department of Health and Human Services, *U.S. Dietary Guidelines for Americans 2015-2020*, 2015.

In addition, we recommend that FNS require that at least four of the varieties be extra lean. Retailers could easily provide an adequate number of distinct varieties, such as beef, extra lean beef, pork, extra lean pork, chicken, turkey, and many other meats; tuna, salmon, shrimp, catfish, and many other fish; as well as, beans, nuts, seeds, eggs, tofu, tempeh, seitan, plant-based luncheon meat, and other veggie meats.

Research demonstrates that many stores were able to meet the “variety” requirements in the 2016 rule, which would have disallowed multiple-ingredient foods. One study of Chicago retailers showed that nearly 97 percent of small grocery stores and 73 percent of limited service stores carried seven varieties of meat, poultry, or fish that met the 2016 standards.⁴¹

2. *FNS Should Use Nutritional Content to Require Healthy Dairy Varieties and Distinguish among Cheese Varieties*

Many of the dairy products USDA lists as staple foods are inconsistent with USDA’s own Food Patterns Equivalents Database. In the Database, USDA explains that “[t]he Dairy Group does not include dairy fats such as butter, cream, and cream cheese, which are assigned to the Solid Fats component” and that “[r]egular and low fat cream cheeses are not assigned to the Cheese component due to their low calcium content.”⁴² Yet FNS lists cream, butter, and regular cream cheese as staple dairy items in the proposed rule.

The Chicago study showed that only a third of small grocery stores and limited service stores stock seven varieties of dairy.⁴³ Rather than weaken the variety standards by dividing certain dairy products into arbitrary sub-categories, FNS should provide small retailers with technical assistance to stock a healthy range of dairy products. FNS should also require that at least four of the seven dairy varieties be low-fat, no-fat, or no added sugar varieties (see below for more on milk and yogurt).

We oppose FNS’s proposal for cheese varieties, which, as explained above, are arbitrary and hard to understand. Instead, the agency should recognize two cheese varieties: reduced-fat and regular cheese.

Cheese is a top source of saturated fat in the American diet.⁴⁴ By dividing cheese into varieties based on saturated fat content, FNS would encourage retailers to stock healthier cheese varieties. We suggest defining regular cheese as products with more than three grams of saturated fat per labeled serving and reduced-fat cheese as products with three or fewer grams of saturated fat.

⁴¹ Powell LM, Singleton CR, LI Y, Duran AC, Zenk S. *Proposed Changes to SNAP-Authorized Retailer Requirements and the Availability of Staple Foods in Small Stores Located in Low-Income Chicago Communities*. Illinois PRC Research Brief. April 2018. <https://illinoisprc.org/wp-content/uploads/2018/04/SNAP-Retailer-Stocking-Requirements-Illinois-PRC-Brief-No.102-Apr-2018.pdf>. Accessed April 27, 2019.

⁴² Bowman SA, Clemens JC, Shimizu M, Friday JE, Moshfegh AJ. *Food Patterns Equivalents Database 2015-2016: Methodology and User Guide*. U.S. Department of Agriculture. September 2018. https://www.ars.usda.gov/ARUserFiles/80400530/pdf/fped/FPED_1516.pdf. Accessed April 27, 2019.

⁴³ Powell, 2018.

⁴⁴ National Cancer Institute, Division of Cancer Control and Population Sciences. *Top Food Sources of Saturated Fat among U.S. Population, 2005–2006*. NHANES. https://epi.grants.cancer.gov/diet/foodsources/sat_fat/sf.html. Accessed April 27, 2019.

Any plant-based cheese alternatives that FNS recognizes as staple varieties should be nutritionally equivalent to animal-milk cheeses and meet minimum nutrient standards for protein, calcium, vitamin D, and potassium.

3. *FNS Should Revise How the Agency Uses Nutritional Content to Distinguish Milk Varieties*

The distinction in the proposed rule between three percent or greater and less than 3 percent milk fat is not consistent with the *Dietary Guidelines* nor with the National School Lunch and Breakfast programs. The *Dietary Guidelines* recommends “increasing dairy intake in fat-free or low-fat forms.”⁴⁵

We urge FNS to recognize three milk varieties: 1) milks higher in saturated fat (whole and two percent), 2) low-fat milk, and 3) fat-free milk. Recognizing a variety for milks with lower saturated fat contents could help increase availability of healthier options. USDA also should count plant-based alternatives that meet minimum nutrient standards for protein, calcium, vitamin D, and potassium.

The 2016 rule allows for three different varieties of milk: perishable, shelf-stable, and powdered. We urge FNS not to divide milk varieties by perishability, as there is no nutritional difference between shelf-stable and powdered milks. Powdered products like Muscle Milk, despite the name, are not adequate nutritional substitutes for animal milk.

4. *FNS Should Revise How the Agency Uses Nutritional Content to Distinguish Yogurt Varieties*

We urge FNS to recognize three yogurt varieties: 1) full-fat yogurt, 2) lower-fat yogurt (low-fat or fat-free), and 3) yogurt with no added sugars. We were pleased to see FNS use the difference in fat content—which is proxy for saturated fat content in dairy foods—as a means of distinguishing yogurt varieties. However, FNS’ distinction between products with three or greater percent milk fat and products with less than three percent milk fat is not consistent with the *Dietary Guidelines*. The *Dietary Guidelines* advise individuals to choose dairy products in their fat-free or low-fat forms.

Distinguishing products by fat content should encourage retailers to stock healthier versions with less saturated fat. Because many yogurts and yogurt drinks are high in added sugars, we propose that yogurts with no added caloric sweeteners also count as a distinct variety. USDA also should count plant-based alternatives that meet minimum nutrient standards for protein, calcium, vitamin D, and potassium.

5. *FNS Should Distinguish Varieties in the Bread or Cereal Staple Food Category by Nutritional Content*

Stores do not need “additional flexibilities” to meet the variety standards in this category. The Chicago study showed that 100 percent of small grocery stores already carry seven varieties of

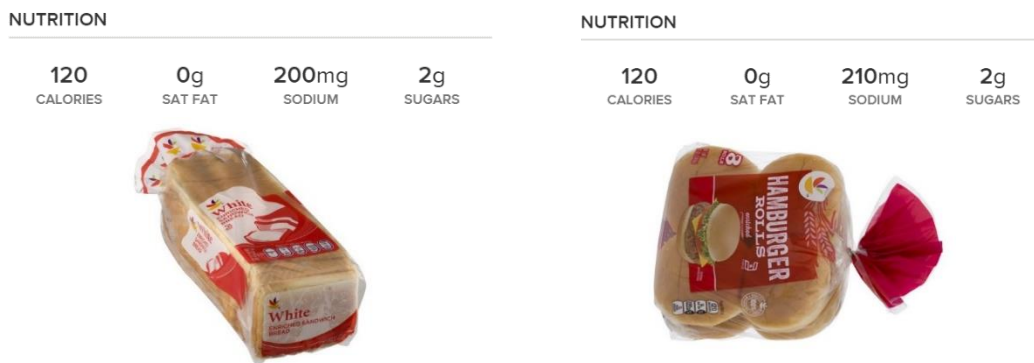
⁴⁵ U.S. Department of Agriculture and U.S. Department of Health and Human Services, *U.S. Dietary Guidelines for Americans 2015-2020*.

bread or cereal.⁴⁶ Even among limited service retailers in the study, 73 percent stocked adequate variety in these categories (as defined by the agency’s 2016 rule).

We strongly support USDA’s proposal to allow grains to count once as a variety if they are 100 percent whole grain and a second time if a product is less than 100 percent whole grain. In addition, FNS should require that at least four of the varieties are whole grain. The *Dietary Guidelines* recommends consuming half of grains as whole grains, and most Americans do not consume the recommended amount.⁴⁷

We oppose FNS’s proposal to further split bread into additional, discrete staple food varieties. Wheat-based bread should count as one variety: bread. The multiple varieties for “wheat-based bread”—bread, bagels, buns, English muffins, and pita—that FNS counts are items with similar ingredients and equivalent nutritional profiles, just different shapes. Nutritionally, there is little difference between sliced sandwich bread, bagels, English muffins, buns, and pitas.

Figure 4: Wheat-Based Bread Varieties Have Similar Nutritional Profiles



In addition, we oppose FNS’s proposal to include crescent rolls as a discrete staple food variety in the wheat-based bread or cereal category. Crescent rolls are just another arbitrary category of bread. They are typically high in refined flour, and unlike most breads, contain saturated fat.

We commend FNS’s proposal to count additional, culturally appropriate varieties as bread. Recognizing roti, naan, and matzah as bread could allow retailers to better respond to customers’ cultural preferences. However, all of these should be grouped into a single discrete variety with other breads. Stores could meet the bread and cereal variety requirements by offering a wider variety of grain products, such as oatmeal, rice, pasta, breakfast cereal, wheat bread, barley, and quinoa, and by adding more whole grain varieties.

b. FNS Should Clarify that Certain Foods Are Accessory Foods and Do Not Count as Staple Foods

In the final rule, FNS should sharpen the definitions of “staple” and “accessory” foods and not list accessory foods as examples of staple foods. The proposed rule lists a number of snack

⁴⁶ Powell, 2018.

⁴⁷ U.S. Department of Agriculture and U.S. Department of Health and Human Services, *U.S. Dietary Guidelines for Americans 2015-2020*.

foods, like beef jerky and cheese spray, as examples of items that would qualify as staple foods. The statute is clear that accessory foods include food items “*such as* coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices.”⁴⁸ The 2016 final rule further defined “accessory foods” to:

include foods that are generally considered snack foods or desserts *such as, but not limited to*, chips, ice cream, crackers, cupcakes, cookies, popcorn, pastries, and candy, and other food items that complement or supplement meals, such as, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt, and sugar... Accessory food items shall not be considered staple foods for purposes of determining the eligibility of any firm.⁴⁹

FNS must clarify that all snacks, and not just some, are accessory foods and therefore do not qualify as staple foods, let alone as discrete staple food varieties. Legislative history verifies that Congress: 1) intended a wider variety of foods than those listed in the statute to qualify as accessory foods; and 2) included the accessory food provision in the statute to specifically exclude stores that do not sell a variety of nutritious, basic foods. Though Congress did not specifically list snacks and ice cream in the authorizing statute, the 1977 House Report explains that “stores whose primary business is the sale of snack-type foods . . . are not authorized to accept food coupons because they do not enable recipients to obtain a low-cost nutritious diet and, therefore, do not effectuate the purpose of the food stamp program.”⁵⁰ The same report further explained that “candy stores and ice cream stores and vendors are not authorized to redeem food stamp coupons because they do not provide recipients with an opportunity to obtain any basic staples.”⁵¹

In 2016, FNS proposed to better align the definition of accessory foods with Congressional intent to “enable recipients to obtain a low-cost nutritious diet.”⁵² At that time, the convenience store trade association complained that as a result of FNS’s proposal “accessory food items with higher profit margins, such as potato chips, would need to be replaced with staple food items with lower profit margins, such as fruits and vegetables,”⁵³ demonstrating a clear understanding that the rule’s goal was to increase the healthfulness of food options in retail settings.

The agency also clarified that “staple foods are generally considered to be basic items of food that make up a significant portion of an individual's diet and are usually prepared at home and consumed as a major component of a meal.”⁵⁴

FNS must make sure that the examples the agency provides for staple foods are not actually accessory foods and should more clearly delineate the boundaries for staple foods. The

⁴⁸ 7 U.S.C. § 2012(o)(1).

⁴⁹ 7 C.F.R. § 271.2.

⁵⁰ H. Rep. No. 95-464.

⁵¹ H. Rep. No. 95-464.

⁵² H. Rep. No. 95-464.

⁵³ 81 FR 90675.

⁵⁴ 81 FR 90675.

distinction between staple and accessory foods has been a longstanding problem, one rife with errors. Many of the food items that FNS lists as staple food items in both the 2016 final rule and current proposal rule are snack foods and are clearly not for home preparation and consumption as the law explicitly requires. For example, FNS listed beef jerky as a possible variety of beef in the 2016 rule, though it is clearly a snack food, not likely to be a “major component of a meal.”⁵⁵

FNS’s allowance for unhealthy snack foods if the first ingredient is a “staple” food, like cheese or meat, is indefensible under the statute and conflicts with Congressional intent. Just because an ingredient derived from a staple food is listed first does not mean that the finished product is not a snack food or a complimentary or supplemental item. Corn chips, which are specifically excluded as snacks in the 2016 rule, have corn as their first ingredient. Beef jerky and spray cheese are clearly snacks and are not used for home preparation or major components of meals. On a recent trip to several dollar stores, we found nacho cheese, along with beef jerky, in the snack food aisle.

Figure 5: Cheddar Cheese Snack and Beef Jerky Are Accessory Foods that Appear in the Snack Food Aisle



“Pasteurized cheese snack” and beef sticks were stocked next to other snacks like Cheez-Its and Combos in this dollar store. (Mount Ranier, MD, 5/7/19)

FNS also lists pimiento-stuffed olives as an example of an item that would qualify as a staple food. It is hard to imagine an individual building a meal around pimiento-stuffed olives, much less eating a half-cup serving of them to contribute to the two and a half cups of vegetables that the *Dietary Guidelines* recommends.

As USDA wrote in the 2016 final rule, “the statutory language defining “accessory food items” was explicitly not intended to limit this class of food items to the eight items specifically enumerated” and the accessory food examples the agency provided were “not to be construed as an exhaustive list.”⁵⁶ The 2016 final rule explained that the agency would update the accessory food list in guidance. But since FNS finalized the 2016 rule, the agency has added only a single food item, brownies, to the short list of accessory foods the agency recognizes.

Rather than defining staple foods as everything not on the accessory food list, FNS should do the opposite and define accessory foods as everything not on the staple food list. A staple food list

⁵⁵ 81 FR 90675.

⁵⁶ 81 FR 90675.

should include only “basic items of food that make up a significant portion of an individual's diet and are usually prepared at home and consumed as a major component of a meal.” The agency previously expressed concerns that an exhaustive list of staple food varieties would be difficult to develop because approximately 20,000 new food products enter the retail marketplace annually. But, the same is true of keeping the accessory food list updated.

c. FNS Should Provide Technical Assistance, Training, and Support for Small Stores to Stock and Promote Healthier Options

For small, independent stores, which comprise approximately seven percent of SNAP retailers, we encourage FNS to provide training and technical assistance, either directly or through experienced contractors.⁵⁷

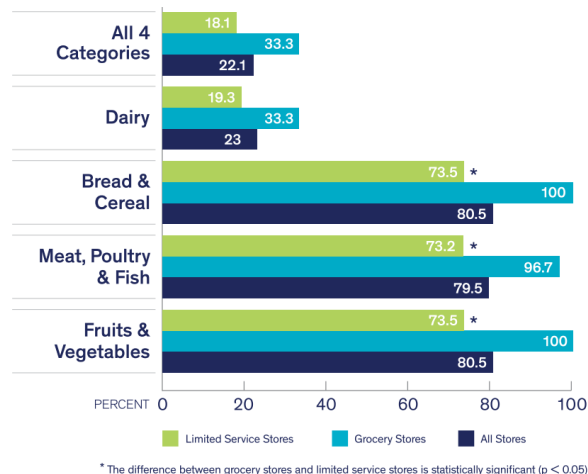
The study of small grocery stores in Chicago demonstrated that they are able to stock seven varieties in the staple food categories, save for dairy.⁵⁸ One hundred percent of small grocery stores meet the variety requirements in the bread or cereal and vegetable or fruit categories. Ninety-seven percent meet the meat, poultry, or fish requirements. Dairy is the only staple food category for which smaller grocers struggle to stock seven varieties. See Table 3 below.

Table 3. Small Retailers’ Ability to Meet 2016 Breadth of Stock Requirements ⁵⁹

**Proposed Stocking Requirements:
7 Varieties per Category**

- 22.1% of all small food stores met the proposed requirement of stocking at least 7 eligible varieties in each staple food category.
- Only 23% of all stores offered at least 7 varieties of dairy, and such offerings were low in both grocery (33.0%) and limited service (19.3%) stores.
- The percentage of stores carrying at least 7 varieties significantly differed by store type for fruits and vegetables; meat, poultry, and fish; and bread and cereal.

FIGURE 4 Percentage of small food stores meeting the proposed SNAP-authorized retailer requirement of stocking 7 varieties in each staple food category by store type, Chicago, IL, 2016.



This study assessed the availability of varieties of stock as proposed in the 2016 rule, demonstrating that small grocery stores and many convenience stores meet those standards for variety for all categories except dairy. Additional technical assistance for smaller stores is what is needed. Weakening the variety requirements for all categories is not.

⁵⁷ U.S. Department of Agriculture, *Retailer Policy & Management Division 2012 Annual Report*, 2012.

⁵⁸ Powell, 2018.

⁵⁹ Powell, 2018.

We urge FNS to coordinate technical assistance and training efforts with other USDA and Centers for Disease Prevention and Control (CDC) retail-related initiatives. For example, FNS could provide guidance to state agencies that administer SNAP to partner with SNAP Nutrition Education (SNAP-Ed) providers. SNAP-Ed providers could help retailers meet SNAP stocking requirements, more effectively promote healthy food, and conduct healthy in-store marketing. FNS also should encourage state agencies administering WIC, the Healthy Food Financing Initiative, and Food Insecurity Nutrition Incentive programs to coordinate with each other to support healthy retail.

We strongly encourage FNS to partner with non-government entities that support small retailers. For example, The Food Trust, United Fresh Produce Association, and National Association of Convenience Stores (NACS) have produced a variety of resources to help small retailers expand their fresh fruit and vegetable offerings.^{60,61}

FNS should educate retailers on the importance of marketing healthy staple foods. Carrying healthful foods and beverages, but not effectively marketing them, could limit their purchase and consumption. For example, stocking healthy staple foods, but relegating them to a back corner of a store, may not ensure “velocity” sufficient for retail profit or freshness. FNS should recommend that retailers stock healthy staple foods in places and ways that promote their purchase.

One key strategy is to place healthy foods at checkout, on end of aisle shelves, in free-standing displays, and in other prominent in-store locations. Key placement prompts consumer purchases. Cross promotions are another effective strategy, as are using shelf tags, labels, tear-off cards, or other point-of-purchase signage to promote healthier purchases. The Healthy Eating Research report, *Minimum Stocking Levels and Marketing Strategies of Healthful Foods for Small Retail Stores*, recommends additional marketing strategies for retailers.⁶²

Finally, we recommend that FNS issue guidance concurrently with the final rule to minimize potential negative impact on retailers. Changes to stocking standards could be challenging for small retailers who typically have less capacity to quickly implement changes. FNS should issue complementary tools, such as “Frequently Asked Questions,” which the agency updates regularly. Robust, targeted technical assistance options would support smaller stores to successfully implement changes. We urge FNS to set aside adequate funding for these efforts before and during implementation.

⁶⁰ United Fresh Produce Association. *Are You Fit for Fresh?* 2015.

<http://www2.unitedfresh.org/forms/store/ProductFormPublic/fit-for-fresh>. Accessed April 27, 2019.

⁶¹ The Food Trust. *Healthy Food and Small Stores: Strategies to Close the Distribution Gap in Underserved Communities*. 2015. http://thefoodtrust.org/uploads/media_items/healthy-food-and-small-stores.original.pdf. Accessed April 27, 2019.

⁶² Healthy Eating Research, 2016.

IV. Conclusion

Thank you for the opportunity to provide comments to help strengthen the SNAP stocking standards rule. We look forward to supporting FNS's efforts to address food insecurity and improve nutrition for low-income consumers.

Sincerely,

A handwritten signature in cursive script that reads "Julia McCarthy".

Julia McCarthy, J.D.
Senior Policy Associate

A handwritten signature in cursive script that reads "Colin Schwartz".

Colin Schwartz, M.P.P.
Deputy Director, Legislative Affairs

A handwritten signature in cursive script that reads "Margo G. Wootan".

Margo G. Wootan, D.Sc.
Vice President for Nutrition