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May 18, 2016

Vicky Robinson, Chief  
Retailer Management and Issuance Branch  
Retailer Policy and Management Division, Rom 418  
3101 Park Center Drive  
Alexandria, VA 22302

Docket Number: FN-2016-0018  
Submitted via: <http://www.regulations.gov>

Dear Ms. Robinson:

The Association of State Public Health Nutritionists (ASPHN) is pleased to comment on the proposed Rule, *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)*, as published in *Federal Registers* dated February 17, 2016 and the extension published on April 5. We will address specific questions contained in both notices.

Founded in 1952, ASPHN is a non-profit membership organization that provides state and national leadership on food and nutrition issues, programs and services aimed at improving the health of our population. ASPHN's membership is composed of more than 250 public health nutritionists located throughout all 50 states, the District of Columbia and five U.S. territories. ASPHN's vision is to create new environmental norms where healthy eating and active living are the easy and natural choices for all Americans. You can find ASPHN on the web at [www.asphn.org](http://www.asphn.org) and on Facebook at [facebook.com/asphn](https://facebook.com/asphn).

**Background:** ASPHN commends and supports the long-awaited and well-justified proposal to increase the amount and variety of healthy food in all retail stores that are certified to participate in SNAP, as legislated in the 2014 Agricultural Act (Farm Bill). We applaud USDA efforts that began with an extensive public comment period in 2013, followed by five listening sessions across the country. The Rule is needed to harmonize SNAP with public health changes that Congress called for in other USDA and FDA programs: updating the WIC Food Package, improving meal standards for child nutrition programs, and nutrition labeling on out-of-home food. We concur that specialized food outlets such as farmers' markets, butchers, bakeries, dairies, fish markets, and green carts that typically sell foods from only one food group should continue to be exempted.

The number of SNAP-certified retailers grew nearly 80 percent with the Great Recession, from about 145,000 (2003) to over 260,000 (2014), most of which was from small retailers.<sup>i</sup> In the same timeframe, public health concerns have been serious enough that cities in at least 16 states and the District of Columbia have participated in the Healthy Corner Store initiative<sup>ii,iii</sup>

and some are taking more extensive action.<sup>iv, v, vi, vii</sup> The proposed Rule is an essential next-step in a comprehensive effort to close long-standing gaps in nutritional health among vulnerable groups, especially in low-income and minority settings. The Staple food requirements for SNAP retailers that use four food groups appear to date from the 1970s, well before relationships among diet, chronic disease and health costs were understood. Clearly, as the centerpiece program of the Nation's nutrition safety net, it is necessary to assure that everything possible is done in the administration of SNAP to support its public health goals and avoid any inadvertent adverse impacts.

There is very extensive literature documenting the uneven availability of healthy food, especially fruits, vegetables, lower fat milks, and whole grain products, as well as higher prices and lower quality, in many small retail outlets in low-income neighborhoods.<sup>iv,vi, vii,viii,ix,x,xi,xii,xiii</sup> Small stores, especially those near schools, have become a concern due to their often obesogenic inventory and marketing<sup>v,xiv</sup>, and some in the convenience store industry have called for stores to feature more fresh food as a means of improving the sector's image, sales and profit margins.<sup>xv</sup> Neighborhoods with high ratios of unhealthy food outlets to healthy ones have been shown to correlate with higher mortality and morbidity from diet-related diseases.<sup>ix,xvi</sup> Long-standing efforts in public health that separately addressed food, tobacco and alcohol are beginning to view these issues as having interconnected, synergistic adverse effects on population health and neighborhood vitality.<sup>v,x,xvii,xviii</sup>

Responses to specific questions in the *Federal Register* follow.

***Adverse effects of requiring hot foods to total less than 85% of all food sales: ASPHN recommends that a comprehensive impact analysis be prepared before any change in the percent of total sales from hot foods is made.***

Rationale for ASPHN Recommendations: The proposed Rule changes the definition of stores that may be certified for SNAP to those with no more than 15% of total sales from hot foods, rather than the 49% that is now allowed. While there has been adverse publicity and public misunderstanding about the use of SNAP in restaurants, there does not seem to be good information about the number of stores now certified for SNAP that could be dropped if there were a 15% limit. We understand that business models in small stores can include offering hot, ready-to-eat foods and foods for home preparation, that the present requirements prohibiting SNAP benefits being used for hot and restaurant foods will stay in place, and that the proposed increases in the quality and quantity of staple foods would offer much healthier and more economical choices for SNAP customers. Therefore, we recommend that the existing criterion of no more than 49% of total food sales be from hot foods remain in place for the present.

***Two food businesses in one place: ASPHN does NOT support the prohibition of operating two food businesses in a single location if a business can meet all other SNAP requirements, then co-locating a section of the business that meets SNAP retail requirements with another food business should be allowed.***

Rationale for ASPHN Recommendations: The proposed Rule would prohibit businesses from splitting to operate a SNAP retail store and restaurant for hot food separately. Because of the business model mentioned above, together with the increasing customer dependence on one-stop shopping, we believe that having two food operations under the same roof may be especially important for SNAP retailers and customers in small and rural communities.

***Accessory Foods: ASPHN strongly supports the proposal to add desserts and snack foods as 'accessory' foods that do not qualify as staple foods for purposes of variety and depth-of-stock requirements.***

Rationale for ASPHN Recommendations: This provision would not only help guarantee a minimal mix of whole, basic foods in SNAP-certified stores, but also it would simplify regulatory oversight, provide a more consistent image of SNAP being a nutrition program, and in some small stores, it could free up shelf space for healthier choices. The Staple requirement in no way limits the accessory foods that a retailer may carry or that a customer may use SNAP benefits to buy.

***Guidance versus Rule: ASPHN recommends that the Final Rule focus on clarifying the statutory and other permanent requirements, and that Guidance be issued upon release of the Final Rule, then updated every five years.***

Rationale for ASPHN Recommendations: Formulations of food products and packaging change constantly, as do business conditions and community environments. Therefore, it is recommended that Guidance be issued initially, when the Rule is released, and periodically updated to assist retailers, advance public health, and accommodate operational issues as they arise. In particular, we recommend that the Final Rule provide for USDA to update the illustrative list of Staple foods every five years to align with changes in:

- each edition of the *Dietary Guidelines for Americans*;
- national policy recommendations about foods-to-increase or foods-to-limit;
- new knowledge about dietary trends;
- disparities relevant to SNAP-eligible populations; and
- evaluations of the new requirements.

***Staple Foods: ASPHN strongly supports the Congressionally-required minimum of 7 items in the dairy, grain and protein food groups and, in addition, urges USDA to increase the Vegetable/Fruit requirement to 14 different varieties.***

Rationale for ASPHN Recommendations: The proposed Rule codifies Congressional requirements that were established in 2014. For each of four food groups (vegetable/fruit, dairy, grain and meat), the Rule would implement Congress' requirements to *a minimum of 7 different varieties* of foods, from 3 varieties now; *28 items on the shelf*, compared to 12 now; and *3 groups with at least 1 perishable item*, compared to the current requirement of 1 perishable item in 2 groups. Perishables would continue to be defined as fresh, frozen or refrigerated items with a shelf life of less than 2-3 weeks at room temperature.

The proposed Rule also calls for each variety to have 6 'stocking units' on the shelf at all times, as compared with 1 stocking unit now. The Rule clarifies that Staple foods should be *items suitable for home preparation and consisting solely of ingredients from one food group*. Of course, desserts, snack items and mixed-ingredient foods would still be sold but would *no longer be counted as contributing to the minimums that a store must offer* for sale.

The Rule makes no change in SNAP-eligible foods that customers may purchase using SNAP benefits, but SNAP *retailers now must carry the minimum varieties and amounts* of basic Staple foods listed above. The Rule would impose, for the first time, assurance that items consist of ingredients drawn from primary agricultural categories and that there are enough units so that SNAP shoppers do not encounter shelves empty of healthier items.

USDA research assessed the impact that the variety and depth-of-stock requirements in the proposed Rule would have on small retailers nationwide.<sup>i</sup> While the most challenge was found in the dairy group and the least for fruits and vegetables, most stores could meet these shortfalls by adding 1 or 2 varieties. This research further confirms that, from a public health perspective, many SNAP stores do not provide the variety of foods or stock enough product to provide SNAP customers with a reasonable choice of basic foods needed to meet American standards for a healthy diet, though for most, the shortfall is not large. Other research with small stores and evaluations of the impact of the new WIC Food Package indicates that, when done well, the changes in the proposed Rule are feasible and can be done effectively by small retail stores.<sup>ii,iii,xix,xx,xxi,xxii,xxiii</sup>

The 2014 law continued to use the four food group categories first promulgated through the Basic Four (1956), rather than national guidance that, starting in the 1990's, classified fruits and vegetables as separate groups and called for a near-doubling of consumption. However, Congress specified that the varieties required in each group were minimums. For vegetables and fruit, ASPHN recommends increasing the stocking requirement to 14 different varieties. This change is needed to increase access to vegetables and fruits in low-income and minority neighborhoods, reduce long-standing disparities, and better harmonize with other nutrition assistance programs, national nutrition messaging, and national dietary guidance policy.

The evidence shows that vegetables and fruits are the most under-consumed among food groups<sup>xxiv</sup> that consumption trends are poor,<sup>xxiv,xxv,xxvi</sup> but that many governmental and private sector initiatives are in place to help achieve this goal.<sup>iii,iv,v,vii,xvi,xix,xxii,xxii,xxvi,xxvii</sup> These include, but are not limited to, *Let's Move! Salad Bars to School*; *Know Your Food, Know Your Farmer*; FINI (the Food Insecurity and Nutrition Initiative); *Fruits & Veggies—More Matters™*; *Double Up Food Bucks*; *FVRx®*; and *FNV™*; along with farm-to-school, farm-to-fork, and locally-grown marketing programs across the country. The movement toward healthy retail is large and growing, which means that there is considerable national, state-level and community support for small retailers to meet new provisions of the Rule.

***Varieties of Staple Foods, Examples of Acceptable Variety and Perishables: ASPHN recommends that USDA's list of examples be greatly expanded to demonstrate the many healthy choices, versatility and flexibility available within Staple food categories. Choices should be those that carry the nutrients associated with each food group. For example, in the dairy group items like butter, sour cream and cream cheese, though derived from milk, carry low amounts of nutrients associated with fluid milk, so such foods should not be included as Staples. ASPHN has compiled the attached listing of Staple foods as an example.***

Rationale for ASPHN Recommendations: In the extension of April 5, USDA provided examples of Staple foods that would meet requirements for variety, depth-of-stock and perishability in each food group and asked for comments on the choices and forms that would qualify.

ASPHN suggests that, for public health, customer choice, educational, and business benefits, a new list of Staple foods be developed that displays a much wider variety of options, that it add food items containing multiple ingredients from a single food group (mixed vegetables, fruit cup), foods with incidental amounts of flavorings (salad kit, flavored yogurt), and that two different forms of the same item (ground and whole beef, frozen and fresh spinach) be permitted to meet the variety requirement. It is recommended that items be displayed to accentuate those with desirable nutrient qualities appropriate for each food group on the list. These would include descriptors such as lean, lower fat, whole grain, and the recommended mix of nutrition-related attributes in the Vegetable Fruit group, as well as items with less added sodium and sweeteners. Items on the list should include those that are generally lower in cost, that reflect cultural, regional and seasonal preferences, and that offer consumer convenience wherever possible.

***Number of Perishable Items: ASPHN supports the requirement to carry at least one perishable food in three of the food groups and encourages public and private sector efforts to increase small store capacity to carry a larger variety of fresh, frozen and refrigerated foods, including those that are locally sourced.***

Rationale for ASPHN Recommendations: Congress increased the perishable requirement from 1 perishable item in any 2 of the food groups to at least 1 perishable item in any of 3 of the

food groups. The definition of ‘perishable’ for SNAP stores is extremely broad; it includes refrigerated, fresh and frozen forms. Since most stores already carry perishable basics like milk, eggs and bread, adding one more ‘perishable’ item would adversely affect few stores, if any. Research shows that about two-thirds of SNAP customers do their main shopping at large stores farther from home once or twice a month, about 60% of SNAP households include children, and many families may be in housing with limited storage facilities, so both customers and stores are likely to benefit by offering a larger selection of ‘perishables’.<sup>xiii,xxv,xxvi,xxviii,xxix</sup> As displayed on the attached ASPHN list, there are so many choices, it is easy to carry perishables in all the food groups.

***Qualifications for Multi-Ingredient Foods: ASPHN suggests that only 2 multi-ingredient choices be allowed out of the 7 varieties in the Dairy, Protein and Grain groups, and 4 choices out of 14 in the Vegetable and Fruit group. We further recommend that multi-ingredient items offer a full serving from the food group to which they are assigned and that USDA use its food composition data bases to determine the best way to determine in which group they fit. ASPHN has included examples for multi-ingredient foods for each food group in the attached listing of staple foods.***

Rationale for ASPHN Recommendations: Multi-ingredient foods are popular, and many offer shopper convenience to families. To assure that stores offer consumers a minimum set of basic foods needed for a healthy diet, simplify the program for retailers, and minimize the extensive government oversight that is now needed to assess products as formulations change, USDA proposed that Staple foods be streamlined to exclude those with significant proportion of ingredients from other food groups. However, since this may limit options that busy families need and inadvertently restrict access to healthy, convenient food items, ASPHN believes that customers would benefit from having ready availability of healthy multi-ingredient foods by adding them in each Staple food category. The attached list from ASPHN shows examples of popular items that, depending on the manufacturer’s formulation, may contain a full serving from the food group in which it is placed.

***Total Items to for Depth-of-Stock: ASPHN strongly supports the 6-unit requirement as a minimum needed in SNAP stores. Additionally, ASPHN recommends that USDA marshal its existing resources and also reach out to other partners, such as CDC and private sector campaigns, to help launch the proposed standards across the country. Some key resources in the food system infrastructure would include SNAP-Ed, WIC, child nutrition programs, FINI, Food Policy Councils, other farm-to-consumer initiatives, and federal, state and local financing and incentive programs.***

Rationale for ASPHN Recommendations: In order for SNAP customers to find the healthy Staple food items whenever they shop, USDA has proposed increasing to 6 the number of units in each variety, replacing the present requirement of 1 unit on the shelf at all times. A unit is defined simply: 1 apple, 1 quart of milk, or 1 loaf of bread. The Congressionally-required stock totals 28

items (7 items in each of 4 food groups). Since most grocery stores need to restock shelves 2-3 times a day, SNAP customers typically shop for multiple family members, customers are deterred when they find empty shelves, and most stores already carry enough stock, the 6-unit proposal would meet customer needs much better than the current standard of only 1 item and appears to be commercially feasible.

That said, research with small retailers has found that some need help to identify suppliers who make more frequent deliveries; train employees on inventory management; promote the new foods inside the store through signage, placement and pricing; and connect with community programs that can generate consumer demand.<sup>ii,iii,viii,ix,x,xi,xix,xx,xxii</sup> Some may also need to identify financing opportunities for capital improvements in shelving, display space, cold storage and refrigeration.<sup>xiii,xxvii</sup> ASPHN and others in the public health and non-profit communities stand ready to help.

***Exceptions to Rule: ASPHN recommends a one-year implementation period for all stores less than 1,000 square feet, and for stores under 2,000 square feet in defined rural areas and food deserts.***

Rationale for ASPHN Recommendations: USDA invited comments about exceptions to the new Staple food requirements. Some in the small store, convenience and anti-hunger communities have expressed concern that several requirements – particularly the limits on hot foods and co-location of food businesses -- would jeopardize the viability of very small stores and stores in rural and remote settings.<sup>xxx</sup>

Research with small stores, defined as less than 2,000 square feet and usually in urban settings, has found that offering healthier items is successful, as long as attention is paid to consumer education and outreach, product selection, price, promotion, training, and technical assistance.<sup>ii,iii,xx</sup> Evaluations of the new WIC Food Package found few difficulties with implementation as well as unexpected benefits to stores and their customers, even beyond the WIC participants.<sup>xix</sup> Already, cities in a third of the states, including those with large rural areas like California, Kentucky, Louisiana, Michigan, Minnesota, New York, Ohio, Tennessee, and Washington, have implemented healthy retail initiatives.<sup>iii</sup>

ASPHN strongly supports establishment of the Congressionally required minimum inventory of healthy foods for all SNAP-certified stores as a means of to improve public health and help eliminate disparities. However, due to the absence of clear data about the capacity of very small and rural stores and to avoid unintended adverse effects, we recommend that for all stores less than 1,000 square feet, and for stores under 2,000 square feet in defined rural areas and food deserts, implementation be phased in over a one-year period after the effective date of the Final Rule. During the phase-in period, ASPHN recommends that USDA monitor progress; work with states and other partners to help target technical assistance and training to stores

that need it; assess the adverse impacts on public health, community vitality, and agriculture; and determine if exceptions are needed past the initial 12-month period.

**Additional Benefits:** USDA invited comments about additional benefits that may result from this Rule. From a public health perspective, these include, but are not limited to, the following:

- **All residents** in neighborhoods served by SNAP retailers will have increased and permanent access to more varieties of and choices among healthy foods, regardless of SNAP participation status.
- **Equity:** This change will help correct long-standing problems of health equity; communities with predominantly non-minority residents have two to four times more large-chain grocery stores and supermarkets than do communities of color.<sup>xi,xii,xxviii,xxix</sup>
- **Nutrition education and environmental support:** The effectiveness of nutrition education efforts in public and private settings through public programs like SNAP-Ed, Child Nutrition, CDC, and MCH programs, health care delivery, and non-profit initiatives such as food banks will be increased. The increased exposure, ready availability, and greater choice of healthy foods in community environments will make it easier for consumers to make the healthy choice.
- **Policy:** This Rule reduces policy contradictions. The current easy access to less nutritious options in SNAP undermines its nutrition goals, sends mixed messages to SNAP participants, and undermines the efforts of other programs, including SNAP-Ed, WIC, school nutrition and other public health programs.
- **Food supply:** New, nutrition-based standards for multi-ingredient foods will encourage manufacturers to shift their formulations and increase the availability of healthier products in the food supply, more generally. There is historical precedent with school nutrition and WIC.
- **Livability:** Healthier retail benefits neighborhood safety, property values, economic activity, jobs, and social cohesion.<sup>v,x,xvi,xxi,xxviii</sup>
- **Business environment:** For small retailers, the new requirements that affect the entire industry equally will help level the playing field among small stores and reduce the price advantage to stores that stock only high-margin, low-nutrient foods. Due to the volume of business that SNAP represents, the new requirements can be expected to help improve the entire supply chain and may help reduce prices for retailers and customers alike.
- **Local agriculture:** This requirement will benefit urban farms, small, new and ethnic farmers, community gardens, food hubs, coops, and small business enterprises by creating new demand from small stores for basic healthy foods year-round.<sup>xiii,xxviii</sup>
- **Evidence-base:** Evaluations of well-designed community trials that focus on systems changes show 'consistent positive results on consumer psychosocial factors, food purchasing, food preparation, and diet, and – in some cases – obesity.'<sup>xxiii</sup>

- **Public health:** All told, improvements in retail offerings could – as part of an increasingly robust set of healthy eating initiatives – measurably improve healthy eating in low-resource neighborhoods and contribute to positive health, community and business outcomes.

***Preemptive Effects:*** ASPHN recommends that the Final Rule clarify what the state and local prerogatives are and define clearly that this Rule is intended as a floor, not a ceiling, as was done with the Child and Adult Care Food Program.

Rationale for ASPHN Recommendations: The proposed Rule states that its provisions are intended to have preemptive effects with respect to any State or local laws, regulations or policies which conflict with its provisions or impede its implementation. ASPHN affirms that, while the federal government is responsible for maintaining access to its programs, setting standards, and assuring that they are met, states and localities are incubators of innovation, have primary responsibility for public health, and must be responsive to priorities and norms of their residents. We understand that states and local governments have neither the authority nor means to hold retailers to SNAP program standards that are different from or additional to the federal standards. However, we affirm the responsibility of localities to impose different minimum requirements on stores through other means (such as licensing laws, zoning regulations), as long as those requirements apply to all stores, and not just SNAP authorized retailers.

ASPHN recommends that the Final Rule clarify what the state and local prerogatives are and define clearly that this Rule is intended as a floor, not a ceiling, as was done with the Child and Adult Care Food Program.<sup>xxxi</sup> As adapted, such language might read as follows:

*State or local agencies operating SNAP may establish more rigorous nutrition requirements or additional requirements for SNAP stores that are not inconsistent with the nutritional provisions of this rule. Such additional requirements would be permissible as part of an effort by a State or local agency to enhance the retail food environment. To illustrate, State or local agencies are permitted to establish higher standards for stores in their jurisdictions. These may include for nutritional quality such as lean, lower fat, whole grain, fresh, or reduced sodium or added sugar. For Federal requirements, quantities are stated as minimums and could not be lower; however, greater amounts than the minimum could be offered. While State agencies and local agencies may establish more rigorous nutrition requirements, they cannot establish less rigorous nutrition requirements than provided by the Agricultural Act of 2014 which provides the U.S. Department of Agriculture the authority to establish the minimum SNAP Retail Requirements. This rule is not intended to have a retroactive effect. Prior to any judicial challenge to the provisions or application of this final rule, all applicable administrative procedures in §§ 226.6(k) and 210.18(q), must be exhausted.*

**Conclusion:** The Rule addresses one essential retail strategy within a larger set that must be in place to achieve improvements in public health. Projects to upgrade healthy foods in small stores have found that changes in inventory are necessary but not sufficient.<sup>xx</sup> Increases in supply must be accompanied by strategies to increase consumer demand, such as nutrition education and marketing; in-store promotion and product placement; training and technical assistance to store personnel; help in developing new supply chains; and – sometimes – financing assistance for storage, equipment and capital improvements.

Experience and evidence suggest that, when implemented thoughtfully – and especially in concert with other ‘healthy retail’ initiatives by state and local public health departments, non-profits, CDC, and USDA programs such as SNAP-Ed, the Food Insecurity and Nutrition Initiative (FINI), support to farmers’ markets, and the farm to fork movement – this Rule will fill a gap and add an essential strategy to help shift dietary patterns toward targets set by the *Dietary Guidelines for Americans*. These changes will benefit the nation’s 40 million-plus SNAP customers and – potentially – the millions more people who shop in the same stores.

ASPHN appreciates the leadership shown by Congress and USDA in stepping forward to help correct long-standing structural disparities in low-income and minority communities and commits its continued support as the changes are implemented.

With best regards,



Karen Probert, MS, RD  
Executive Director  
Association of State Public Health Nutritionists

Attachment  
*ASPHN Recommendations for Staple Foods, May 18, 2016*

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<sup>i</sup> Food and Nutrition Service. *Enhancing Retailer Standards in SNAP: Changes to Depth of Stock and Stocking Requirements Using New Farm Bill Definition*. Initial Regulatory Flexibility Analysis—Proposed Rule. Washington, DC; US Department of Agriculture; February 2016. Available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-02-17/html/2016-03006.htm>. Accessed on May 9, 2016.

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- <sup>xii</sup> Laska MN, Caspi CE, Pelletier JE, Frieber 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, 2014. *Prev Chronic Dis* 2015;12:150171. DOI: <http://dx.doi.org/10.5888/pcd12.150171>
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