Proposed Changes to SNAP Eligibility for Stores

The Supplemental Nutrition Assistance Program (SNAP) is a federal program that provides low-income households with funds to purchase food from participating stores using debit or EBT cards.[1] This program used to be known as the "food stamp" program.

The program was established by federal law and is administered by the Food and Nutrition Service (FNS), which is part of the U.S. Department of Agriculture. To participate in SNAP, retailers must carry "staple foods;" specifically, foods that are classified as "meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products."[2] Staple foods do not include hot food that is eaten right away, like restaurant food.[3]

Current program standards

Under current regulations, retailers that "sell food for home preparation and consumption"[4] can meet staple food stocking requirements if:

A) More than **half** of their "total gross retail sales" are from sales of staple foods,[5] or

B) They provide a minimum healthy food stock, which means:

- Carrying **3** or more "varieties" of food in each staple food category,[6] and
- Carrying perishable (frozen/fresh) food items that fit into **2** or more staple food categories.[7]

Proposed changes

The 2014 federal Farm Bill made some changes to retailer SNAP eligibility. FNS recently proposed a rule to implement these changes, and included some additional changes.[8] If finalized as proposed, the new rule would:

- Increase the number of required varieties within each staple food category from 3 to 7 (required in the 2014 Farm Bill),
- Require retailers to carry at least 6 "stocking units" of each variety,
- Increase the number of staple food categories with perishable food items from 2 to 3 (required in the 2014 Farm Bill),
- Narrow the definition of "staple food" to exclude many multiple-ingredient products (such as pizza) and more "accessory foods" (such as desserts and snack foods),
- Exclude retailers for whom sales of food that is heated or cooked on site make up 15% or more of their food sales, and
- Make information about SNAP-violating facilities public.

> "Varieties" refer to different types of food, not variations on the same type of food (e.g., apples and oranges are two varieties, but Red Delicious and Gala apples are one variety). (7 C.F.R. § 278.1 (b)(1)(ii)(C).) Also, food items containing multiple ingredients, like soups, are counted in one category only, which is determined by their primary ingredient. (7 CFR § 271.2.)

FNS waiver of the standards

Under the proposed regulation, the FNS could allow retailers to participate in SNAP even though they do not meet the new standards, based on factors such as:

- How close the retailer comes to meeting the new standards,
- The retailer's distance from SNAP-participating retailers, and
- Whether the retailer's participation in SNAP would advance SNAP's mission.[9]

FNS' financial impact estimate

Under this proposed regulation, the minimum item stocking requirement for retailers would increase from 12 to 168.[10] However, FNS reports that many participating retailers already provide amounts and varieties of foods that go beyond the minimum standard.[11] FNS estimates that, based on a study of 1,392 small retailers[12] and taking inventory maintenance costs into account:

- Small retailers are likely to need to increase their stock by 54 items to meet the proposed standards, and would have to spend approximately $142 to remain compliant,[13] and
- Retailers carrying no staple foods at all would have to spend about $400 to comply with the proposed standard.[14]

The FNS predicts that these up-front costs could be recuperated through sales.[15]

What's next?

The comment period on the proposed rule closed in May 2016. The potential financial impacts and logistical challenges of meeting the proposed changes for small stores, particularly for stores in rural and underserved areas, is a key area of debate. The final rule is expected to be issued sometime in late 2016.

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Endnotes

[1] OFFICE OF RESEARCH AND ANALYSIS, U.S. DEP'T OF AGRIC., BUILDING A HEALTHY AMERICA: A PROFILE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 2 (2012).

[2] 7 CFR 271.2 (under "Staple food").

[3] *Id.*; 7 CFR 271.2 (under "Eligible foods").

[4] 7 C.F.R. § 278.1 (b)(1)(i)(A) (2016).

[5] 7 C.F.R. § 278.1 (b)(1)(iii) (2016).

[6] 7 C.F.R. § 278.1 (b)(1)(ii)(A) (2016).

[7] 7 C.F.R. § 278.1 (b)(1)(ii)(B) (2016).

[8] Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP), 81 Fed. Reg. 8015, 8018 (Feb. 17, 2016) (proposed rule) [hereinafter, Enhancing Retailer SNAP Standards]; and Enhancing Retailer SNAP Standards, Clarification of Proposed Rule and Extension of Comment Period, 81 Fed. Reg. 19500 (April 5, 2016) (proposed rule). Available at https://www.regulations.gov/docket?D=FNS-2016-0018.

[9] Enhancing Retailer SNAP Standards, *supra* note 8, at 8018.

[10] FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., INITIAL REGULATORY FLEXIBILITY ANALYSIS – PROPOSED RULE, FNS-2016-0018-0007 2 (2016). Available at https://www.regulations.gov/document?D=FNS-2016-0018-0007.

[11] *Id.*

[12] *Id.* at 3.

[13] *Id.* at 6.

[14] *Id.* at 5.

[15] *Id.* at 6.