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3101 Park Center Drive
Alexandria, VA 22302

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Submitted via: <http://www.regulations.gov>

Dear Ms. Robinson:

On behalf of the American Public Health Association, a diverse community of public health professionals who champion the health of all people and communities, I thank you for the opportunity to provide comments on the proposed rule, *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program*, as published in *Federal Registers* dated February 17, 2016 and the extension published on April 5. The comments will address specific questions contained in both notices.

Background: APHA commends and supports the long-overdue 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 Agricultural Act of 2014. APHA provides several recommended changes to the proposal to enable a larger variety of foods to count as staples and to ensure that small retailers offering these foods are not unnecessarily penalized by other prescriptions in the proposed rules. We applaud the efforts of the U.S. Department of Agriculture that began with an extensive public comment period in 2013, followed by listening sessions across the nation. The rule is needed to harmonize SNAP with public health changes that Congress called for in other USDA and Food and Drug Administration programs, including: updating the Women, Infants and Children food package, improving meal standards for child nutrition programs, and nutrition labeling on out-of-home food. We agree 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 retailers in 2003 to over 260,000 retailers in 2014, most of which was from small retailers.ⁱ As part of the public health effort to bring healthy food choices to all neighborhoods, many of these small retailers have begun to carry more fruits and vegetables, low-fat dairy items, whole grains bread products and other healthier options in at least 16 states and the District of Columbia through the Healthy Corner Store initiative.^{ii,iii} 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. Requirements for SNAP retailers have not been updated since the 1970s, well before relationships among diet, chronic disease and health costs were understood.^{iv} As the centerpiece program of the nation's nutrition safety net, it is necessary to ensure that the administration of SNAP supports its public health goals and avoids any inadvertent adverse impacts.

There is 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.^{v,vi,vii,viii,ix,x,xi,xii,xiii} Small stores, especially those near schools, have become a concern due to their often obesogenic inventory and marketing.^{vi,xiv} 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.^{xv} 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.^{ix,xvi} 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.^{vi,x,xvii,xviii}

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

Adverse effects of requiring hot food sales to not exceed 15 percent of all food sales: The proposed rule would change the definition of stores that may be certified for SNAP to those with no more than 15 percent of total sales from hot foods, rather than the 49 percent that is now allowed. Presently, business models in small stores and large stores include both hot, ready-to-eat foods and foods for home preparation. Changes in the requirements that prohibit sale of hot and restaurant foods may be premature until more research is conducted. Additional information is needed on the number of stores now certified for SNAP that could be dropped if a 15 percent limit is established. ***APHA recommends that a comprehensive impact analysis be prepared before establishing a new limit on the total sales from hot foods.***

Two food businesses in one place: The proposed rule would prohibit businesses from splitting to operate a SNAP retail store and restaurant separately. Because of the business model mentioned above, together with the increasing customer dependence on one-stop shopping, we believe that ***if a business can meet all other SNAP requirements, then a section of the business that meets SNAP retail requirements being co-located with another food business should be allowed.*** Having two food operations under the same roof may be especially important for small and rural communities.

Accessory foods: ***APHA 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.*** This provision would help guarantee a minimal mix of foods in SNAP-certified stores, 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.

Guidance versus rule: Formulations of food products and packaging change constantly, as do business conditions and community environments. ***Therefore, it is recommended that the final rule focus on clarifying statutory requirements and that guidance be issued initially, when the rule is released, and periodically thereafter to assist retailers, advance public health and accommodate operational issues as they arise.*** In particular, we recommend that the rule provide for USDA to update the illustrative list of staple foods at least every five years to align with changes in each edition of the *Dietary Guidelines for Americans*, including national policy recommendations about foods-to-increase or foods-to-limit, as well as new knowledge about dietary trends, disparities relevant to SNAP-eligible populations and evaluations of the new requirements.

Staple foods: APHA strongly supports the congressionally-required minimums in the dairy, grain and protein food groups and in addition urges USDA to increase the minimum requirement to 14 different varieties in the vegetable or fruit category. This change is needed to increase access in low-income and minority neighborhoods and to better harmonize with other nutrition assistance programs, national nutrition messaging and national dietary guidance policy.

The proposed rule codifies congressional requirements that were established in 2014. For each food group – vegetable or fruit, dairy, grain and meat – the rule would implement Congress’ requirements increasing the minimum variety of foods to seven different varieties, compared to the three varieties required now; 28 items on the shelf, compared to 12 now; and three groups with at least one perishable item, compared to two groups now. 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 would require that each variety have six stocking units on the shelf at all times, as compared with one stocking unit now. Staple foods are clarified as *items suitable for home preparation and consisting solely of ingredients from one food group*. Desserts, snack items and mixed-ingredient foods may be sold but would no longer be counted as contributing to the minimums that a store must offer for sale. The rule does not propose any changes to SNAP-eligible foods that customers may purchase using SNAP. Instead, SNAP retailers would be required to carry the minimum varieties and amounts of 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 would have on small retailers nationwide.^x USDA found that, while the most challenging maybe in the dairy group and the least for fruits and vegetables, most stores could meet these shortfalls by adding one or two varieties. This research confirms that, from a public health perspective, many SNAP stores do not provide the variety of foods or stock enough products to provide SNAP customers with a reasonable choice of basic foods needed for a healthy diet, but 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 in small retail stores.^{ii,iii,xix,xx,xxi,xxii,xxiii}

While the 2014 law continues to use the four food group categories first promulgated in the Basic Four (1956), rather than national guidance from the 1990’s that classified fruits and

vegetables as separate groups and called for a near-doubling of consumption, Congress specified that the varieties required in each group were minimums. The evidence shows that vegetables and fruits are the most under-consumed among food groups,^{xxiv} that consumption trends are poor,^{xxiv,xxv,xxvi} and that as a result, governmental and private sector initiatives are in place to help achieve this goal. These include, but are not limited to, Let's Move Salad Bars to School, Know Your Food, Know Your Farmer, the Food Insecurity and Nutrition Initiative, or FINI, Fruits & Veggies—More Matters™, Double Up Food Bucks, Fruit & Veggie Rx, and the FNV campaign, along with farm-to-school, farm-to-fork and locally-grown marketing programs across the nation.

Varieties of staple foods, examples of acceptable variety and perishables: In the clarification of the proposed rule and extension of the comment period, USDA provided examples of foods that would meet requirements for variety, depth-of-stock and perishability of staple foods in each food group and asked for comments on the choices and forms that would qualify. ***APHA recommends that the list of examples be greatly expanded to demonstrate that there are many healthy choices, versatility and flexibility available within staple food categories.*** Choices should be good sources of the nutrients associated with the specific food group. Items like butter, sour cream and cream cheese, though derived from cow milk, carry low amounts of nutrients associated with fluid milk, so such foods should not be included as varieties of the dairy group.

APHA suggests that, for public health, customer choice 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 (e.g., mixed vegetables, fruit cup), foods with incidental amounts of flavorings (e.g., salad kit, flavored yogurt), two food groups (e.g., beef stew) and that two different forms of the same item (e.g., ground and whole beef, frozen and fresh spinach) be permitted to meet one of the variety requirements. Within each food group, it is recommended that items be displayed to accentuate those with desirable nutrient qualities for each group such as lean, lower fat, whole grain and the recommended mix of nutrition-related attributes in the vegetable/fruit group, as well as those 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: ***APHA supports the requirement to carry more perishable foods 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.*** Congress increased the requirement to at least one perishable item in three of the food groups, rather than the current one in two food groups. Since the SNAP definition of perishable includes refrigerated, fresh and frozen forms, and most stores carry basic items like milk, eggs and bread, this change 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 percent are households with children, and many families may be in housing with limited storage facilities, so both customers and stores are likely to benefit from featuring a larger selection of perishables.

Qualifications for multi-ingredient foods: Multi-ingredient foods are popular, and many offer great 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 government oversight needed to assess products as formulations change, USDA proposes that staple foods exclude those with a significant proportion of ingredients from other food groups. However, this requirement may limit options that busy families need and inadvertently restrict access to healthy, convenient food items. ***APHA suggests that two multi-ingredient choices be allowed out of the seven varieties in the dairy, protein and grain groups, and four choices out of 14 in the vegetable and fruit group. APHA recommends that USDA provide guidance to retailers on which food group a multi-ingredient food should be assigned and credited.***

Total items to for depth-of-stock: In order to assure that customers can find the healthy staple food items whenever they shop, USDA has increased the number of units to six in each variety from the present requirement of one unit on the shelf at all times. The congressionally-required stock totals 28 items (seven varieties in each of the four food groups), and having six units increases the requirement to 168 units on the shelf. Since customers are deterred when they find empty shelves, ***APHA strongly supports the six-unit requirement as a minimum needed in SNAP stores. APHA also recognizes that further research may be needed to determine the impact of the requirement regarding availability of shelf space in small stores and if small stores need accommodations such as allowing for a portion of the units to be available in inventory on premise to immediately restock the shelves.***

APHA recommends that USDA leverage its existing resources and collaborate with other partners, such as the Centers for Disease Control and Prevention and private sector campaigns, to help launch the new standards in communities across the nation. Some key resources to encourage increased demand for and restocking of healthier foods would include nutrition education for community members through SNAP-Ed, WIC, child nutrition programs, FINI, Food Policy Councils and other farm-to-consumer initiatives. Federal, state and local financing and incentive programs^{xiii,xxvii,xxviii} can assist with financing opportunities for capital improvements in shelving, display space, cold storage and refrigeration. Technical assistance is often needed for businesses to identify suppliers who make more frequent deliveries; provide training to help employees rotate inventory, maintain peak quality and avoid waste; promote the new foods inside the store through signage, placement and pricing; and connect with community programs that can generate consumer demand.^{ii,iii,ix,x,xi,ixx,xx,xxii,xxix,xxx}

Exceptions to rule: 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.^{xiii} Prepared foods have become a staple in grocery stores serving shoppers of all economic levels. ***APHA recommends that a comprehensive impact analysis be prepared before establishing a new limit on the total sales from hot foods. APHA also recommends allowing food businesses under the same roof to split and operate one business as a SNAP retailer.***

APHA strongly supports establishment of the congressionally-required minimum inventory of healthy foods for all SNAP-certified stores as a means of bringing needed improvements in

public health and help eliminate disparities. However, due to the absence of clear data about the capacity of very small stores and to avoid unintended adverse effects, APHA recommends that for 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 final effective date. During the phase-in period, APHA recommends that USDA provide technical assistance and training for these stores who need it, help target technical assistance and training to stores that need it and assess the adverse impacts on public health, community vitality, and agriculture to determine if exceptions are needed past the initial 12-month period.

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.^{ii,iii,viii,x,ix,xx,xxii,xxx} Evaluations of the new WIC food package found few difficulties with implementation, along with unexpected benefits to stores and their customers, beyond WIC participants.^{xii,xx} 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.ⁱⁱⁱ

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

- **All residents:** Regardless of SNAP participation status, neighborhoods served by SNAP retailers will have increased access to more varieties of healthy foods.
- **Equity:** Ensuring that all communities, especially communities of color, have access to a variety of healthy foods when large-chain grocery stores and supermarkets are not available.^{xxx,xxxi}
- **Nutrition education and environmental support:** Community members can take full advantage of the increased availability and greater choice of healthy foods in community convenience stores and small stores especially when they receive nutrition education.
- **Policy:** The rule moves to harmonize the federal nutrition programs around similar nutrition goals.
- **Food supply:** Having new, nutrition-based standards for food stocked in retailers serving SNAP recipients should encourage manufacturers to increase their supply of affordable healthier food products in all food retailers, regardless of size.
- **Livability:** Healthier food retail has been shown to benefit neighborhood safety, property values, economic activity, jobs and social cohesion.^{vi,x,xxi,xxiv}
- **Business environment:** For small retailers, it is expected that the new requirements could lower the price of healthier foods if more of these food products must be stocked in a larger number of retailers that accept SNAP.
- **Local agriculture:** This requirement could benefit urban farms, small, new and ethnic farmers, community gardens, food hubs, coops and small business enterprises when technical assistance and support is provided to small retailers to access these providers.
- **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, diet and – in some cases – obesity.^{xxiii}

- **Public health:** 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 community and business outcomes.

Conclusion: APHA strongly supports improving access to healthy foods for all communities and ensuring members of those communities have the education available to motivate purchase of healthy foods through multiple SNAP-Ed, Food Insecurity Nutrition Initiatives, and other federal, state and local nutrition education programs. The 40 million SNAP shoppers and others from these communities can benefit from projects that upgrade healthy foods in small stores and increase consumer demand through 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.

Thank you for your consideration of our comments and commitment to improving access to healthier foods in communities across the nation.

Sincerely,



Georges C. Benjamin, MD
Executive Director

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