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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 278

[Docket No. FNS-2025-0018]

RIN 0584-AF12

Updated Staple Food Stocking Standards for Retailers in the Supplemental Nutrition Assistance Program

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to section 765 of the Consolidated Appropriation Act of 2017 and subsequently enacted appropriations, this rule proposes to codify a new framework for determining distinct staple food varieties and accessory foods (such as snacks, desserts, and foods meant to complement or supplement meals, which do not themselves count as staple foods) for purposes of meeting the staple food requirements for retailer participation in the Supplemental Nutrition Assistance Program (SNAP). The rulemaking is necessary to implement the codified stocking requirements of the Agricultural Act of 2014, which increased the minimum number of staple food varieties and perishables SNAP retailers must carry. A summary of this notice of proposed rulemaking is posted on [regulations.gov](http://www.regulations.gov) at <https://www.regulations.gov/docket/FNS-2025-0018>.

DATES: Comments must be received by November 24, 2025.

ADDRESSES: The Food and Nutrition Service (FNS), USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments on docket

FNS-2025-0018 or enter “RIN 0584-AF12” and click the “Search” button. Follow the instructions at this website.

- *Mail:* Comments should be addressed to SNAP Retailer Policy Division, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314.

All comments submitted in response to this rulemaking will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the internet via: <http://www.regulations.gov>. We encourage commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the published materials referenced, including active hyperlinks. Likewise, commenters who reference materials which have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist us in analyzing the comments.

FOR FURTHER INFORMATION CONTACT: James C. Miller, Administrator, Food and Nutrition Service, at (703) 305-2060, or James.Miller@usda.gov with a subject line of “RIN 0584-AF12”.

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Act of 2014 (2014 Farm Bill) amended the Food and Nutrition Act of 2008 (herein referred to as “the Act”) to increase the number of staple food varieties that certain SNAP authorized retail food stores must have available on a continuous basis in each of four staple food categories. The standards were increased from requiring a minimum of three (3) varieties to seven (7) varieties in each of the four (4) staple food categories and increased the number of varieties that must be perishable from one (1) variety in each of two (2) different staple food categories to one (1) variety in each of three (3) different staple food categories.

The Department promulgated regulations to implement the increased breadth of stock requirements in the final rule, “Enhancing Retailer Standards in the Supplemental

Nutrition Assistance Program (SNAP)” (81 FR 90675), published on December 15, 2016 (the “2016 final rule”). That rule also outlined what constituted a variety in all four staple food categories. However, after the regulations were finalized, section 765 of the Consolidated Appropriations Act of 2017 and provisions in subsequent appropriations acts have in effect prohibited the Department from implementing, administering, or enforcing the retailer “Breadth of Stock” and “Variety” provisions of the 2016 final rule until the Department makes regulatory modifications to the definition of “variety” that would increase the number of food items that count as acceptable staple food varieties for purposes of SNAP retailer eligibility. To meet this directive, the Department published a proposed rule, “Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)” (84 FR 13555) on April 5, 2019. An overwhelming majority of the almost 9,000 comments received were opposed to the provisions as arbitrary and confusing and many argued the provisions would impact SNAP households’ access to a variety of healthy food options and make it easier for fraud-prone retailers that do not primarily sell food to enter the program. Additionally, the 2019 proposed rule did not incorporate specific criteria described in the preamble into proposed regulatory text. Supportive comments, from retail food stores and industry groups, generally advocated for more flexibility overall. For these reasons, and because of the length of time that has passed since comments were received, the Department is issuing this new proposed rule to solicit fresh comments on a new proposed framework to determine distinct staple food varieties that would be codified in regulatory text. The Department also proposes to add and codify food categories that count as accessory foods, which are generally considered snacks or dessert foods or are meant to complement or supplement meals. Accessory foods do not count towards meeting the staple food stocking or sales requirements for retailer eligibility. While the “Accessory Food Items” provision of the 2016 final rule did go into effect, the specific criteria that determined what qualifies as an accessory food were not incorporated

into regulatory text but were, instead, implemented through agency guidance Retailer Policy Management Division Policy Memo 2020–05 and SNAP Accessory Foods List. USDA is now proposing to codify, with modifications, these two guidance documents. This proposed rule does not modify any other provisions or components of the 2016 final rule.

Breadth of Stock

In order to be eligible to participate in SNAP, a retail food store must meet either Criterion A (staple food stock) or Criterion B (staple food sales) requirements under SNAP regulations at 7 CFR 278.1(b)(1)(ii) and (iii), respectively. Most stores are authorized under Criterion A, which requires a minimum breadth of staple food stock in each of the four staple food categories, which are (1) meat, poultry, or fish; (2) dairy; (3) bread or cereals; and (4) vegetables or fruits. Specialty food stores, such as butcher shops or fruit and vegetable stands, are typically authorized under Criterion B, which requires that at least 50 percent of a store's gross sales be for staple foods in at least one staple food category. Currently, (pursuant to the conditions of Section 765 of the 2017 appropriations language Act and the repeated conditions in subsequent appropriations language) stores authorized under Criterion A must carry at least three (3) varieties of staple foods in each of the four (4) staple food categories where at least one (1) variety in at least two (2) staple food categories is perishable. For each variety, stores must carry at least three (3) stocking units. Upon finalization of a new staple food variety framework through this rulemaking, the SNAP retailer stocking requirements in Section 3(o) of the Act would also go into effect because the conditions of the appropriations language will have been satisfied. Those stocking requirements, which have already been codified at 7 CFR 278.1(b)(1)(ii) but not enforced, would require SNAP retailers to stock seven (7) varieties of staple foods in each of the four (4) staple food categories, of which at least one (1) variety in each of three (3) different staple food categories is perishable. The requirement to carry at least three (3) stocking units for each variety, as currently implemented and codified in regulations, will remain the same. The increased number of staple food varieties required under Criterion A is non-discretionary. While this proposed rule would not make any changes to the minimum breadth of stock stores are required to carry, this part of the previously codified standards would be

implemented for the first time upon publication of a final rule under this rulemaking.

Definitions of Accessory Food, Prepared Food, Retail Food Store, and Staple Food

The Department proposes to remove the discussion of accessory foods, variety, and main ingredient from the “Staple Food” definition at 7 CFR 271.2 for greater clarity. Instead of addressing all four terms in one definition, this proposed rule would add a separate definition for “Accessory Food.” The definition of main ingredient and the expanded frameworks for staple food varieties and accessory foods would be codified separately at 7 CFR 278.1(b). In line with the current Dietary Guidelines for Americans (DGA), 2020–2025, the definition of “Staple Food” at 7 CFR 271.2 would indicate that the meat, poultry, or fish staple food category would be referred to as the protein category to be inclusive of high protein plant-based food—and it will be referred to as, simply, the protein category through the remainder of this proposed rule. Similarly, the bread or cereals category would be referred to as the grains category to be inclusive of other grain-based food products—and it will be referred to as, simply, the grains category through the remainder of this proposed rule. The current definition of “Staple Food” already accounts for plant-based options for both the protein and the dairy categories. The proposed changes to streamline the definition of “Staple Food” would not result in any substantive changes to the definition or to existing staple food categories as currently defined.

To prevent inconsistency, the Department also proposes to remove the discussion of criteria A and B and prepared food from the definition of “Retailer Food Store” in 7 CFR 271.2. Criterion B is currently outlined in 7 CFR 278.1(b)(iii). Criterion A would be outlined in greater detail at 7 CFR 278.1(b)(ii), and a separate definition for “Prepared Food” would be added to 7 CFR 271.2 through this proposed rulemaking.

Finally, the Department proposes to move out of the “Retail Food Store” definition, the criteria for determining which co-located businesses are evaluated as a single firm for purposes of determining retailer eligibility. Instead, the provision would be added as new subparagraph at 7 CFR 278.1(b)(8). The proposed reorganization of provisions currently included as part of the “Retail Food Store” definition would not result in any substantive regulatory changes.

Application of Criterion A

Reorganization

For purposes of greater clarity and readability, as well as to incorporate a more detailed framework for determining distinct staple food varieties when assessing SNAP retailer eligibility, the Department proposes to reorganize 7 CFR 278.1(b)(1). Specifically, this rule proposes to remove redundancy in subparagraph (A) of 7 CFR 278.1(b)(1)(i) and break up subparagraph (A) of 7 CFR 278.1(b)(1)(ii) to address, in separate subparagraphs, the staple food stocking standards and the requirement to display the required stock for sale on a continuous basis. This action does not make any substantive changes to the current regulations. While this proposed reorganization highlights the statutory increases in the required number of varieties in each staple food category, those non-discretionary standards were already codified by the 2016 final rule, though these requirements have never been enforced due to Section 765 of the 2017 Consolidated Appropriations Act and the repeated conditions in subsequent appropriations language. If this rule were to be finalized as proposed, it is the Department's view that the requirements of this appropriations language would have been met and thus would negate the need for continuation of this appropriations language.

Staple Food Varieties

In this rulemaking, the Department is faced with balancing several competing interests, including ensuring that SNAP retailers carry a larger variety food options, that retailer food stores can easily understand the requirements, that the requirements can be operationalized in an efficient and cost-effective manner, and that the variety framework does not undercut Congress' intent to make the stocking standards more rigorous so that unscrupulous retailers are not able to gain entry into SNAP for the sole purpose of defrauding the program (H.R. Rep No. 113–333, 2014). In a December 2018 report, SNAP: Actions Needed to Better Measure and Address Retailer Trafficking, the General Accountability Office (GAO) reiterated its 2006 finding that the minimal requirements for the amount of food that retailers must stock could allow retailers more likely to traffic SNAP benefits (*i.e.*, referring to the illegal exchange of SNAP benefits for cash or consideration other than eligible food) into the program. It is with all these interests in mind that the Department proposes a modified

framework for distinguishing food items that would count as distinct varieties. As a result, the Department believes that the new approach described below is superior to the 2016 construct precisely because it more effectively balances all the competing interests.

Specifically, the Department proposes to codify the framework for determining distinct varieties at 7 CFR 278.1(b)(1)(ii)(C). In general, this proposed rule would maintain the overall current framework but proposes two new groups of distinct varieties for operational simplification and to give more weight to traditional staple food products. The Department believes that this approach is superior to the 2016 structure because it will provide more options for retailers to meet the variety requirements under this new staple food framework than under the 2016 framework.

To date, the criteria for determining which foods count as distinct staple food varieties (different types of food within a staple food category) have existed only in agency guidance and have generally been defined based on the type of food (by each different plant or animal) or the main ingredient of the food product. For the protein and vegetables or fruits staple food categories, this generally means that different types of food—regardless of brand, packaging, flavoring, style or cut, etc.—count as one distinct variety. For example, all types of apples fall within one variety separate from all types of oranges, just as all forms of chicken fall within one variety separate from all forms of beef. For the dairy and grains categories, this generally means that different types of products—even those that have the same main ingredient—are distinct varieties. For example, yogurt is a distinct variety from cheddar cheese, even if they both have milk as the main ingredient; and bread is a distinct variety from pasta, even if they both have wheat as the main ingredient. More recently, FNS has counted plant-based dairy alternatives as distinct dairy varieties from the traditional mammal-based varieties for each different type of plant the product is made from (*e.g.*, almond milk is a separate variety from soy milk and both are separate varieties from cow's milk) and counted dairy products from different mammals as distinct traditional dairy varieties (*e.g.*, cow milk is a separate variety from goat milk). For multi-ingredient food products, long-standing agency policy has determined variety and category by the main ingredient, defined as the first listed ingredient after water, stock, or broth. For example, if a can of beef stew

has beef as its main ingredient, it counts as a beef variety in the protein category.

With the non-discretionary increase in the number of varieties SNAP retailers will be required to stock in each staple food category, retailer stakeholders have expressed concern with being able to meet the new standards, particularly for the dairy and the protein categories. An analysis of 121,294 SNAP-authorized small format retail food stores (which represent 64% of all SNAP-authorized small retailers, or 45% of all SNAP-authorized retailers) determined that, in terms of meeting the higher number of staple food varieties required by the 2014 Farm Bill, 81% of the small stores already stocked enough grains and 83% already stocked enough fruits and vegetables, while only 63% already stocked enough protein and only 52% already stocked enough dairy.

Staple Food Subgroups 1 and 2

In general, the more varieties that are subdivided based on main ingredient or other factors (such as dairy or meat fat content, whole or refined grains, and cheese firmness), the more difficult the system becomes to operationalize and the more costly it becomes for FNS to identify and document the distinct varieties. It can also become more confusing for retail food stores, making it difficult for them to meet the stocking standards simply because they do not understand the requirements. Currently, FNS employs a contractor to take photos of store aisles to get a sense of the overall store inventory, but not individual items or their ingredients. When retailers are at the margin of eligibility, and the availability of certain inventory is not clear or needed information is not on the front of the packaging, follow-up store visits or documentation requests are required to determine whether the store has sufficient stock. Such situations increase the time it takes for a retailer to become authorized. To make the variety criteria more straightforward and minimize the need to identify the main ingredient for basic food products, the Department proposes to establish two separate subgroups of staple food varieties.

In group 1 under 7 CFR 278.1(b)(1)(ii)(C)(1), the specific types of raw food identified, without any other ingredients, would count as separate varieties from multi-ingredient food products with the same main ingredient. The purpose of this group is to promote the stocking of basic staple food essentials needed for the home preparation of meals rather than counting such essentials as the same variety as multi-ingredient, processed

foods with the same main ingredient. The Department proposes to include the following three types of food in group 1:

- Grain-Based Flour;
- Raw Grains; and
- Dry Beans, Peas, or Lentils.

For example, as part of group 1, the following foods, which currently count as just one variety, would be separate varieties under the proposed framework:

- Cornmeal and ears of corn or a product with corn as the main ingredient;
- A bag of uncooked rice and canned soup with rice as the main ingredient; and
- A bag of dry beans and canned cooked beans.

All dry beans, all dry peas, and all dry lentils, regardless of the kind of bean, pea, or lentil, each would count as one distinct variety, for a total of 3 possible varieties, separate from any multi-ingredient product with beans, peas, or lentils as the main ingredient. The same construct would apply to each kind of grain for grain-based flour and raw grain. Therefore, instead of a bag of raw rice, rice flour, and a frozen grain bowl with rice counting as one rice variety as is currently the case, each of those items would count as its own distinct variety under the proposed framework. The same would apply for each different type (*e.g.*, oats, barley, wheat etc.).

In group 2, under 7 CFR 278.1(b)(1)(ii)(C)(2), the specific types of food identified would count as only one distinct variety, regardless of different main ingredients or coming from different animals or plants. The purpose of this group is to make the process of identifying distinct varieties as simple and intuitive as possible for both FNS and retailers while still meeting the intent of the program to provide SNAP households with access to a broad range of staple food varieties to meet their nutritional needs. This framework is currently being applied through long-standing practice to specific dairy and grains products as indicated in agency guidance, SNAP Staple Foods. Through this rulemaking, the Department proposes to codify the framework and the specific products for which it applies. This rule also proposes to count additional dairy subproducts as distinct varieties and count tofu/tempeh as a distinct variety of protein. At the same time, the current practice of subdividing bread by various forms (such as bagels, sliced bread, tortillas, pita, etc.) would be eliminated. The Department proposes to include the following 17 different types of food products in group 2:

- Eggs
- Bread
- Pasta/Noodles
- Breakfast Cereals/Foods
- Perishable Liquid Milk
- Shelf-Stable Liquid Milk
- Dried or Powdered Milk
- Fermented or Cultured Dairy Beverages
- Yogurt (non-liquid)
- Butter
- Cream (separate from butter)
- Cheese
- Perishable Meat, Poultry, or Fish (for each different kind of animal)
- Shelf-Stable Meat, Poultry, or Fish (for each different kind of animal)
- Tofu/Tempeh
- Infant Formula
- Infant Cereal

Unlike the foods in group 1, most of the foods in group 2 are available in multiple forms, with a wide array of main ingredients. As a result, the main ingredient of many food products listed in group 2 cannot be easily determined by just looking at the product or even knowing what kind of product it is. Breakfast cereals, for instance, may each have a different grain (such as corn, oat, or wheat) as the main ingredient. Under the proposed framework, all breakfast cereals would fall within one variety, regardless of the grain from which they are made. The same construct would apply to all the food products in group 2, greatly simplifying the process for determining if a retail food store meets the standards for Criterion A.

The Department is aware that the proposal to no longer subdivide bread by its form (e.g., rolls, baguette, sliced bread) may be controversial. However, the Department has concluded that counting each form of bread as a distinct variety is not practical given the need to categorize a large number of possibilities. Allowing a retailer to meet the stocking requirement for the grain category with just bread also subverts the purpose to require retail food stores authorized under Criterion A to carry a broader variety of staple foods in each staple food group. By separating out certain foods as distinct varieties through the combination of food items identified in both groups 1 and 2, the Department would be replacing those varieties with other, more basic varieties of grains which are easier to distinguish and are commonly stocked in retailer food stores of various types and sizes. For example, under the new proposed framework, rice products could be counted in as many as three distinct varieties: rice flour, rice grain, and any other product with rice as the main ingredient. Currently, all these products

count as only one “rice” variety. By singling out these specific food products, the new variety framework would not only make it easier for FNS to determine retailer eligibility, but it would also make it easier for retailer food stores to more accurately determine if they meet the stocking requirements before deciding to move forward with applying for authorization.

Plant-Based or Grain Alternatives to Dairy Products

Plant-based alternatives are currently recognized as distinct varieties from the traditional dairy products for which they are a substitute. Under 7 CFR 278.1(b)(1)(ii)(C)(3)(i), the Department would maintain this provision but proposes to limit the number of plant-based alternatives that may count towards the dairy category to three. Current policy does not limit the number of plant-based dairy alternatives that a single retail food store may count towards meeting the staple food stocking requirements in the dairy category. For example, having sufficient units of almond milk, oat milk, and soy milk is enough to meet the current dairy stocking requirement. Yet, the DGA states that, other than fortified soy milk, no other plant-based dairy alternative contains the nutritional content to meet the dietary recommendations for dairy. This proposed change would help ensure that SNAP retailers carry a variety of milk, yogurt, and cheeses rather than meeting the standard through multiple varieties of plant-based milks.

Under 7 CFR 278.1(b)(1)(ii)(C)(3)(ii), the Department proposes to move several high protein plant foods from the vegetable or fruit category, for which almost all retail food stores already carry a sufficient number of varieties, to the protein category. Under this proposed rule, the following types of foods would count as protein: nuts and seeds, beans, peas, and lentils. This proposed change would not only add more protein varieties, but it would also properly encourage retail food stores to carry plant-based proteins and help meet the nutritional needs of SNAP households through high-fiber protein sources, particularly for individuals with plant-based diets. The Department does not propose limiting the number of plant-based varieties that may count in the protein category because the DGA includes a broad group of foods from both animal and plant sources in the protein category, which can help individuals meet the protein dietary recommendations.

Appropriations Directive

In accordance with enacted appropriations directing USDA to increase the number of items that qualify as acceptable varieties in each staple food category the proposed variety framework would create several more varieties in the protein, dairy, and grains categories than existed in the 2016 final rule. The vegetables or fruits category already includes numerous possible varieties—significantly more than any other staple food category. Furthermore, 83 percent of currently authorized small format stores already stock enough fruits and vegetables. Any further attempts to subdivide existing vegetable or fruit varieties would add unwarranted complexity to a category that, up to this point, has always been the most straightforward. Therefore, the Department does not propose any changes to the vegetables or fruits staple food category. However, because there has been some confusion as to whether pre-cut fruits and vegetables were considered prepared food for retailer authorization purposes, the Department would like to take this opportunity to clarify that cold pre-cut fruits and vegetables intended for home consumption count as a staple food in the vegetable and fruits category. Therefore, bags of sliced apples or broccoli florets continue to count as a staple food. In addition, the Department is proposing to codify, with modification, the definition of “Prepared Foods” in current agency guidance, “Retailer Eligibility-Prepared Foods and Heated Foods,” to allow cold pre-cut food intended for home consumption, even if cut by the retailer on the premises of the firm, to count as staple food as long as the retailer has not otherwise prepared the food for immediate consumption. This means that a bag of shredded lettuce to prepare a salad at home, regardless of whether the lettuce was shredded on the premises of the store, counts as a staple food. Shredded lettuce and other cold cut fruits or vegetables from a salad bar from which the customer must prepare their own salad by serving themselves would also count as staple food. However, if the retailer serves, mixes, and/or otherwise prepares the ingredients of the salad for the customer, even if cold, then the salad would continue to be considered prepared food that does not count towards meeting the SNAP staple food stocking or sales requirements.

As discussed earlier, carrying enough varieties in the protein and dairy categories has historically presented the biggest challenge for small format retail

food stores when it comes to meeting the staple food stocking standards for SNAP authorization followed by the grains category. Therefore, the Department would like to specifically address the additional varieties the new proposed framework would create in each of those three staple food categories in comparison to the 2016 final rule. We note that the number of different groupings of varieties indicated does not reflect the total number of possible distinct varieties under that staple food category. For example, although the protein category has seven categories of varieties, there are numerous possible distinct varieties under the single “perishable meat, poultry, or fish” category because each kind of animal (*e.g.*, cow, pig, lamb, turkey, chicken, trout, flounder) represents a separate variety, all of which would be impossible to fully identify or count.

Protein Category

The Department is proposing to subdivide protein into the following seven groupings of varieties:

- Perishable meat, poultry, or fish, including fresh or frozen versions for each different kind of animal;
- Shelf-stable meat, poultry, or fish for each different kind of animal;
- Eggs;
- Nuts/seeds;
- Raw beans, peas, or lentils, each of which would count as a distinct protein variety;
- Cooked (*e.g.*, canned) beans,
- Peas, or lentils and multi-ingredient products with beans, peas, or lentils as the main ingredient; and
- Tofu/tempeh, together, would be a distinct variety from all other types of proteins and any other pea product as the main ingredient.

As with the 2016 final rule, this rule would add nuts/seeds as well as beans, peas, or lentils to the varieties FNS currently counts in the protein category, adding an additional 4 possible protein varieties—(1) nuts/seeds; (2) beans; (3) peas; and (4) lentils. In addition, this rule would add the last four varieties listed above to the varieties established by the 2016 final rule, allowing for numerous additional possibilities for each type of shelf-stable meat, poultry or fish, as well as three additional varieties each for beans, peas, or lentils in its raw form, and one additional variety for tofu/tempeh, which would be separate from any other product with soybeans or other peas as the main ingredient.

Dairy Category

The Department proposes to subdivide dairy into twelve distinct categories:

- Perishable liquid milk (such as whole milk, 2% milk, 1% milk, skim milk, etc.) for each different type of mammal;
- Shelf-stable liquid milk, such as canned evaporated or condensed milk and boxed milk;
- Cheese;
- Yogurt (non-liquid);
- Butter;
- Infant formula;
- Cream (other than butter, which would continue to be its own separate variety), such as heavy cream, sour cream, and half and half;
- Fermented or cultured dairy beverages, such as kefir, buttermilk, and yogurt-based drinks;
- Dried milk, such as milk powder; and
- Plant-based alternative (for up to three different dairy products listed above).

Current agency guidance counts all milk products, other than the first five products listed above, as one single “milk” variety. Under the 2016 final rule, cheese was further subdivided into soft cheese and hard/firm cheese, and milk was further subdivided into perishable and shelf-stable milk, adding two additional dairy varieties.

In agency guidance issued in April 2023, Criterion A—Stocking Requirements for Retailers: Dairy, FNS made dairy products distinct varieties for each different type of mammal (*e.g.*, cow milk, sheep milk, goat milk) to make the distinctions for mammal milk more similar to that for plant-based dairy alternatives. Prior to this policy change in 2023, milk was one variety, regardless of the mammal it came from, while plant-based dairy alternatives were counted as separate varieties for each different kind of plant it was made from (*e.g.*, soy milk, coconut milk, rice milk). However, such distinctions for mammal-based milk have proven to be difficult to operationalize. Feta cheese, for instance, can be made from various kinds of milk either by itself or in combination, including goat milk, sheep milk, and cow milk, making it almost impossible to determine the dairy variety without looking at the ingredients list. While the proposed framework would eliminate this recently added distinction for dairy products by mammal for the types of products listed in group 2, the four additional dairy varieties under the proposed framework are common types of dairy products that most retail food

stores carry. Not only is it less likely for small format retail food stores to carry most of these products for any mammal other than cow, essentially making the distinction by mammal immaterial, it would streamline the retailer approval process by eliminating the need to identify which type of mammal milk is the main ingredient of each of those products. Under the proposed framework liquid perishable milk would continue to count as distinct varieties for each type of mammal.

In this rule, the Department proposes to carry over the 2016 provision of making shelf-stable dairy a distinct variety from perishable dairy. However, for the reasons stated above, the Department has reconsidered counting soft cheese and hard/firm cheese as two separate varieties and distinguishing dairy products, other than liquid milk, by mammal or, in the case of plant-based alternatives, by main ingredient as the 2016 final rule had. Instead, this proposed rule would add three different distinct dairy varieties in the form of cream, fermented or cultured dairy beverages, and dried milk. Therefore, cream and fermented beverages would count as a distinct variety from milk or yogurt, and dried milk would count as a distinct variety from liquid shelf-stable milk. The operational difficulties of determining which animal a product is made from or the main ingredient of a plant-based alternative, which include numerous possibilities, would impose an undue burden on the agency as discussed earlier. The Department is also proposing these changes based on retailer industry feedback indicating that counting plant-based dairy alternatives and dairy made from mammals other than cows as distinct varieties would not significantly assist small-format stores in meeting the increased SNAP stocking requirements in the dairy category since such products are not widely in demand by customers of small-format stores.

Grains Category

The Department proposes to subdivide grains into six distinct categories:

- Raw Grains for each different type of grain;
- Flour (grain-based) for each different type of grain;
- Bread;
- Pasta/Noodles;
- Breakfast Cereals/Foods (such as a box of corn flakes, frozen waffles, or pancake mix); and
- Infant Cereal.

For the grains category, the 2016 final rule subdivided bread into five varieties based on the bread form. The five

varieties included bread, bagels, buns/rolls, English muffins, and pitas for each type of grain. The Department believes that such categorization introduces too much confusion as to which category a particular bread form falls under. For example, it is unclear how tortillas or croissants would be categorized. Likewise, it is unclear how cornbread or matzo bread would be categorized. Also, determining the grain each bread is made of would present significant operational challenges for a construct that is counter to the Congressional intent to require a greater range of different types of food in each staple food category.

Under this rule, the Department now proposes to count all bread as one variety, regardless of form or the grain from which it is made. However, for each type of grain, the Department proposes to count raw grain as a separate variety from any other product with that grain as the main ingredient and to count flour as a separate variety from the raw grain or any other product made with the same grain. Raw grains and flour, which are not only generally more easily identifiable on account of having the grain clearly indicated on the front of the package, are also important components for the preparation of numerous foods.

Finally, the Department proposes to combine both the cold and “hot” cereal varieties with the baking mix variety included in the 2016 final rule. However, the category would be expanded to include other breakfast foods, such pre-made frozen/cold waffles, pancakes, etc. With the introduction of raw grains and flour as distinct varieties for each type of grain, the Department believes that having three separate varieties for breakfast foods is not only unnecessary but would add unwarranted complexity by requiring varieties to be based on whether it is intended to be eaten hot or cold as well as whether it is ready-to-eat or not. Also, the Department believes that having a baking mix variety would not, in most cases, add additional possibilities. Baking mixes for dessert foods (such as cakes, brownies, cookies, etc.) would be considered accessory foods that do not count towards the staple food stocking requirements even if the main ingredient is flour. Also, any baking mix that has an accessory food as the main ingredients would also be an accessory food. Therefore, having a separate baking mix variety would give the false impression that any baking mix counts as a separate variety in the grains category, leading to both retailer confusion and operational ambiguity.

In the end, the Department has determined that the addition of raw grains and flour for each type of grain more than makes up for the removal of the of other distinct grain varieties while staying true Congressional intent. Under 7 CFR 278.1(b)(1)(ii)(C)(4)–(5), the Department proposes to codify existing long-standing policy. Current policy prohibits counting a food product in more than one staple food category. Current policy also does not count a single type of food that is packaged differently as distinct varieties. For example, chicken wings and chicken breasts are both currently counted as one “chicken” variety. Similarly, ground beef and chuck roast are both currently counted as one “beef” variety. A single type of food that is prepared differently is also not currently counted as separate varieties. For example, whole fresh tomatoes, 100% tomato juice, and tomato sauce all currently count as one “tomato” variety. Similarly, pork loin and pork hotdogs are both currently counted as one “pork” variety. Different flavorings also do not currently count as distinct varieties. For example, chocolate milk and plain milk both currently count as one “milk” variety. Finally, different kinds of the same type of food also do not count as distinct varieties. For example, brown rice, wild rice, and white rice all currently count as one “rice” variety. Similarly, mandarin oranges, tangerines, and navel oranges all count as one “orange” variety. These current policies would remain unchanged in this proposed rule.

Under 7 CFR 278.1(b)(1)(ii)(C)(6), the Department proposes to also codify the long-standing definition of “main ingredient” currently used to determine the staple food category and variety of a food product with multiple ingredients. “Main ingredient” is currently defined as the first listed ingredient unless the first ingredient is water, stock, or broth. If the first ingredient is water, stock, or broth, the next ingredient is considered the main ingredient for determining the variety of staple food or whether it is an accessory food. This definition is based on the Food and Drug Administration requirement that ingredients be listed from highest to lowest quantity by weight in the ingredients list on the product’s label (21 CFR 101.4). The definition would remain unchanged in this proposed rule.

Accessory Food

In accordance with section 3(q)(2) of the Act, and as currently codified at 7 CFR 271.2 (definition of “Staple Food”) and 7 CFR 278.1(b)(1)(ii)(C), accessory

foods do not count towards meeting the retailer staple food stocking or sales requirements discussed above. The current definition of “Staple Food” at 7 CFR 271.2 also defines accessory foods as foods that are generally considered snacks or desserts and/or are meant to complement or supplement meals and provides several illustrative examples for each of the two groups. Agency guidance, SNAP Accessory Foods List (March 5, 2018), provides several more examples and states that any food product that is not specifically identified as an accessory food in agency guidance shall be considered a staple food. In an effort to further the purpose of the program to provide low-income households access to nutritious food essential to health and well-being, as well as to meet the intent of Congress to reduce fraud at retail stores by requiring more rigorous staple food stocking standards, the Department is taking this opportunity to update the current accessory foods list and to codify it through this proposed rulemaking.

Under this proposed rule, the Department would separate the current list of accessory foods by creating a third group; edible items primarily used as part of the food preparation process. Most of the foods that would be listed under this group are already included in the current accessory foods list under one of the other two existing groups. Additional specific examples would be added for clarity and consistency, including yeast, starch, broth, stock and gelatin. These items are subproducts of currently listed items and considered accessory foods under long-standing agency practice. This clarification would also be consistent with the definition of “main ingredient,” which is the first ingredient listed in the ingredient list of food product after broth, stock, or water. Water is already explicitly identified as an accessory food, as is bouillon. These proposed changes would not have any material impact on current practice.

The Department also proposes adding three new groups of foods to the accessory food list. The proposed new groups are:

- Snack bars, including but not limited to, protein, granola, and baked bars. Such food products are not generally eaten as a meal, but as a snack between meals. Furthermore, because multi-ingredient food products are categorized by the main ingredient, snack bars may fall under any one of the four staple food categories. This makes it difficult to categorize snack bars by looking at the package itself and leads to counterintuitive classification, such

as a protein bar that has whey as the main ingredient counting as a staple food in the dairy category.

- Jerky, other than whole-muscle meat jerky, including but not limited to beef jerky and plant-based jerky. While jerky is rich in protein, non-whole muscle jerky is also typically eaten as a snack between meals. Counting jerky as a staple food also allows stores to meet the protein staple food category by merely stocking jerky sticks of different animals, such as beef jerky, turkey jerky, and pork jerky, which are currently counted as three separate protein varieties. This classification of jerky does not further the purposes of the program or the intent of Congress for SNAP retailers to be required to carry a broader variety of foods in each staple food category. Changing jerky to an accessory food may also compel SNAP retailers to stock alternative food varieties that would count under the protein staple food category.

- Cheese or fruit dips and spreads, including but not limited to, cheese sprays, jams, jelly, marmalade, preserves and compote. Cheese or fruit dips and spreads are meant to complement or supplement a meal, which the Act explicitly identifies as a category of accessory foods. In addition, cheese dips and spreads are highly processed cheeses made with less real cheese and more additives. Similarly, fruit spreads tend to be high in sugar content, which is not foundational to a balanced diet.

The Department recognizes that many individuals may occasionally or frequently eat some of these food products as meal replacements. These proposed changes, however, would not prevent households from purchasing these food items with SNAP benefits. All accessory foods, while not counted as staple foods for retailer eligibility purposes, are generally eligible for SNAP purchase.¹

Procedural Matters

Executive Orders 12866 and 13563

Under Executive Order 12866, as amended, agencies must assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits. The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a

regulatory action is significant as defined by Executive Order 12866 and, therefore, subject to OMB review.

This proposed rule has been determined to be significant under Executive Order 12866 and was reviewed by OMB. The Regulatory Impact Analysis (RIA) for this rulemaking was published as part of the docket in Supporting Documents on www.regulations.gov. A summary of the RIA follows. This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 regulatory action.

Regulatory Impact Analysis

Need for Action: In response to section 765 of the Consolidated Appropriation Act of 2017 and corresponding sections in subsequent enacted appropriations, the United States Department of Agriculture (the Department) Food and Nutrition Service (FNS) proposes to revise the Supplemental Nutrition Assistance Program (SNAP) regulations at sections 271 and 278 to codify a new framework for determining distinct varieties of staple foods for purposes of assessing retail food store eligibility to participate in SNAP. The rulemaking is necessary to implement the enhanced stocking requirements of the Agricultural Act of 2014 (2014 Farm Bill), which increased the minimum number of varieties SNAP retail food stores must carry in each staple food category from three (3) to seven (7) as well as the minimum number of varieties that must be perishable from one variety in each of two (2) different staple food categories to one variety in each of three (3) different staple food categories. This rule would also update and codify the existing criteria for accessory foods (snacks, desserts, and foods meant to complement or supplement meals), which are not counted as staple foods for purposes of meeting the staple food stocking or sales requirements for SNAP retailer eligibility. This proposed rule will primarily affect small SNAP-authorized retailers (convenience stores, small grocery stores, and combination stores) who are currently authorized under Criterion A.

Benefits: The proposed rule will increase the variety of staple food products offered for sale at SNAP-authorized firms, which will help to ensure that SNAP households have access to healthier foods on a continuous basis.

Costs: The Department has estimated the proposed rule's total cost to the Federal Government as approximately \$4 million in fiscal year (FY) 2027, and to incur no further costs after implementation. The cost to currently

authorized retailers is estimated to be approximately \$55 million in the first year and about \$2 million per year over the following four years.

Initial Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), agencies must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). FNS believes the rule would not present a significant economic impact to a substantial number of small businesses. Although the number of stores impacted is large, we estimate that the cost to those small businesses of the changes in this rule would be nominal, on average about \$262 in the first year and \$374 over five years for those stores that need additional varieties to comply with this rule. USDA welcomes comment on any factors that that might be specific to the impacts of the proposed rule on small businesses, and potential data sources to quantify such impacts.

Unfunded Mandates Reform Act

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments, or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule may contain policies that require consultation. USDA will have a consultation before the issuing of the final rule and at a point where Tribal feedback can be incorporated into the final rule. FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

¹ With approval by the Secretary for a demonstration project waiver, authorized by Section 17 of the Act, States may restrict the purchase of certain foods with SNAP benefits. For additional information, see <https://www.fns.usda.gov/snap/waivers/foodrestriction>.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule will contain information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by November 24, 2025. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: SNAP—Store Applications.

OMB Control Number: 0584–0008.

Expiration Date: 4/30/2027.

Type of Request: Revision of a currently approved collection.

Abstract: This rule proposes to revise the SNAP regulations to codify a new framework for determining distinct varieties of staple foods for purposes of assessing retail food store eligibility to participate in SNAP. To assist authorized retailers with the implementation of this rule, the Department intends to provide written notice to all authorized retailers outlining the changes to staple food stocking requirements. Additionally, the Department may consider new guidance for authorized retailers that further outlines these changes. Finally, the Department anticipates that currently authorized retailers may need to order additional stock to come into compliance with the regulations. These activities are considered one-time burden. There is no additional ongoing burden associated with this information collection. The Department intends to revise the currently approved information collection for SNAP—Store Applications (OMB Control Number 0584–0008, expiration 4/30/2027) to include the burden associated with these activities while seeking a three-year renewal for the OMB control number.

One Time Reporting Burden Estimates for Proposed Rule

Respondents: Businesses, For Profit.

Estimated Number of Respondents: 269,217. As of April 30, 2025, there were 269, 217 SNAP-authorized retailers. Under this proposed rule, each authorized retailer would review the written notice of changes to SNAP staple food stocking requirements, review written guidance aligning with the rule, and make any changes to current stock, as necessary.

Estimated Number of Responses: 269,217. Each authorized retailer would be expected to review the written notice and guidance and update store stock, if necessary, one time.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: The estimated total one-time burden for authorized retailers reviewing the notice and guidance and updating stock is 1,126,167.85 hours.

Revised Reporting Burden for 0584–0008, Including Proposed Rule Estimates

Respondents: Business.

Estimated Number of Respondents: 324,925.

Estimated Number of Responses: 394,102.

Estimated Number of Responses per Respondent: 1.212.

Estimated Total Annual Burden on Respondents: 1,126,167.85.

Respondent category (affected public)	Type of respondents (optional)	Burden activity	Estimated number of respondents	Responses per respondent (Col. H/F)	Total annual responses (Col. F × G)	Estimated hours per response (Col. J/H)	Estimated total burden hours (Col. H × I)	Wage Rate	Total annualized cost of respondent burden (J * L)	Previously approved burden hours	Difference due to adjustments	Differences due to program changes
Businesses, For Profit.	SNAP Authorized Retailers.	Reviewing notice, reviewing guidance, and updating stock.	269,217.00	1.00	269,217.00	4.00	1,076,868.00	\$49.89	\$53,724,944.52	0	0	1076868.00
Total Start-up Reporting Burden		.....	269,217.00	1.00	269,217.00	4.00	1,076,868.00	49.89	53,724,944.52	0.00	0.00	1076868.00
Currently Approved Reporting Burden		.....	55,708.00	2.2	124,885.00	0.395	49,299.85	.....	2,427,716.84	49,299.90	0.00	0
Grand Total Reporting Burden		.....	324,925.00	1.2129014	394,102.00	2.8575543	1,126,167.85	.....	56,152,661.36	49299.9	0	985064.00

* Additional information is available in the Supporting Statement and Excel chart.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13132; Federalism Summary Impact Statement

The proposed rule does not impact States or local governments, so FNS anticipates that this rule will not have implications for federalism. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required. States and local governments are invited to comment if they believe a federalism summary is necessary.

Executive Order 12372

Executive Order 12372 requires Federal agencies to engage in intergovernmental consultation with State and local officials when involved in Federal financial assistance programs and direct Federal development. SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in this proposed rule, Department of Agriculture Programs and Activities Excluded from Executive Order 12372 (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effects with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effects. Prior to any judicial challenge to the provisions of the final rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis" and 1512-1, "Regulatory Decision Making Requirements" to identify and address any major civil rights impacts the proposed rule might have on minorities, women, persons with disabilities, or other protected classes. FNS does not collect data from retail food stores regarding any of the protected classes

under Title VI of the Civil Rights Act of 1964, and FNS specifically prohibits retailers that participate in SNAP from engaging in actions that discriminate based on race, color, national origin, sex, age, disability, religion, or political belief. After careful review, FNS has determined that the intent of this proposed rule is not to have an adverse impact on any retail food store owners or SNAP recipients belonging to protected classes and would not limit equal access to retailer participation. The rule concerns only those retail food stores participating in SNAP that would not meet the increased staple food stocking requirements necessary for SNAP authorization that were mandated by the 2014 Farm Bill and codified in the 2016 final rule. The proposed regulatory changes are intended to make the staple food stocking standards more intuitive so that those retail stores, which are primarily small format retailers, are better able to understand and meet the enhanced stocking requirements of the 2016 final rule. For retailers with limited English proficiency, FNS will ensure that all retailers are made aware of FNS telephonic translation services offered upon request.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Banks, banking, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, 7 CFR parts 271 and 278 are proposed to be amended as follows:

- 1. The authority citation for parts 271 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

- 2. In § 271.2:
 - a. Add definitions for *Accessory food* and *Prepared food* in alphabetical order;
 - b. Revise subparagraph (1) of the definition of *Retail food store*; and
 - c. Revise the definition of *Staple food*.
The additions and revisions read as follows:

§ 271.2 Definitions.

Accessory food means food that is generally considered a snack food or dessert, food that is meant to complement or supplement meals, or

food used primarily in the meal preparation process as listed at § 278.1(b)(7). Accessory foods are not defined by package size and shall not be considered staple foods for purposes of meeting retail food store staple food stocking or sales requirements for SNAP participation.

* * * * *

Prepared Food means hot or cold food or beverages ready for immediate consumption that are assembled, cooked, mixed, or otherwise made ready for immediate consumption by the retailer on the premises of the firm, except for bread that otherwise counts as staple food. This definition also includes hot or cold food or beverages intended for onsite consumption regardless of whether it is assembled, cooked, mixed, or otherwise made by the retailer. Prepared food does not include food that is only cut or sliced on the premises of the firm, but which is not otherwise made ready for immediate consumption by the retailer or intended for onsite consumption. Prepared foods shall not be considered staple foods for purposes of § 278.1(b).

* * * * *

Retail food store means:

- (1) An establishment or house-to-house trade route that sells food for home preparation and consumption and meets the criteria as set forth in § 278.1(b).

* * * * *

Staple food means food intended for home preparation and consumption, excluding accessory foods, in each of the following four categories: (1) protein, including plant-based sources; (2) grains; (3) vegetables or fruits; and (4) dairy, including plant-based alternatives.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

- 3. In § 278.1:
 - a. Revise subparagraph (b)(1)(i)(A);
 - b. Revise subparagraph (b)(1)(ii); and
 - c. Redesignate subparagraph (b)(7) as subparagraph (b)(9) and add new subparagraphs (b)(7) and (b)(8).

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

- (b) * * *
(1) * * *
(i) * * *

(A) An establishment or house-to-house trade route shall normally be

considered to have food business of a nature and extent that will effectuate the purposes of the program if it sells food for home preparation and consumption and meets either Criterion A or B of this paragraph.

* * * * *

(ii) Application of Criterion A.

(A) Stocking Standards. To qualify under Criterion A, retail food stores shall offer for sale no fewer than:

(1) Seven (7) distinct varieties of staple food items in each of the four staple food categories, as defined under § 271.2 of this chapter, for a minimum of 28 distinct staple food varieties;

(2) Three (3) stocking units of each qualifying staple food variety, for a minimum of 84 stocking units; and

(3) One (1) variety of perishable foods in three different staple food categories so that a minimum of three (3) of the 28 varieties and nine (9) of the 84 stocking units are perishable.

(B) Offer on a Continuous Basis.

Retail food stores must offer the qualifying staple food items for sale on a continuous basis, as evidenced by displaying the items for sale in a public area on any given day of operation.

(1) If a retail food store does not meet the stocking requirements at the time of an FNS store visit, the store may provide documentation that it ordered and/or received the required stock no more than 21 calendar days prior to the date of the store visit. Documentation may include, but is not limited to, invoices and receipts.

(2) Failure to provide documentation related to stock may result in denial or withdrawal of authorization. Failure to cooperate with FNS store visits shall result in the denial or withdrawal of authorization.

(C) Distinct Staple Food Varieties.

Foods within the same staple food category that differ by type (e.g., apple vs. orange), the kind of animal from which the staple food is derived (e.g., cow vs. chicken), or by raw or main ingredient are considered distinct staple food varieties. Multi-ingredient foods are categorized based on the food's main ingredient. The main ingredient of a multi-ingredient food is the first ingredient other than water, broth, or stock listed on the ingredient list.

(1) The following foods are considered distinct staple food varieties from foods of the same type or kind, and from foods with the same raw or main ingredient:

(i) Dry Beans, Peas, and Lentils (with no other ingredients and each counting as only one staple food variety regardless of the number of dry bean, dry pea, or dry lentil types offered);

(ii) Raw Grains (e.g., rice and barley with no other ingredients); and

(iii) Flour (made from raw grains with no other ingredients);

(2) The following foods are considered only one distinct staple food variety regardless of type, kind, or raw or main ingredient (e.g., rice noodles are the same variety as wheat noodles):

(i) Eggs;

(ii) Perishable Meat, Poultry, or Fish (for each different kind of animal)

(iii) Shelf-Stable Meat, Poultry, or Fish (for each different kind of animal)

(iv) Tofu/Tempeh;

(v) Bread;

(vi) Pasta/Noodles;

(vii) Breakfast Cereals/Foods;

(viii) Perishable Liquid Milk;

(ix) Shelf-stable Liquid Milk;

(x) Cream (other than butter);

(xi) Fermented/Cultured Dairy

Beverages;

(xii) Dried/Powdered Milk;

(xiii) Cheese;

(xiv) Yogurt (non-liquid);

(xv) Butter;

(xvi) Infant Formula; and

(xvii) Infant Cereal.

(3) Plant-Based or Grain Alternatives.

(i) Plant-based dairy alternatives shall be considered distinct dairy staple food varieties from the traditional variety for which they are a substitute and may count for up to three (3) varieties as long as the main ingredient is not an accessory food.

(ii) Nuts/seeds, beans, peas, and lentils shall count in the protein category.

(4) No food product can count as a variety in more than one staple food category.

(5) Unless specified under subparagraphs (b)(1)(ii)(C)(1) or (2) of this section, the following are not considered distinct staple food varieties:

(i) Different brands, flavorings, packaging, or preparation, such as, but not limited to: different cuts of meat, juiced versus whole fruits, processed or cooked meat versus raw meat, chocolate versus plain milk, etc.

(ii) Different kinds of the same type of food, such as, but not limited to: brown and white rice, pinto and kidney beans, granny smith and gala apples, whole and skim milk, etc.

* * * * *

(7) *Accessory Foods.* Accessory foods as defined at § 271.2 of this chapter do not count as staple foods for purposes of retail food store eligibility and include:

(i) Snack and Dessert Food Items.

(A) Chips and other finger snacks, including but not limited to, potato, corn, wheat, tortilla, pita, vegetable, and

fruit chips, crisps, sticks, and straws; onion ring snacks; corn nuts; snack and trail mixes (other than those containing only nuts); crackers; pork rinds; pretzels; pre-popped or un-popped popcorn; and cheese puffs or curls.

(B) Baked, gelatin, and pudding desserts, including but not limited to, doughnuts, brownies, cupcakes, cookies, snack cakes, muffins, pastries, sweet rolls, pies, cakes, churros, scones, pudding, and any packaged mixes intended to create any of the aforementioned products;

(C) Frozen snacks and desserts, including but not limited to, ice cream, ice milk, frozen yogurt, custard, whipped cream, sherbet, sorbet, gelato, granita, Italian ices, frozen carbonated beverages, snow cones, and ice pops;

(D) Candy and chocolate, including but not limited to, mints, chocolate chips, marshmallow, gum, toffee, brittle, fudge, marzipan, nougat, and candy bars;

(E) Snack bars, including but not limited to, protein, granola bars, and baked bars; and

(F) Jerky, other than whole-muscle meat jerky, including but not limited to beef jerky and plant-based jerky.

(ii) Food Items that Complement or Supplement Meals.

(A) Carbonated and uncarbonated beverages (except milk, plant-based milk alternatives, and 100% fruit or vegetable juice), including but not limited to, soda pop, sports or energy drinks, iced tea, tea bags, fruit punch, mixers for alcoholic beverages, shake powder/mixes, and water;

(B) Condiments, including but not limited to, ketchup, mayonnaise, mustard, salad dressing, hot sauce, vinegar, relish, horseradish, chutney, salsa, and soy sauce;

(C) Cheese or fruit dips and spreads, including but not limited to, cheese sprays, jams, jelly, marmalade, preserves, and compote;

(D) Sweeteners, including but not limited to, sugar, honey, maple syrup, aspartame, molasses, high fructose corn syrup, and any other natural or artificial sweeteners;

(iii) Edible items primarily used as part of the food preparation process.

(A) Extracts, including vanilla and other flavor extracts;

(B) Powdered, dried, and extracted spices or seasonings;

(C) Baking soda, baking powder, yeast, and starch;

(D) Vegetable oil, olive oil, shortening, lard, safflower oil, and any other solid or liquid cooking oils or fats (except butter and butter substitutes);

(E) Broth, stock, gelatin, and bouillon;

(F) Edible but non-caloric and non-digestible food products, including but

not limited to, monosodium glutamate, sodium nitrate, olestra, and any other food additives.

(iv) Any food product with a main ingredient (*i.e.*, the first ingredient other than water, broth, or stock listed on the ingredient list) that appears on this list as an accessory food item except infant formula.

(8) Separate businesses that operate under one roof are considered a single firm for purposes of determining eligibility to participate as a SNAP retail food store if both businesses:

(i) Share the same ownership in whole or in part;

(ii) Sell similar foods; and

(iii) Share inventory.

* * * * *

James C. Miller,
Administrator.

[FR Doc. 2025-18624 Filed 9-24-25; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-SC-24-0069]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2025–2026 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, and Oregon and parts of Nevada and Utah (Far West) for the 2025–2026 marketing year.

DATES: Comments must be received by October 27, 2025.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be submitted to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of

the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Barry Broadbent, Chief, Northwest Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: Joshua.R.Wilde@usda.gov or Barry.Broadbent@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Antoinette.Carter@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and comprises spearmint oil producers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Order 12866, as amended by Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—

Consultation and Coordination with Indian Tribal Governments, which requires federal agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This rule is not intended to have retroactive effect. Under the Order now in effect, salable quantities and allotment percentages have been established for both classes of spearmint oil produced in the Far West. This proposed rule increases the quantity of Native Spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2025–2026 marketing year, which began on June 1, 2025.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements in § 985.50 of the Order, the Committee meets each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. In determining such marketing policy, the Committee considers several factors, including, but not limited to, the current and projected supply of oil, estimated future demand, production costs, and producer prices for both Class 1 (Scotch) and Class 3 (Native) spearmint oil. Input from spearmint oil handlers and producers are considered as well.

Pursuant to the provisions in § 985.51, when the Committee’s marketing policy considerations indicate a need to establish or to maintain stable market