

RESEARCH BRIEF

The Risks of State SNAP Food Choice Restriction Waivers

The Supplemental Nutrition Assistance Program (SNAP) relies on a nationwide network of retailers to ensure eligible households can purchase food each month. These retailers are essential access points for families; without them, the program cannot function, as recipients would have no way to redeem their benefits. Yet, a new effort is being led by the U.S. Department of Agriculture (USDA) and the U.S. Department of Health and Human Services (HHS) to promote state-level food choice restriction waivers, which threatens to disrupt this system. The proposed waivers, which would limit purchases of foods labeled “unhealthy,” would override long-standing federal definitions of eligible foods and impose heavy administrative, technological, and financial burdens on retailers, particularly small and rural grocers.

The waivers’ rollout comes amid major instability: States are already implementing the harmful provisions of the budget reconciliation law (H.R. 1) that weaken SNAP, while USDA undergoes significant restructuring and staff cuts, which will erode institutional knowledge and technical capacity. Together, these pressures have exposed an agency stretched beyond its limits. Moving forward with food restriction waivers under such conditions risks confusion, retailer withdrawal, and diminished food access; undermining SNAP’s core mission to provide consistent, equitable nutrition for all households.



Retailer and SNAP-Eligible Foods Landscape

In fiscal year (FY) 2024, over 22 million SNAP households¹ nationwide did their shopping at 267,000 SNAP-licensed retailers. In FY 2024, 84 percent of SNAP benefits were spent at roughly 40,000 supermarkets, superstores, or online retailers. The remaining 15 percent of SNAP benefits were spent at other types of stores (and a nominal number on meal services) that make up the remaining more than 220,000 SNAP-authorized retailers. These include convenience stores, small, medium, and large grocery stores, and specialty stores.²

The USDA Food and Nutrition Service (FNS) manages store authorization, reauthorization, fraud monitoring, compliance, and compliance adjudication at the federal level. All SNAP retailer records, related systems, operational guidance, and policy are managed by FNS. This is notably different from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) where WIC store authorization and store participation is managed by each state.

SNAP-eligible foods: When retailers are licensed, they are provided with training information that outlines food items that are eligible to be purchased with SNAP benefits. Congress defined these foods in Section 3(k) of the Food and Nutrition Act of 2008, as amended,³ and the Food and Nutrition Service codified the definition at 7 CFR 271.2 “eligible foods”.⁴ For the vast majority of SNAP participants, eligible food is any food or food product for home consumption (except alcoholic beverages, tobacco, hot foods/beverages ready for immediate consumption), any state-mandated bottle deposit fee on eligible beverages, and seeds and plants that produce food. Eligible foods purchased with SNAP benefits are not subject to state sales tax (Food and Nutrition Act Section 4(a)(1)).⁵

The definition of eligible foods is long standing. FNS guidance has provided further guidance on the eligibility of items that may be less clear.⁶

Large retailers, where the majority of SNAP benefits are redeemed, and any tech companies they may use to support their SNAP participation, comply with a long ago identified ineligible items list, including beer, wine, cigarettes, paper goods, and hot foods, so that they correctly default to ineligible at the cash register.



As new products come to market, larger retailers must assess their eligibility and mark them correctly for recognition by their front-end cash register system. An average of 20,000 new food and beverage products are launched every year.⁷ Thousands of universal product codes (UPCs) exist for the varying sizes, brands, and types of sugar-sweetened beverages alone. States that prohibit other products such as candy and prepared desserts introduce further complexity and breadth into the number of UPCs that must be identified to ensure SNAP benefits cannot be used for restricted item purchases.

Smaller retailers may still require SNAP customers to separate eligible and ineligible items at the cash register when checking out, to ensure that ineligible items are not paid for with SNAP benefits. Smaller retailers are more reliant on their employees knowing the rules to manually intervene and ensure that no ineligible items are paid for with SNAP.

Bottle deposits and sales tax: Larger retailer systems automatically manage bottle deposits payable with SNAP benefits and track state sales tax-required items sold with SNAP benefits so that retailers are not required to remit sales tax to states for these items. Smaller retailers likely track this information (i.e., sales tax exemptions) manually.

Waiver authority: While codified in regulations, because the definition of eligible foods is specified in law, a waiver of that definition can only be given under Section 17 of the Food and Nutrition Act. Section 17(b)(1)(A)⁸ allows the USDA Secretary to conduct projects designed to test program changes that “increase the efficiency of SNAP and improve the delivery of supplemental nutrition assistance program benefits to eligible households,” and may waive any requirement of the act for the project to be conducted. Approved projects must be consistent with the goal of “providing food assistance to raise levels of nutrition among low-income individuals” and must include a project evaluation.

Although Section 17 grants the Secretary limited authority to waive requirements, there is a strong legal argument that neither the statute nor the regulations allow USDA to waive or redefine statutory definitions. A definition is not a procedural or operational requirement; it is a fixed element of law that Congress intentionally established to govern the program scope. Because Congress specifically defined “eligible foods” in the statute, USDA cannot rewrite or narrow that definition through a waiver mechanism designed for testing administrative changes. Allowing the Secretary to redefine statutory terms through waivers would enable the agency to override congressional intent, an outcome Section 17 does not authorize.

Despite these legal limitations, beginning this year, USDA, in partnership with HHS, has been encouraging states to restrict foods deemed unhealthy.⁹ USDA and HHS are actively promoting state requests for waivers restricting eligible foods, and HHS has incentivized states to pursue waivers by offering extra points in the evaluation of the Rural Health Transformation Program state grant solicitation.¹⁰

SNAP retailers in 18 states will need to implement approved state waivers. Additional state waivers are pending at FNS, and more states are planning to submit waivers to FNS in the future.¹¹

State-level food/beverage restrictions require that:

- SNAP retailers must get a full and complete listing of prohibited items in each of the states that has opted to restrict select foods and/or beverages, from those states, from FNS, or on their own.
- Retailers must work with internal tech or contracted tech companies to update cash register systems and online purchasing options to ensure that state waiver-restricted food items cannot be purchased with SNAP benefits either by SNAP participants who are residents of the restricted state, or by all SNAP participants who shop in the restricted state. A system review of the state identifier embedded in the card number, or manual review of the card for each SNAP household at the point of sale, or review of the delivery address for online orders, is required to determine whether prohibitions apply. Some approved state waivers have implementation dates as early as January 2026.
- Where such newly restricted food and beverage items may have previously been exempt from state sales tax, retailers must redirect systems to charge the relevant sales tax and record the information for state sales tax reporting purposes.
- Where such newly restricted food and beverage items may have previously charged the state bottle deposit fee to SNAP, retailers must redirect systems to now ensure that beverage bottle deposits are paid for with cash.
- On a periodic basis, FNS, states, or retailers must assess new products that have come to market. Retailers or their technology contractors must then update the list of prohibited items to ensure compliance.
- Retailers with cross-state footprints must ensure that their individual store locations manage each state's unique food restrictions correctly. This may require unique front-end programming based on store location.
- SNAP-authorized retailers must be aware of and track beginning and end dates for state food restriction waivers to ensure their own compliance.
- Retailers must ensure store employees are trained/aware of all newly restricted items (This is critical in stores that do not have a fully automated front-end cash register system).
- Retailers must ensure that store cashiers and managers have been given appropriate clear messaging for SNAP customers as waivers take effect; retailers are often the front line for educating SNAP participants.

Implementation Responsibilities That Place SNAP Retailers and Participants At Risk

What tasks would USDA be required to undertake to implement, monitor, and support state SNAP food restriction waivers?

In recent months, the USDA has undergone major internal disruptions. The new administration has implemented staff furloughs, terminated key personnel, and it is pushing to reorganize its structure — reducing regional offices from seven to five. These shifts have already revealed serious capacity challenges, as seen during the shutdown, when USDA provided minimal communication or guidance to retailers. This lack of coordination left many unprepared and uncertain about how to continue serving SNAP participants.

USDA FNS is responsible for SNAP retailer policy including retailer eligibility requirements, compliance with rules, and policy regarding SNAP-eligible foods. USDA does not currently have the infrastructure or capacity to manage the complex implementation, monitoring, and support required for state-level SNAP food restriction waivers. Moving forward with these waivers under current conditions would risk widespread confusion, compliance errors, and retailer withdrawal, especially among small grocers who are the backbone of rural and low-income communities. The best course of action is for USDA to pause these efforts until it can demonstrate the operational stability, staffing, and communication capacity necessary to carry out the responsibilities outlined below.

Section 17 waivers require that states meet the goal of improving nutrition for SNAP participants and that states with waivers conduct an evaluation of waiver impact.

As part of the technical assistance FNS provides, the agency should be:

- Setting realistic expectations relative to implementation timing: Based on the agency's technical expertise, the agency should work with states to ensure that timing is based on retailer ability to make system changes where warranted, train staff, and ensure that participants have been given sufficient state messaging.
- Providing updated training materials: The agency should be providing updated, state-specific training materials in multiple languages to set up SNAP retailers for success.
- Providing detailed guidance on how food restriction waivers must be operationalized: Do waivers apply to the store location, and by extension, all SNAP participants who shop at the location regardless of their state of residence? Or, do waivers apply only to residents of the state that has opted to implement food restrictions? For retailers that operate strictly online, do waivers apply to the state's cardholders or to the delivery address?
- Providing guidance on an acceptable frequency for store-level updating of the prohibited products listings.
- Providing the waiver compliance plan: The agency should identify the responsible entity for ensuring compliance, the manner in which compliance will be reviewed, the penalties for noncompliance, and the process for adjudication.
- Defining penalties in regulations for the sale of state-waiver restricted items, and communicating the final regulation to SNAP retailers.
- Ensuring there is sufficient FNS staffing to manage any increase in compliance case adjudication needs.
- Facilitating state-retailer communication with national and state retailer associations, major retailers, and with retailers not affiliated with national or state associations.
- Facilitating retailer contacts to ensure retailers are made aware of impending changes with sufficient lead time for implementation.
- Assisting states in determining where product adjudication will happen, including reviewing where adjudication would be most operationally efficient and cost-effective.
- Providing general messaging for retailers to provide to affected SNAP participants.
- Providing effected SNAP retailers with advance notice of waiver implementation dates, notice of implementation, and advance and final notice of waiver termination dates.
- Assessing retailer operational impacts and costs based on the breadth of state-selected restrictions as part of a national evaluation.
- Assessing impact on SNAP participant access: Include as part of a national evaluation impact assessments: For example, are stores leaving the program as a result of restrictions? Are non-restricted stores seeing an increase in SNAP shopping? Is there an impact on food access?

Potential Impacts on SNAP Retailers

Administrative and Financial Strain

Retailers are the backbone of SNAP. Without them, the program cannot function effectively. State-level food restriction waivers threaten to weaken this foundation by imposing costly and complex requirements — particularly on small and independent stores that serve as critical access points for millions of participants. When retailers withdraw from SNAP due to increased administrative and financial strain, families are left with fewer options, often forced to travel longer distances or pay higher prices to meet basic food needs. These policies risk undermining SNAP's central purpose: ensuring equitable and consistent access to nutritious food for all households.

Current SNAP regulations already require stores to stock a minimum number and variety of staple food items to maintain SNAP eligibility requirements. There is a contingent of stores — largely convenience stores — that provide participants with points of access for basic staple food items like milk and bread. However, a significant portion of the sales (including SNAP sales) at these stores may be in the category or categories of state-restricted waiver items.

Opting Out

Coupled with the USDA FNS proposed rule¹² that will increase the number of staple foods required for SNAP store eligibility, stores are likely to review SNAP authorization in terms of the return on investment, and the new SNAP store eligibility requirements in addition to state restrictions, and as a result, may opt to leave the program.

For participants with transportation, child care, shift-work, or other challenges that make getting to alternative shopping locations difficult, loss of store access can be a significant and/or costly barrier to meeting their food needs. While online shopping may alleviate some of these challenges, it may require payment of delivery fees. Such fees cannot be paid for with SNAP benefits.

Penalties for Non-Compliance

It is unclear whether USDA FNS has authority to penalize SNAP licensed stores for the sale of state waiver-restricted items that are eligible by law and federal regulation, without Congress making companion changes in the law and FNS subsequently initiating notice and comment rule making. However, should FNS opt to investigate and penalize stores for sale of state-restricted items by removing them from the program for a term, there is further potential for participant access issues.

Up-Front Costs: Staffing, Time, Technology

Finally, these waivers come at a significant monetary cost to all SNAP retailers, as well as time and resource costs. Based on a grocer industry assessment,¹³ these state food restriction waivers will result in a total up-front cost of \$1.6 billion and an annual ongoing cost of approximately \$759 million. Costs identified include software and hardware updates, point-of-sale (POS) updates, differentiating requirements between states when multi-store owners operate in multiple states, maintaining and updating inventory software or, for smaller stores, maintaining and updating inventory manually.¹⁴

The industry cost assessment suggests that state food restriction waivers equate to a economically significant change in law and regulation that would otherwise be subject to notice and comment rule making with a required regulatory impact and economic analysis.



Conclusion

State-level SNAP food restriction waivers represent a fundamental shift in how the program defines and administers access to food. By altering long-standing federal standards and introducing new layers of administrative complexity, these waivers risk destabilizing a system that depends on more than a quarter million retailers, many of them small businesses operating in underserved areas. The financial, technological, and compliance burdens outlined throughout this analysis demonstrate that these waivers are not minor policy adjustments, but economically significant regulatory changes that demand full review and public input.

At a time when states are already implementing the harmful provisions of the budget reconciliation law and USDA is facing deep staffing cuts and organizational strain, the agency lacks the operational capacity to oversee such sweeping changes. Proceeding without sufficient infrastructure or technical support would jeopardize retailer participation, disrupt benefit access, and undermine the program's core mission of ensuring consistent, equitable nutrition for low-income households. Instead of advancing any state's food restriction waivers, USDA should pause and restore its capacity, reaffirm its commitment to evidence-based policymaking, and protect the stability of SNAP for the millions of families who rely on it.

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Endnotes

¹ USDA, FNS key data. <https://www.fns.usda.gov/pd/overview/keydata-may2025>

² USDA, FNS annual SNAP retailer management data. <https://www.fns.usda.gov/data-research/data-visualization/snap-retailer-management-dashboard-fy24>

³ Food and Nutrition Act: Sec 3(k). <https://www.govinfo.gov/content/pkg/COMPS-10331/pdf/COMPS-10331.pdf>

⁴ 7 CFR 271.2 Eligible foods. <https://www.ecfr.gov/current/title-7/part-271#p-271.2>

⁵ Food and Nutrition Act: Sec 4(a)(1). <https://www.govinfo.gov/content/pkg/COMPS-10331/pdf/COMPS-10331.pdf>

⁶ *What can SNAP buy?* <https://www.fns.usda.gov/snap/eligible-food-items>

⁷ *Did you know? The birth of a new food or beverage product.* <https://foodindustryexecutive.com/2019/09/did-you-know-the-birth-of-a-new-food-or-beverage-product/>

⁸ **Food and Nutrition Act:** Sec 17(b)(1)(a). <https://www.govinfo.gov/content/pkg/COMPS-10331/pdf/COMPS-10331.pdf>

⁹ *Reforming SNAP with USDA.* <https://www.hhs.gov/maha/index.html>

¹⁰ Rural Health Transformation Program, appendix, points scoring details, item B.3. <https://grants.gov/search-results-detail/360442>

¹¹ USDA, FNS waiver tracker. <https://www.fns.usda.gov/snap/waivers/foodrestriction>. See also National Grocers Association waiver tracker for states pending waiver approval or considering waiver submission. <https://www.nationalgrocers.org/snap-waiver-tracker/>

¹² Updated staple food stocking standards for retailers in the Supplemental Nutrition Assistance Program proposed rule. <https://www.regulations.gov/document/FNS-2025-0018-0001>

¹³ *SNAP restrictions impact analysis* (The Food Industry Association, National Grocers Association, and National Association of Convenience Stores). https://www.fmi.org/docs/default-source/communications-uploads/snap-reform-impact-report-final.pdf?sfvrsn=95761431_1

¹⁴ *SNAP restrictions impact analysis* (The Food Industry Association, National Grocers Association, and National Association of Convenience Stores). https://www.fmi.org/docs/default-source/communications-uploads/snap-reform-impact-report-final.pdf?sfvrsn=95761431_1