

V-3

Sent: Wednesday, August 23, 2006 7:41 PM

To: WICHQ-SFPD

Subject: wic food packages rule

docket id number 0584-ad77

yes i agre with the new changes on wic

SUPER DISCOUNT MARKET
LOS ANGELES CA (90023)

V-60

From: WebMaster@fns.usda.gov
Sent: Thursday, September 21, 2006 10:25 AM
To: WICHQ-SFPD
Subject: RevisionstoWICFoodPackages-Proposed Rule

CITY: earlham
STATE: IA
ORGANIZATION: Hometown Market, Inc.
CATEGORY: RetailFoodVendor
OtherCategory:
Date: September 21, 2006
Time: 10:25:27 AM

COMMENTS:

As a business owner of a small grocery store, there are changes we see that need to be made to the WIC program and the Food Stamp Program as well. It seems many times that the clients of WIC don't need as much food as is being provided for them, and they subsequently give it to friends or family members. They are obviously given too much that they can't use; dried beans-most of them don't know what to do with them, milk-they receive too much, peanut butter-they receive too much. We have seen clients dividing it up with others in our store. Also, I think it would be a good addition to give them fresh fruits and vegetables, or even other shelf stable items. I realize there is a vast selection out there, but modifications are needed. Vouchers for fresh fruits and vegetables would probably work, but I don't know how you decide on a dollar amount. To help keep the program's cost down, we feel that that WIC should require that private label items be purchased instead of the name-brand (ie: Shurfresh milk instead of Anderson Erickson, and the same with peanut butter or cereals. Providing of course they are on the program). We also feel that changes need to be made with the selection of foods that are eligible on the food stamp program. If this is a nutritionally-based program, we would like to see snack foods (ie; potato chips, etc, candy, pop, energy drinks, etc. not be allowed.) We see many transactions that are ONLY consisting of these kinds of purchases. Isn't there a way that WIC and food stamps both require nutritionally-based purchases?



Associated Grocers of Maine, Inc.

(207) 582-6500

PO Box 1000 • Gardiner, Maine 04345
www.agofme.com

1 800 852-6550

NOV - 3 2006

November 1, 2006

✓
✓-63

Patricia N. Daniels, Director
Supplemental Food Programs Division
Food and Nutrition Service – USDA
3101 Park Center Drive – Room 528
Alexandria, VA 22302

SUBJ: DOCKET ID Number 0584-AD77, WIC Food Package Rule

Dear Ms. Daniels:

After attending the WIC meeting held in our area, we have some concerns that the number of items added to the WIC program is going to put a huge strain on our warehouse personnel (wholesale) and retail store employees to administer the program properly. Our concerns about the vast number of new items and the problems it will create at both the wholesale and retail level are explained below.

Associated Grocers of Maine currently supplies our retail customers with shelf tags containing the word “WIC” for their convenience and to make the customer aware of what is a WIC approved item. Our goal is to cause less embarrassment at the checkout for the WIC purchase. We also use this tool to program the register system to recognize WIC authorized items to ensure only approved items are being purchased. We want to ensure that our retailers are able to remain on the WIC program without violation. The addition of a large quantity of new items (possibly 1,000 or more?) adds to the burden of staying within the dollar range of the WIC program or faces the chance of having a voucher returned. At this time, there is no list available which states what is an acceptable retail (price) on WIC items. Every warehouse pays a different product cost based on purchases and then sets retail pricing for its customers accordingly.

At the wholesale level, we will not be able provide our retailers with the same level of accurate user-friendly information without adding more personnel. While the WIC Program is a federal program, our warehouse and others have participants in multiple states. Each retailer has variations in allowances/sales of individual items. It will require additional staff to research and maintain the thousands of newly proposed WIC items available in multiple states. At the retail level, a full-time person will be needed to train, oversee and make judgment calls on questionable items – leading to mistakes and again possible violations and/or loss of the WIC Program.

We agree the time has come to change and improve everyone’s eating habits, but the changes are too vast and overwhelming to be administered correctly. Perhaps a scaled back version would be more acceptable to wholesalers and retailers and still provide healthy foods for the WIC clients. Again, the burden put upon retailers may cause some to “rethink” the benefits of offering the WIC program in their stores. This would have a definite impact in the rural State of Maine – where many WIC clients do not live near larger retailers and they rely on smaller independent stores for their groceries.

Please feel free to contact me at (207) 588-3202 if you need further information. Thank you for your consideration.

Sincerely,
Roger Harris
Roger Harris
Retail Automation Supervisor

NOV - 6 2006

V-64

November 6, 2006

Patricia Daniels
Director, Supplemental Food Programs Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 528
Alexandria, VA 22302

**Re: Special Supplemental Nutrition Program for
Women, Infants, and Children (WIC): Revisions in the WIC Food Packages;
Proposed Rule, 71 Fed. Reg. 151 (August 7, 2006) (RIN 0584-AD77)**


Dear Ms. Daniels:

On behalf of the California Grocers Association, thank you for the opportunity to comment on the U.S. Department of Agriculture's proposed rule RIN 0584-AD77 that revises WIC food packages and introduces fruits and vegetables to the program. CGA members acknowledge the necessity and benefits of introducing fruits and vegetables to the WIC program and participated in the fruit and vegetables pilot project conducted in California.

The California Grocers Association is a non-profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail members operating over 6,000 food stores in California and Nevada, and approximately 300 grocery supplier companies. Retail membership includes chain and independent supermarkets, convenience stores and mass merchandisers. Nearly every one of our retailer members holds a valid WIC license.

While we support the introduction of fruits and vegetables to the program, we have several concerns with the implementation of the program and the complexity it will add for WIC authorized vendors.

CGA understands that with the recommendation of adding fresh, canned, or frozen fruits and vegetables to the program the USDA is attempting to grant program participants the flexibility to purchase the type of food that best fits their needs while offsetting any difficulties that grocers face in regularly stocking those items. We appreciate the flexibility to stock nearly any type of fresh, frozen, or canned fruits or vegetables, however, we are concerned with the difficulties



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associated with the sheer number of items that would be eligible for purchase with WIC vouchers. The proposed rule would expand the number of WIC items by over 10,000 different Stock Keeping Units (SKUs), thereby increasing the difficulty of flagging all WIC-eligible items in a point of sale (POS) system. The difficulty of flagging all WIC-eligible SKUs is further compounded by the fact that fruits and vegetable products with added sugar, fat, oil, or salt are not eligible, thereby increasing the chance for human error during the programming or check-out stages, as will be further discussed later.

Limit and Manage Exclusions at Federal Level

We believe it is essential that the authority to limit and manage all product exclusions and stocking requirements be maintained at the Federal level in order to ensure continuity between programs in the various states in which our members operate. It is important that the number of excluded ingredients be limited to ensure vendor compliance and reduce the risk of inadvertently selling a product to a WIC participant that may be excluded because it has an added ingredient that may not be readily observable by the cashier.

As mentioned earlier, CGA is concerned that adding thousands of additional products to the WIC program will greatly increase the probability of an error in a transaction. Currently, cashiers in grocery stores are trained to identify WIC products and process transactions correctly. Adding thousands of items to the program while excluding those with added sugar, fat, oil, or salt will complicate and inevitably slow down the transaction process, especially if the cashier must check the ingredients on a bag or can of produce to determine if it has any added ingredients that would make it ineligible for purchase with a WIC voucher. We strongly emphasize the joint responsibility that the vendor and the program participant have to ensure that the correct products are purchased.

Stocking Requirements

Certain events will sometimes disrupt the supply of a fruit or vegetable, which will in turn prevent adequate stock levels of that product from being maintained. As such, CGA believes that the minimum stocking requirement should be established and controlled by the USDA. Given the thousands of potentially eligible SKU's, CGA is concerned that allowing state discretion with respect to minimum stocking requirements will create a system in which the vendors will be required to stock items that may be unavailable or cost-prohibitive due to acts of nature, being out of season, or any of a number of other events that could cause difficulty in maintaining adequate stocks of an item. Moreover, CGA supports federal uniformity as a way to ensure that vendors in all states will be subject to the same requirements. Given that vendors face significant fines or even program disqualification if they do not stock all of the required items, we believe that the USDA maintaining control over stocking requirements will best ensure vendor compliance.

Limited Enforcement Recommended

Given the concerns mentioned above, we believe the technical and training preparation necessary to implement the introduction of fruits and vegetables will take a great deal of time. In light of the sheer number of items expected to be added to the program and the technological and personnel difficulties that may be encountered, we strongly suggest that there be limited enforcement during the first twelve months after the federal and state products lists are

provided to authorized retailers. CGA is especially concerned about violations and disqualifications due to a vendor inadvertently selling a product with one of the excluded ingredients. As such, we believe that the proposed fruit and vegetable vouchers should operate outside of the traditional WIC penalty system as long as the vendor acted with good faith and the product sold was within the fruit and vegetable category. We also believe that enforcement actions should be limited to only items that are clearly outside of the fruit and vegetable category. In this way, vendors will still be held accountable to sell only WIC-authorized products, but will not be penalized for making a good faith effort to support USDA efforts to provide fruits and vegetables to program participants.

Voucher Amounts and Usage

CGA supports the USDA's recommendation that WIC issue mothers \$8 and children \$6 in cash based vouchers for the purchase of fruits and vegetables on a monthly basis. Furthermore, we agree with the recommended \$2 denomination of each voucher and believe that this will allow participants to stagger the purchase of fruits and vegetables over the entire month. This staggering of purchases will ensure that the food purchased is consumed, as fruit and vegetables are perishable and purchases for the full \$8 or \$6 value could lead to waste due to product spoilage prior to consumption.

Due to the tremendous variation in produce prices across, as well as within, the individual types of fruits and vegetables, we believe that program participants should be allowed to pay any overage in cash. Not only would this be well-received by the customer, who would thereby have a greater choice of products that could be purchased, but it would also cut down on confusion generated by product weight. If the customer was not allowed to pay any overage, the transaction could be bogged down by taking one item out at a time and repeatedly reweighing the produce in order to ensure that the price was under the total value of the vouchers presented. Finally, in the event that the purchase price of the fruits/vegetables was less than the \$2 increment, the cashier should write the total amount charged on the voucher and then be reimbursed by the state for that amount, without any change being given to the customer.

Interaction of Fruits and Vegetables with Peer Group Pricing Programs

Given the wide variety of fruits and vegetables, along with the astounding numbers of SKUs and prices that would be affected by the introduction of fruits and vegetables to the WIC program, CGA discourages the alignment of the fruits and vegetables voucher system with any cost containment or peer group pricing measures. Making fruits and vegetables part of the peer group pricing system would be extremely difficult for state agencies to enact and for vendors to comply with for the simple reason that product pricing changes so rapidly based on supply and demand as well as product type. A perfect example of this is the fact that grocery stores normally carry several different varieties of apples, all of which usually have different prices. Simply establishing a MADR for an item based on an average price would have to take those considerations into account so as to not adversely impact the vendor who is merely trying to provide a variety of products to its customers.

Shelf-tags Optional

Shelf-tags should be optional for retailers, given the sheer number of items that will be eligible for purchase. Retailers should be given the choice to place shelf tags on any WIC-eligible item without having to place those tags on *all* WIC-eligible items. Furthermore, those shelf-tags should be provided by WIC for retailers to use in their stores, if they so choose.

Whole Grain Cereals

CGA is concerned that limiting eligible cereals to those containing not less than 51% whole grains will have an adverse impact upon the WIC program recipients. The standard proposed seems to limit eligible cereals to wheat and oat-based cereals and exclude corn and rice-based cereals. Many of customers and WIC participants have a strong cultural or personal preference for corn and rice-based cereals, and may not be interested in a wheat or oat-based cereal.

Additionally, some WIC participants may have food allergies to wheat and/or oats.

Eliminating corn and rice-based cereals from the program would effectively deny those groups the nutrition delivered by various breakfast cereals traditionally eligible through the program.

As such, we urge USDA to continue to allow WIC participants to purchase corn and rice-based cereals with their food instruments.

Vendor Input on Participant Training

CGA believes that vendors should be allowed to play a role in developing the training offered to WIC participants so that WIC personnel and program participants will fully understand the needs and concerns of vendors. Language barriers between the vendor/cashier and program participant increase customer frustration, further highlighting the need for participant training with respect to vendor concerns.

CGA supports the introduction of fruits and vegetables into the WIC program, however, several concerns remain with the implementation of the proposed changes with respect to the scope of eligible items; the process by which items may be included/excluded from the program; how the fruit and vegetable program will be enforced; how the fruit and vegetable program will interact with peer group pricing programs, how the fruit and vegetable vouchers may be used by program participants; and the limitation to whole grain cereals.

We appreciate the opportunity to comment on the proposed rule to revise the food packages available to WIC participants. Please contact us if you have any questions regarding the issues raised.

Sincerely,



KRISTIN POWER
Vice President, Government Relations

KP:jk

OCT - 4 2006

ADMITTED IN
N.Y. and N.J.

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V-65

September 29, 2006

Attn: Patricia N. Daniels, Director
Supplemental Food Programs Division
Food and Nutrition Service, USDA
3101 Park Center Drive, Room 528
Alexandria, VA 22302

Last deals
with Food Package Rule

Re: Comments

Dear Ms. Daniels:

We are writing with reference to the Proposed Rules affecting changes to the WIC Program (7CFR Part 246). Our office represents the National Supermarket Association and the comments herein express the opinion of that organization.

We are addressing each issue although not necessarily in the order set forth in the Proposed Rules.

It has been proposed that the State maintain a list of licensed wholesalers, distributors, retailers and manufacturers through whom infant formula could be purchased. In fact, this requirement places an undue burden on the Vendors. Most WIC Vendors ("Vendors") deal with dozens if not hundreds of suppliers of products within their stores. This includes numerous jobbers, sub-jobbers and other sales persons. It would be an impossible burden for the store to verify the validity of the source of each and every purchase or to contact the State in order to ascertain the status of the supplier. The proposed regulations fails to address suppliers located outside of the State nor provide a methodology for legitimizing those suppliers. In fact, the proposed regulations appear to sanction a State not allowing purchases from suppliers in another State. This could have a severe effect on interstate commerce placing an undue burden on the retailer and severely affect the ability of Vendors to obtain proper product at proper prices..

The stated criteria was to prevent the sale of "adulterated stolen infant formula". The solution for that problem would be to prohibit the sale of "adulterated stolen infant formula". These Vendors are engaged in extensive purchasing and need to protect the integrity of their

products regardless of the WIC requirements. In most cases the Vendor has security measures to ascertain and guaranty that their products are not adulterated. However, the solution of this issue is not the requirement of tracking down all sources of the purchased formula. The solution is to mandate that the sale of formula should not be "adulterated stolen formula". The true test is whether the Vendor believes the source to be legitimate and believes that the product is unadulterated, not to compel an investigation by the Vendor in order to complete a purchase.

There is no real criteria to establish a qualified supplier of the formula since there is no nationwide supply list nor any requirement for same, no mandate to the State to require out of State suppliers, no method to control a uniform method of qualifying suppliers nor any method to allow a supplier to be placed on any list. Such a methodology could effectively exclude any number of legitimate sources of the formula. Additionally, to our knowledge there is no significant problem in New York concerning "adulterated stolen infant formula". A cross section of our membership confirms that they have not had instances of such a claim affecting their products.

This proposed legislation proves not only burdensome but costly to the program. It requires the maintenance of large numbers of records, distribution of same to Vendors as well as appropriate staffing to answer questions, resolve problems and address disputes. The essence of this provision is to restrict trade and, possibly, to have the government serve as an agent for the manufacturer. This clearly cannot and should not be the intent of the WIC program. The method of controlling the program is to prohibit adulterated stolen infant formula from being allowed to be sold, not to attempt to control the ordinary and necessary transactions which occur in an instantaneous manner on the floor of a supermarket.

The proposed regulations also speak in terms of enhancing the due process elements of the enforcement provisions of the program by providing Vendor with an opportunity to correct a violation. The Association is in fully in support of such a regulation and, in fact, has been a proponent of same for many years. Unfortunately, the current regulation fails to properly draw a distinction between a violation and a violation which compromises an investigation. In most instances, Vendors are unaware of violations occurring within the store since they are staffed by numerous employees, many of whom are part timers and young adults. Although the Vendor strives to have a properly functioning program, it is impossible to monitor each and every WIC transaction.

New York State typically uses a system of compliance buys to establish the methodology in which a store operates. If the regulations provide that notification of a violation be furnished subsequent to the compliance buy, the Vendor would be afforded the opportunity to correct that violation. However, if the compliance buy is deemed an "investigation" the retailer is once again left defenseless since knowledge of the violation will only occur upon completion of the investigation and, presumably the issuance of some sanction. Any proposed regulations should define that upon the initial discovery of any violation, such fact would be transmitted to the Vendor. Such a transaction would not be deemed an "investigation" and accordingly, would not be excludable from the notice provisions.

The WIC Program functions under the concept of strict liability thereby, in most instances, denying the Vendor an opportunity to resolve any problems which, in many instances,

is the result of improper employee conduct. By providing specific notification, the Vendor would have the opportunity to better protect the program as well as preserve his ability to participate in the program and serve the participants. The investigation function could be involved where the principal of the Vendor is specifically implicated in the compliance buy.

As to the inflationary change to the CMP, any such change shall occur prospectively, not retroactively. Accordingly, the inflationary calculation should commence upon passage of the final rules as opposed to an immediate increase in the amount of those penalties.

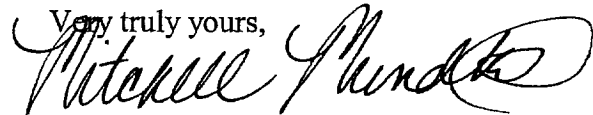
The proposed rules concerning 50% stores, to the best of our knowledge, does not effect New York State as it is our belief that 50% stores do not exist in New York State. However, the inclusion of these new rules do pose the risk of the improper removal of a store from the program as a result of administrative error, errors in record keeping as well as misunderstanding of the regulations. Since the ultimate goal of the WIC Program is to provide adequate participants access to WIC stores the removal of same from the program would only serve to diminish participants access as well as create the administrative cost of identification and removal from the program. As to New York State such an expense would be an unnecessary drain on the New York budget.

The proposal of the establishment of a new peer group system in New York State, would defeat the purpose and, in fact, have an adverse effect on the current peer system used by New York State. The current system for geographic guidelines which appear to be adequate in accomplishing the goals of the peer system. Once that system is changed to a peer system requiring multiple criteria, that criteria can be unnecessarily discriminatory and adversely affect both participants and Vendors. There is no mechanism for accounting for the vast array of purchasing power of different stores in a particular neighborhood which may have Vendors who are chain stores, independent supermarkets or groceries. Each such group has criteria which would overlap into the other group. Yet, each such group brings attributes to the program which benefit the participants, including but not limited to ability to serve the participants, different presentation of WIC products, proximity to the participants home and countless other benefits. Once an attempt is made to segment these various categories, the inequities are inevitable. Similarly, different stores have different purchasing power depending upon the method by which the store operates which can prove beneficial to the WIC Program. To attempt to quantify these benefits would inevitably prove inefficient, inaccurate and costly. As an example, a chain store may be able to purchase canned items on a bulk basis but may not be flexible enough to put boxed items on sale and to maintain that sale for a period of time. Independent stores may have the benefit of buying specials which would reduce WIC cost on a spontaneous basis. Yet, throwing all such entities into different peer groups would not provide a basis with which to measure each group separately and accurately. The current sample criteria method used by New York State has proved functional and accurate and should remain the system implemented.

As to the changes proposed for the WIC package, the Association supports the proposed expansion and modification of acceptable WIC food products. These proposed changes appear to reflect true market conditions as well as a change in participant preferences and also reflect a change in food items without a diminution in the nutritional value of the food being purchased by the participants. The recent pilot program implemented for produce proved very successful and illustrated a move in the right direction by the WIC Program.

Please consider the above comments in reaching your determination on the new rules.

Thank you.

Very truly yours,

Mitchell Mund

MM:kr

V-91

From: ThomasDairy@aol.com
Sent: Friday, October 20, 2006 8:19 AM
To: WICHQ-SFPD
Subject: Docket ID Number 0584-AD77, WIC Food Packages Rule

We deliver the WIC Food Packages to the participants in their homes. Some of the additions to the food packages jump out as the most problematic. There are significant differences in the handling and storage requirements for fresh fruits and vegetables compared to the requirements for milk, cheese and eggs. Fresh fruits and vegetables require a temperature that is too warm for milk, cheese and eggs. There could be waste of one or the other, depending on what temperature is maintained during delivery. Also, if one intention of the proposed change is to increase consumption of soy products instead of dairy, this smacks of a political venture into social engineering. Our figures show that soy-based formula is chosen roughly 26% of the time by WIC participants. It is obvious by the amounts of milk and soy beverage on store shelves that when consumers are paying for their own, they choose soy much less often. If the government wants infants that are started on soy-based formula to stay with it their whole lives, this appears to be a "big brother" manipulation of lower income people. It is all well and good to offer Americans more choices in the food packages, but if proposed policies push or require certain choices over others, this goes beyond the mandate of government.

Lauston Stephens
Thomas Dairy
Rutland, VT

V-96

From: Brian Gannon Big Y Foods [gannon@bigy.com]
Sent: Friday, November 03, 2006 1:06 PM
To: WICHQ-SFPD
Subject: Comments on WIC, Docket ID Number 0584-AD77

Brian Gannon Big Y Foods
2145 Roosevelt Avenue
Springfield, MA 01104-1650

November 3, 2006

USDA WIC

Dear USDA WIC:

I am writing in regard to Docket ID Number 0584-AD77.

I commend USDA on the WIC proposal that incorporates many recommendations from the Institute of Medicine's (IOM) Report: "WIC Food Packages: Time for a Change," principles from the 2005 Dietary Guidelines for Americans, and a strong complement of fresh fruits and vegetables.

I believe the proposal can be enhanced with the following changes:

- * Increase the cash-value voucher for fruits and vegetables to \$10 a month for mothers and \$8 a month for children as was recommended in the Institute of Medicine's (IOM) Report: "WIC Food Packages: Time for a Change." These amounts will help recipients get at least one more serving of fruits or vegetables each day - an important objective of the IOM. Many WIC participants (and most Americans) eat less than one-half of the fruits and vegetables recommended in the 2005 Dietary Guidelines for Americans; WIC can play an important role in helping Americans meet these guidelines.

- * Include all fresh fruits and vegetables in the program. This provides a full range of nutritious choices as well as cultural/personal flexibility for recipients. To provide flexibility, I also recommend that WIC state agencies not be allowed to restrict or limit choice of fruits and vegetables eligible for purchase with the cash-value vouchers and that they provide a wide selection of nutritious fruits and vegetables for WIC recipients.

- * Urge state/local WIC agencies to use their nutrition education activities to emphasize increased consumption of fresh fruits and vegetables. Specifically, education should

include information on: why it is important to eat a variety of fruits and vegetables every day; how to select fruits and vegetables that are nutrient dense, best seasonal buys, most economical, and convenient; preparation tips and recipes; and food safety tips - which can be found at www.fightbac.org, specifically at <http://www.fightbac.org/content/view/102/10/>

Again, I applaud USDA for this proposal that so clearly advances a strong nutrition platform for WIC recipients.

Sincerely,

Brian Gannon Big Y Foods
4135319992

V-97

From: joe williams [jwilliams_tra@verizon.net]
Sent: Monday, November 06, 2006 10:50 PM
To: WICHQ-SFPD
Subject: Docket ID Number 0584-AD77, WIC Food Packages Rule

Ms. Patricia Daniels
November 6, 2006

Director, Supplemental Food Programs Division

Food and Nutrition Service

U.S.D.A.

3101 Park Center Drive, Room 520

Alexandria, VA 22302

Dear Ms. Daniels:

Texas Retailers Association (TRA) welcomes the opportunity to comment on the USDA's proposed rule to revise the current WIC Food Packages.

TRA supports the revision of current WIC Food Packages. TRA also understands the importance and role WIC plays as an important supplemental food program for the many Texas women and their children that participate in the program. Texas food retailers are proud to be a partner in delivering nutritious food and specific related products to WIC mothers and their children.

General Comments

TRA supports all the changes in the food packages for mothers and their children, but would ask USDA to reconsider providing the full \$10 in cash-value food instruments for fruit and vegetables. TRA also supports a system where the vouchers would be issued in \$2 increments and customers allowed to pay any overage on purchases of fruits and vegetables with these vouchers in cash just as they currently do with items that are purchased in addition to WIC authorized items.

TRA believes the one year implementation period mentioned in the proposed rule is much too aggressive. Some states such as Texas, New Mexico and others are currently operating two systems (paper and EBT) and should be given leeway regarding implementation timeframes. USDA needs to look at implementation in the context of ongoing projects in each state. This could be accomplished by allowing states to submit an action plan that describes those projects and proposed implementation time frames.

USDA should sponsor and lead a joint application development session among the four WIC EBT off-line states and USDA's contractor, Booz Allen, with input from the grocer community to produce a common set of specifications and a reference implementation for issuing cash-value fruits and vegetables in an EBT smart card, integrated chip, and off-line environment. These specifications would then be used by the SAM developers to incorporate in their systems. This would fulfill USDA's approach to build a system once and use it multiple times.

Specific Comments

Minimum Stocking- flexibility should be allowed to allow substitutions of fruits and vegetables since they are produced seasonally and not available at all times.

No Limitation by size/weight-no states should be allowed to set limits on certain items by ounces purchased per dollar value. The value per ounce varies substantially between varieties or types of fruits and vegetables not to mention the seasonal availability of fruits and vegetables.

No brand limitations-should be allowed by states as the cost and capability to place signage or flagging specific brands is unmanageable and cost prohibitive. The issue of seasonal availability is also involved here.

PLU Standards- USDA should adopt PLU Standards for use on fresh fruits and vegetables and mandate use by all states.

Penalties and Fines-The fruit and vegetable voucher should operate outside the traditional WIC Voucher as Non-compliance policy and rules should take into consideration the seasonal cost and availability of products and brands.

Food Package-changes should be cost neutral. It doesn't appear the loss or reduction in rebate funds from reduced formula issuance has been taken into consideration.

Thank you for the opportunity to offer comments on the proposed rule and again we applaud USDA's efforts in the proposed rule to revise the current WIC Food Packages.

Sincerely,

Joe Williams

Vice President, Regulatory and Member Services

Texas Retailers Association

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Austin, Texas 78701

832-577-4227



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November 6, 2006

Patricia Daniels
Director, Supplemental Food Programs Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 528
Alexandria, VA 22302

**Re: Special Supplemental Nutrition Program for
Women, Infants, and Children (WIC): Revisions in the WIC Food Packages;
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While we support the introduction of fruits and vegetables to the program, we have several concerns with the implementation of the program and the complexity it will add for WIC authorized vendors.

CGA understands that with the recommendation of adding fresh, canned, or frozen fruits and vegetables to the program the USDA is attempting to grant program participants the flexibility to purchase the type of food that best fits their needs while offsetting any difficulties that grocers face in regularly stocking those items. We appreciate the flexibility to stock nearly any type of fresh, frozen, or canned fruits or vegetables, however, we are concerned with the difficulties

V-98



associated with the sheer number of items that would be eligible for purchase with WIC vouchers. The proposed rule would expand the number of WIC items by over 10,000 different Stock Keeping Units (SKUs), thereby increasing the difficulty of flagging all WIC-eligible items in a point of sale (POS) system. The difficulty of flagging all WIC-eligible SKUs is further compounded by the fact that fruits and vegetable products with added sugar, fat, oil, or salt are not eligible, thereby increasing the chance for human error during the programming or check-out stages, as will be further discussed later.

Limit and Manage Exclusions at Federal Level

We believe it is essential that the authority to limit and manage all product exclusions and stocking requirements be maintained at the Federal level in order to ensure continuity between programs in the various states in which our members operate. It is important that the number of excluded ingredients be limited to ensure vendor compliance and reduce the risk of inadvertently selling a product to a WIC participant that may be excluded because it has an added ingredient that may not be readily observable by the cashier.

As mentioned earlier, CGA is concerned that adding thousands of additional products to the WIC program will greatly increase the probability of an error in a transaction. Currently, cashiers in grocery stores are trained to identify WIC products and process transactions correctly. Adding thousands of items to the program while excluding those with added sugar, fat, oil, or salt will complicate and inevitably slow down the transaction process, especially if the cashier must check the ingredients on a bag or can of produce to determine if it has any added ingredients that would make it ineligible for purchase with a WIC voucher. We strongly emphasize the joint responsibility that the vendor and the program participant have to ensure that the correct products are purchased.

Stocking Requirements

Certain events will sometimes disrupt the supply of a fruit or vegetable, which will in turn prevent adequate stock levels of that product from being maintained. As such, CGA believes that the minimum stocking requirement should be established and controlled by the USDA. Given the thousands of potentially eligible SKU's, CGA is concerned that allowing state discretion with respect to minimum stocking requirements will create a system in which the vendors will be required to stock items that may be unavailable or cost-prohibitive due to acts of nature, being out of season, or any of a number of other events that could cause difficulty in maintaining adequate stocks of an item. Moreover, CGA supports federal uniformity as a way to ensure that vendors in all states will be subject to the same requirements. Given that vendors face significant fines or even program disqualification if they do not stock all of the required items, we believe that the USDA maintaining control over stocking requirements will best ensure vendor compliance.

Limited Enforcement Recommended

Given the concerns mentioned above, we believe the technical and training preparation necessary to implement the introduction of fruits and vegetables will take a great deal of time. In light of the sheer number of items expected to be added to the program and the technological and personnel difficulties that may be encountered, we strongly suggest that there be limited enforcement during the first twelve months after the federal and state products lists are

provided to authorized retailers. CGA is especially concerned about violations and disqualifications due to a vendor inadvertently selling a product with one of the excluded ingredients. As such, we believe that the proposed fruit and vegetable vouchers should operate outside of the traditional WIC penalty system as long as the vendor acted with good faith and the product sold was within the fruit and vegetable category. We also believe that enforcement actions should be limited to only items that are clearly outside of the fruit and vegetable category. In this way, vendors will still be held accountable to sell only WIC-authorized products, but will not be penalized for making a good faith effort to support USDA efforts to provide fruits and vegetables to program participants.

Voucher Amounts and Usage

CGA supports the USDA's recommendation that WIC issue mothers \$8 and children \$6 in cash based vouchers for the purchase of fruits and vegetables on a monthly basis. Furthermore, we agree with the recommended \$2 denomination of each voucher and believe that this will allow participants to stagger the purchase of fruits and vegetables over the entire month. This staggering of purchases will ensure that the food purchased is consumed, as fruit and vegetables are perishable and purchases for the full \$8 or \$6 value could lead to waste due to product spoilage prior to consumption.

Due to the tremendous variation in produce prices across, as well as within, the individual types of fruits and vegetables, we believe that program participants should be allowed to pay any overage in cash. Not only would this be well-received by the customer, who would thereby have a greater choice of products that could be purchased, but it would also cut down on confusion generated by product weight. If the customer was not allowed to pay any overage, the transaction could be bogged down by taking one item out at a time and repeatedly reweighing the produce in order to ensure that the price was under the total value of the vouchers presented. Finally, in the event that the purchase price of the fruits/vegetables was less than the \$2 increment, the cashier should write the total amount charged on the voucher and then be reimbursed by the state for that amount, without any change being given to the customer.

Interaction of Fruits and Vegetables with Peer Group Pricing Programs

Given the wide variety of fruits and vegetables, along with the astounding numbers of SKUs and prices that would be affected by the introduction of fruits and vegetables to the WIC program, CGA discourages the alignment of the fruits and vegetables voucher system with any cost containment or peer group pricing measures. Making fruits and vegetables part of the peer group pricing system would be extremely difficult for state agencies to enact and for vendors to comply with for the simple reason that product pricing changes so rapidly based on supply and demand as well as product type. A perfect example of this is the fact that grocery stores normally carry several different varieties of apples, all of which usually have different prices. Simply establishing a MADR for an item based on an average price would have to take those considerations into account so as to not adversely impact the vendor who is merely trying to provide a variety of products to its customers.

Shelf-tags Optional

Shelf-tags should be optional for retailers, given the sheer number of items that will be eligible for purchase. Retailers should be given the choice to place shelf tags on any WIC-eligible item without having to place those tags on *all* WIC-eligible items. Furthermore, those shelf-tags should be provided by WIC for retailers to use in their stores, if they so choose.

Whole Grain Cereals

CGA is concerned that limiting eligible cereals to those containing not less than 51% whole grains will have an adverse impact upon the WIC program recipients. The standard proposed seems to limit eligible cereals to wheat and oat-based cereals and exclude corn and rice-based cereals. Many of customers and WIC participants have a strong cultural or personal preference for corn and rice-based cereals, and may not be interested in a wheat or oat-based cereal. Additionally, some WIC participants may have food allergies to wheat and/or oats. Eliminating corn and rice-based cereals from the program would effectively deny those groups the nutrition delivered by various breakfast cereals traditionally eligible through the program. As such, we urge USDA to continue to allow WIC participants to purchase corn and rice-based cereals with their food instruments.

Vendor Input on Participant Training

CGA believes that vendors should be allowed to play a role in developing the training offered to WIC participants so that WIC personnel and program participants will fully understand the needs and concerns of vendors. Language barriers between the vendor/cashier and program participant increase customer frustration, further highlighting the need for participant training with respect to vendor concerns.

CGA supports the introduction of fruits and vegetables into the WIC program, however, several concerns remain with the implementation of the proposed changes with respect to the scope of eligible items; the process by which items may be included/excluded from the program; how the fruit and vegetable program will be enforced; how the fruit and vegetable program will interact with peer group pricing programs, how the fruit and vegetable vouchers may be used by program participants; and the limitation to whole grain cereals.

We appreciate the opportunity to comment on the proposed rule to revise the food packages available to WIC participants. Please contact us if you have any questions regarding the issues raised.

Sincerely,



KRISTIN POWER
Vice President, Government Relations

KP:jk



National Grocers Association

November 6, 2006

Patricia N. Daniels
Director, Supplemental Food Programs Division
Food and Nutrition Service, USDA
3101 Park Center Drive
Room 528
Alexandria, VA. 22302

Re: Special Supplemental Nutritional Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages; Proposed Rule, 71 Fed. Reg. (August 7, 2006) Docket No. 0584-AD77

Dear Ms. Daniels,

The National Grocers Association (N.G.A.) appreciates this opportunity to comment on the Proposed Rule ("Proposed Rule"), 71 Fed Reg. No. 151 (August 7, 2006), issued by the Food and Nutrition Service, USDA ("FNS or the Agency") to revise regulations governing the Special Supplemental Nutritional Program Women, Infants, and Children ("WIC") food packages to, among other changes, add fruits and vegetables for WIC participants 6 months of age or older as well as the addition of whole grains, while revising the maximum monthly allowances and minimum requirements for milk, eggs, and juices. The Proposed Rule would largely reflect recommendations made by the Institute of Medicine ("IOM") of the National Academies in its Report "WIC Food Packages: Time for a Change". N.G.A. and its members support the mission of the WIC program and grocers are proud of their role as the primary means to deliver nutritious foods to WIC recipients.

N.G.A. is the national trade association that represents exclusively the interest of independent, community-focused grocery retailers and wholesalers. An independent, community-focused retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. A few are publicly traded, but with controlling shares held by the family and others are employee owned. Independents are the true entrepreneurs of the grocery industry and dedicated to their customers, associates, and communities. N.G.A. members include retail and wholesale

grocers and their state associations, as well as manufacturers and service suppliers.

Summary:

The WIC program has operated on the basis of a limited assortment of eligible products for designated food packages that are authorized by the state and local WIC directors. Payment methods (vouchers, checks, and a limited number of EBT pilots) vary between one jurisdiction and another. Over the years N.G.A. has worked on behalf of its retail members to advocate standardization and modernization of the program in order to efficiently and effectively serve WIC consumers. Most recently, N.G.A. has participated with USDA and WIC directors on the Electronic Benefits Transfer project for WIC. The project has illustrated the complexity of having to develop a payment system for thousands of different products that are administered by over 80 different jurisdictions. N.G.A. and its members support efforts to improve the program for the benefit of WIC recipients consistent with efficient check-out procedures and administrative payment/redemption processes.

The inclusion of fruits and vegetables as stated in the Proposed Rule has nutritional benefits for WIC recipients. In response to the FNS request for comments on the Proposed Rule, N.G.A. offers a number of recommendations to aid WIC recipients and retailers, which are addressed below. The last major revision of WIC food packages was in the 1980s and since then a lot has been learned about the nutritional needs of WIC participants. N.G.A. supports WIC's goal of improving the health of mothers and their young children, and is committed to working with FNS and the WIC community to accomplish this objective.

1. The Proposed Rule grants State agencies wide flexibility to allow participants a choice of fruits and vegetables, while placing certain restrictions and exclusions on selected varieties. Generally, the proposal allows the inclusion of any variety of fresh, frozen and canned fruits and vegetables. While the proposal provides that the State agencies will be responsible for determining how to fully implement the proposed revisions within their grants, N.G.A. recommends that FNS WIC set as specific federal regulatory guidelines as possible to eliminate ambiguity and to promote administrative efficiency for WIC recipients, retailers and directors.

2. FNS must clarify redemption policies, especially with regard to cash vouchers, checks or EBT.

3. FNS must address cost containment and peer group pricing concerns.

4. FNS must allow time for WIC recipient education and retailer training.

1. The Proposed Rule grants State agencies wide flexibility to allow participants a choice of fruits and vegetables, while placing certain restrictions and exclusions on selected varieties. Generally, the proposal allows the inclusion of any variety of fresh, frozen and canned fruits and vegetables. While the proposal provides that the State agencies will be responsible for determining how to fully implement the proposed revisions within their grants, N.G.A. recommends that FNS WIC set as specific federal regulatory guidelines as possible to eliminate ambiguity and to promote administrative efficiency for WIC recipients, retailers and directors.

N.G.A. applauds the Agency's goal of offering WIC recipients the benefits of nutritious fruits and vegetables. In summary, the Proposed Rule states that all fresh fruits and vegetables will be allowed as long as oils, fats, and sugars are not added. Canned fruits can not have added sugars, fats, oils, or salt; frozen fruits no added sugar; dried fruits and vegetables no added sugars, fats, oils, or salt; and canned or frozen vegetables no added sugars, fats, and oils.

Excluded products include white potatoes, catsup or other condiments, pickled vegetables and olives, soups, herbs or spices, creamed or sauced vegetables, fruits and vegetables from salad bars, party trays, fruit and nut mixtures, fruit roll-ups, peanuts, blueberry muffins and other baked goods, among others.

N.G.A. supports the goal of improving the consumption of fresh fruits and vegetables and allowing flexibility so people of different cultural backgrounds can be served by the program. A typical supermarket may carry 200-300 varieties of fresh fruits and vegetables, while also stocking hundreds, if not thousands, of varieties and brands of frozen and canned fruits and vegetables. FNS rightly recognizes that allowance must be made for the fact that fresh fruits and vegetables prices vary for any number of reasons including, quantity, weight, season, region, and other factors. N.G.A. agrees with FNS that fresh produce cannot be prescribed within the normal WIC process. However, N.G.A. urges FNS to clarify the ambiguity that may exist over the scope of coverage for fruits and vegetables and provide more specific regulatory administrative guidance. For example, FNS encourages "State agencies to allow participants the wide variety of choices within the authorized fresh and processed options, but Section 246.12(g)(3)(i) would be revised to require vendors to carry a minimum of two varieties each of fruits and vegetables, in any combination of fresh and processed. However, it is the Agency's expectation that more than two varieties each of fruits and vegetables be authorized by State agencies." (page 44798).

FNS also states that "to improve the consumption of fresh fruits and vegetables and the appeal of this option, especially for people of different cultural backgrounds, this proposal would place minimal restrictions on participant choice

of fresh produce." (page 44797). It further states that the fresh produce and processed options could be combined by State agencies.

N.G.A. supports permitting WIC recipients the flexibility of purchasing the wide varieties of fresh produce that FNS advocates either by use of cash vouchers, checks, or EBT. Product exclusions beyond those expressed by FNS on permissible fresh produce varieties will create confusion for WIC recipients and administrative burdens for retail clerks and retailers. Retailers, particularly those that operate in multiple states, are concerned WIC directors may adopt restrictions that are more stringent than the flexible open system that FNS recommends and that conflict with other states. As a result, any final regulation issued by FNS should set specific standards that state WIC directors should follow on produce, especially fresh products.

FNS suggests that cost considerations at State agencies could permit limiting the prescription to just two varieties each of fruits and vegetables, which is in conflict with offering WIC recipients optimum product choice in fresh produce. If state agencies were to adopt a limited prescription for just two varieties each of fruits and vegetables this would defeat the goal of providing WIC participants broad optimum choice of fruits and vegetables. For example it is well known that the nutritional values of the top 20 fruits and top 20 vegetables serve as some sort of guideline for a broader selection than just two varieties. N.G.A. is committed to working with FNS and WIC directors to support a system of open choice in fresh produce and to reduce conflicting administrative constraints.

2. FNS must clarify redemption policies, especially with regard to cash vouchers, checks or EBT.

FNS appropriately recognizes that the WIC method of payments varies among the states, whether by voucher, check or EBT. The proposal states that FNS will assess the administrative burden, technical feasibility, advantages and costs of alternative approaches to delivering the cash value benefit for fruits and vegetables. (page 44798) N.G.A. welcomes that commitment and is committed to working with FNS in developing and fostering workable solutions to facilitate the administrative efficiency in selling fruits and vegetables to WIC recipients whether by cash voucher, checks or EBT. The final regulation should not be wedded to one particular system, especially as the WIC program moves toward possible implementation of EBT.

For example, for State agencies and retailers that use vouchers the proposed WIC cash vouchers for fruits and vegetables appear to be a workable system, provided some uniformity to the cash vouchers and consistency of administration is adopted by State agencies. Other and retailers that already have a system and process in place to administer current WIC prescriptions,

such as checks and EBT, are concerned how the introduction of a separate, cash-based, WIC voucher will affect their cash register systems, which are already configured to accept and flag current WIC prescriptions, but not a cash voucher. For those retailers the cash voucher would in essence be the introduction of a separate tender. Some N.G.A. retailers believe check and EBT systems could be modified to purchase any variety of a prescribed fruit or vegetable up to the maximum amount of cash benefit. As previously noted, N.G.A., its retailers and state associations are prepared to work with FNS and WIC directors to explore and develop workable cost effective solutions.

The Proposed Rule states on page 44798 that *State agencies would be encouraged to issue small denomination, such as \$2 cash value fruit/vegetable food instruments*. The monthly cash-value food instruments for women are proposed to be \$8 and \$6 per month for children. N.G.A. supports the issuance of cash vouchers in the \$2 dollar increments. Retailers that use checks and EBT retailers have suggested that systems may be developed that enable the monthly allotment to be incorporated into the system without needing to have \$2 increments. As FNS states the small denominations of cash vouchers are needed so the participant can obtain small amounts of fresh product at various times during the month, lessening the chance of food spoilage and waste. N.G.A. recommends due to the need for uniformity that FNS and State agencies adopt a single denomination value for the cash vouchers.

N.G.A. recommends that the cash value benefit for fruits and vegetables be flexible and be permitted to be redeemed by WIC vendors just as current WIC payments are redeemed. For example, those states which use WIC "checks" instead of "vouchers" could continue to operate under their current system, which requires the WIC vendor to deposit the WIC check into their bank for reimbursement. N.G.A. stresses that it is important to WIC recipients, directors and retailers to minimize the changes in the program while adding the nutritional value of fruits and vegetables to the WIC program.

3. FNS must address cost Containment and Peer Group Pricing Concerns.

FNS has emphasized that "it is important that revisions to WIC food packages be cost neutral." (page 44786) "The implementation of a cash value paper voucher or check may prove administratively burdensome and prohibitively expensive given additional processing costs that may be applied to each transaction, depending on a State's benefit processing arrangement." (page 44798) FNS needs to clarify that because of the variables affecting prices of fruits and vegetables the cost containment and peer group pricing rules do not apply to the Proposed Rule with regards to the cash value voucher or benefits for fruits and vegetables. N.G.A. believes that peer group pricing models do not apply to this portion of the Proposed Rule and would be extremely difficult to implement as produce prices change so rapidly depending on market demands

and product availability. N.G.A. asks FNS to clarify its position regarding peer group pricing for the fruits and vegetables portion of the rule.

In a number of states retailers and WIC agencies are experiencing confusion and frustration with the new mandatory WIC cost containment policies. In some areas, retailers are having WIC vouchers denied in record numbers, causing some to rethink their participation in the WIC program. The purpose of this Proposed Rule is to improve the WIC program for participants, including expanding the availability of nutritious foods. FNS must ensure that policies and procedures are not so burdensome that retailers are unnecessarily penalized for participating in the WIC program.

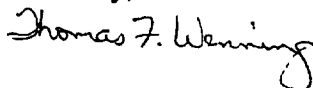
4. FNS must allow time for WIC recipient education and retailer training.

N.G.A. and its retailers urge FNS and State agencies to conduct an effective training program for both WIC participants and retailers before implementing any changes in the Proposed Rule. There have been no major changes to the WIC program since the 1980s. It will be imperative that FNS conduct a thorough and ongoing training for WIC participants and retailers. Due to the sheer number of items that may be added to WIC, N.G.A. recommends that FNS institute a sufficient notice period for implementation of the final rule to permit retailers sufficient time to modify systems and train employees, and WIC directors ample time to educate WIC participants on the changes adopted by the Rule.

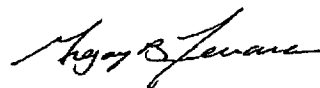
Conclusion

N.G.A. appreciates this opportunity to present its recommendations on the Proposed Rule. N.G.A., its retailers, and state associations are committed to working with FNS and WIC State agencies in facilitating the offering of fruits and vegetables and other changes under the WIC program. N.G.A. would also be pleased to meet with FNS to discuss in more detail its recommendations to assist the Agency in adopting a new Rule that nutritionally and administratively benefits WIC recipients, State agencies, and retailers.

Sincerely,



Tomas F. Wenning
Senior Vice President and General Counsel



Gregory B. Ferrara
Director of Government Affairs



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November 6, 2006

Ms. Patricia Daniels
Director, Supplemental Food Programs Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Room 520
Alexandria, VA 22302

Re: Proposed Rule, Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; 71 Fed. Reg. 44784 (August 7, 2006)

Dear Ms. Daniels:

The Food Marketing Institute (FMI) welcomes the opportunity to comment on the U.S. Department of Agriculture's (USDA's) proposed rule to revise the food packages for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). 71 Fed. Reg. 44784 (August 7, 2006).¹ As partners with USDA and state and local WIC agencies, FMI fully agrees with the important mission of the WIC program and supports its goals completely. Authorized retailers are proud of their role as the primary means of delivering nutritious food to WIC mothers and their children.

The current proposal, which adds fruits and vegetables to the WIC food packages, represents the most significant change in the history of the WIC food package from the vendor perspective. The expansion in the number of potentially eligible products is enormous, so the associated implementation challenges will likewise be significant. Nonetheless, our members believe that the nutritional value that will be provided to WIC recipients is extremely important and we fully support the inclusion of fruits and vegetables. Our specific comments on the implementation are set forth below; comments on the general WIC package precede our remarks specific to the fruit and vegetable benefit.

¹ FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

I-126

ung, Robin

From: Susan Arena [SArena@fmi.org]
Sent: Tuesday, November 07, 2006 11:59 AM
To: WICHQ-SFPD
Cc: Deborah White
Subject: Revisions in the WIC Food Packages; 71 Fed. Reg. 44784 (Aug. 7, 2006)
Attachments: WIC_food_package_11-06-06.pdf

I realized today that the version of the WIC comments I filed yesterday on FMI's behalf was very unclear and the formatting had been corrupted. Please accept my apologies and use the PDF version of FMI's comments on the Proposed Rule in 71 Fed. Reg. 44784 (August 7, 2006) attached.

Please contact me at 202-220-0615 if you have any questions. Thank you.

Susan Arena

From: Susan Arena
Sent: Monday, November 06, 2006 3:40 PM
To: 'WICHQ-SFPD@fns.usda.gov'
Cc: Deborah White
Subject: WIC food package comments 11-06-06 logo.doc

Please find attached the Food Marketing Institute's comments on the USDA Proposed Rule to revise the food packages for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). These were sent a few minutes ago but I omitted the FMI letterhead. Would you please accept the comments attached instead.

Thank you.

Susan Arena
 Manager, Legal and
 Regulatory Affairs
 (202) 220-0615

12/1/2006

I. General Comments

A. Establish a Federal WIC Food Package Implementation Advisory Group

Given the magnitude of the changes that will be required to accommodate the revised WIC food packages, we strongly urge USDA to establish a federal WIC Food Package Implementation Advisory Group. Implementation of the expanded food package will present opportunities and challenges for all involved. Accordingly, we recommend that USDA establish an advisory group composed of representatives from all sectors who will need to work together to ensure the most effective and efficient implementation of the food package, including the Food and Nutrition Service (FNS), state WIC agencies, vendors, and WIC recipients. An advisory committee will be an important mechanism for ensuring that issues can be raised and addressed across impacted constituencies.

B. License New Retail Locations To Serve WIC Populations

The proposed expansion of the WIC food package is a fine example of the WIC program's goal of increasing consumer choice, in this case, with respect to the foods WIC mothers may select. WIC mothers should also be entitled to choose from a broad selection of stores at which they can shop, including new stores. Unfortunately, some states are imposing moratoriums on WIC licenses for new stores, which prevents WIC mothers from shopping at the newest and most up-to-date stores in a given neighborhood. Accordingly, we urge USDA to prohibit states from putting a moratorium on new licenses or otherwise numerically restricting the number of stores eligible for WIC licenses.

C. Federal WIC Program Should Authorize All Appropriate Packaging Materials

As USDA is amending the food package regulations, we encourage the Agency to address an issue not included in the proposed regulations: the tendency of states to regulate food *packaging* materials. Specifically, our members have observed that several state WIC agencies are imposing restrictions on the types of materials (e.g., glass, plastic) in which WIC eligible foods must be packaged. Although we understand the need to require some limitations on the size or weight of packages, state-by-state regulations on packaging materials are beyond the scope or mission of the WIC program and add unnecessary costs to the system. Accordingly, we urge USDA to amend the final rules to authorize the inclusion of food packaged in any materials in the WIC food packages.

II. Fruit and Vegetable Benefit Comments

FMI and its members strongly support the goal of providing WIC customers with access to fruits and vegetables as part of their food package. We believe the inclusion of fruits and vegetables in the food package will enhance the overall nutritional profile of the supplement. Nonetheless, this change constitutes a significant expansion of the eligible products listing and, therefore, will present operational challenges for vendors. Currently, a typical WIC agency maintains an eligible products list of a few hundred items. The proposed revision may result in eligible products lists that approach or even exceed 10,000 items. With any kind of change of this magnitude -- no matter how welcome it may be -- a number of operational issues will need to be considered and addressed to achieve effective implementation. The comments below relate specifically to the fruit and vegetable benefit and reflect the input of FMI members who have participated in WIC fruit and vegetable pilots in California and New York.

A. Fruit and Vegetable Benefit Should Be Provided in Incremental Dollar Value Vouchers

Under the proposed regulation, WIC recipients would be provided with vouchers in \$2 increments that can be redeemed for a variety of fruit and vegetable products. We support the proposed distribution method and urge its inclusion in the final rule for the following reasons.

First, although most of the other items in the WIC food package are described in terms of size or weight of the item, this approach would not work well for fruits and vegetables, many of which are sold from bulk bins. Retailers have long observed that consumers prefer to select fresh produce themselves. Bulk bins allow individuals to choose the types and ripeness of items with ease and specificity. Accordingly, much fresh produce is sold in bulk rather than in pre-packaged amounts. Requiring either WIC mothers or retail cashiers to weigh out exact amounts of bulk produce is unnecessarily burdensome. Therefore, we agree that the proposal to allow WIC mothers to purchase a specific dollar value of produce is preferable to any other approach, such as one that would limit the fruit and vegetable purchase by size or weight.

Second, we support the proposed use of incremental dollar value vouchers. Specifically, USDA has proposed a \$6 or \$8 monthly fruit and vegetable benefit. By providing it in \$2 increments, WIC mothers may purchase fresh fruits and vegetables throughout the month. Given the perishability of these products, a voucher for the total amount would only enable WIC mothers to provide fresh produce for themselves and their children for a short window each month. The proposed approach will allow more regular access to fresh produce. In terms of implementation, if the purchase is less than the \$2 increment, the cashier can simply write the actual amount tendered on the voucher itself, without providing change to the customer; if the purchase exceeds the \$2

increment, WIC customers could pay the balance in cash. Accordingly, we strongly urge USDA to include \$2 vouchers in the final regulations.

B. USDA Should Standardize Minimum Stocking Requirements

Variations among state minimum stocking requirements present significant challenges for vendors. These challenges will be compounded with the proposed addition of fruit and vegetables to the WIC package.

Specifically, our members advise that the proposed fruit and vegetable benefit will result in the potential addition of more than 10,000 different varieties of fresh, frozen and canned fruits and vegetables. Produce, particularly seasonal produce items, are subject to the vagaries of nature. Droughts, hurricanes, and other natural and uncontrollable events can significantly influence the availability of produce items. Indeed, USDA recognizes these challenges in the cost-benefit analysis. See 71 Fed. Reg. at 44840.

Accordingly, the federal WIC program should include a flexible federal provision to authorize and allow retailers to substitute appropriate products when specific items are not available. Moreover, the federal program should not permit states to promulgate specific minimum stocking requirements beyond the requirement for vendors to maintain two or more varieties in the fresh, frozen, or canned category of produce. Vendors simply will not be able to maintain minimum stock levels, subject to fines and penalties, for all of the potential varieties of fresh, frozen and canned fruits and vegetables. The goal of the WIC program to provide WIC recipients with fruits and vegetables can be met without imposing a minimum stocking requirement on each and every variety of produce item.

C. Fruit and Vegetable Benefit Should Not Be Included in Cost Containment Reporting

Under the current regulations, state WIC agencies can impose cost containment requirements under certain circumstances. Cost containment requires vendors to report the sales prices for WIC food packages to the state WIC agency on a regular basis.

Although the proposed regulation does not address the matter, we recommend that USDA amend the final rules to prevent state WIC agencies from including the fruit and vegetable benefit in the cost containment reporting requirements. Specifically, the fruit and vegetable benefit is issued in a set dollar amount determined by the federal WIC program. Accordingly, the cost will not vary from retailer to retailer. Indeed, as the fruit and vegetable benefit will be managed via a separate dollar value voucher, it will not be part of the overall WIC food package voucher at all. Given the fact that USDA intends to issue the benefit via pre-determined dollar limit vouchers, we urge USDA to amend the cost containment regulations to prevent state WIC agencies from including the fruit and vegetable benefit in cost containment reporting obligations.

D. Increased Flexibility in Shelf Tags for Foods Eligible for Fruit and Vegetable Benefit

Under the current regulations, state WIC agencies can regulate the use of shelf tags that retailers can use to identify WIC-eligible food products quickly and easily for WIC customers. In this regard, some states require retailers who intend to use this type of system to use shelf tags to identify all WIC-eligible items, rather than just some. Although we understand the goal of ensuring that all WIC-eligible items are equally identified, this approach will be very difficult for retailers to implement in the fruit and vegetable benefit context.

Specifically and as noted above, the fruit and vegetable benefit may increase the number of WIC-eligible items from several hundred to more than 10,000. Ensuring that a shelf tag is present for each and every one of these items, particularly given seasonal variability, is virtually impossible. Prohibiting retailers from using any shelf tags if they cannot guarantee that a shelf tag is present for every single WIC-eligible item will mean that WIC customers will be missing a potentially useful guide that some retailers try to provide. Accordingly, we urge USDA to amend the final regulations to allow retailers to use shelf tags without requiring retailers to identify every single eligible item.

E. Adequate and Transparent Client Education

The fruit and vegetable benefit is an important expansion in the WIC food package. We encourage USDA to amend the educational programs for WIC customers to explain the important components of the benefit. Retailers can bring an important perspective to updating the educational materials and stand ready to assist USDA in this regard. We encourage USDA to prepare standard federal training materials that are used by all states and to provide working drafts to the public so that retailers can identify areas in which WIC customers seem concerned or confused. For example, an FMI member reported a heated discussion with a customer participating in the New York pilot over whether red potatoes are the same as white potatoes. Giving retailers the opportunity to identify some of the concerns expressed at store level may help to improve the overall quality of the educational materials.

F. Inspection on Perishables

Under the current regulations, new stores must have all perishable products in place before they can receive authorization to serve WIC customers. Given the vast array of perishable products that will be available under the expanded fruit and vegetable benefit and the seasonal variability of these items, we urge USDA to amend the federal regulations to limit this requirement to two varieties as outlined in the proposed rule, rather than require retailers to have the full inventory of fresh produce in place that the retailer expects to maintain over the lifetime of the store.

G. Implementation

Notwithstanding the significant nutritional value that WIC customers will gain from the expanded fruit and vegetable package, managing the massive expansion at store level will present logistical challenges. Retailers must be given the tools and the time to allow them to manage their role of delivering food to WIC participants efficiently and effectively.

1. USDA Must Quickly Develop a Comprehensive Federal Fruit and Vegetable Eligible Products Listing Without Brand Limitations

As noted above, FMI and its members support the broad expansion of the WIC food package to include a broad array of fruits and vegetables. To ensure the most efficient vendor management of this very broad universe of food products, USDA must quickly develop a comprehensive list of the fruits and vegetables that are eligible for the benefit. This list must be federally developed and managed.

Moreover, the list cannot be brand specific. Innumerable different growers serve as sources of fresh produce to the retail community. Increasingly, these growers are branding their products to increase sales and customer recognition. Even (or especially) small local growers brand their produce for consumer recognition. Nonetheless, from a nutritional perspective, each type of fresh produce will have the same nutrient profile, regardless of grower brand.² Requiring each brand to be approved will be time-consuming and costly and will undoubtedly prevent some small local farmers -- who often provide the freshest produce given their proximity to the store -- from participating. Therefore, the list of WIC-eligible produce items must not be brand-specific.

2. State WIC Agencies Must Authorize All Items on Federal Fruit and Vegetable List

The current regulations allow each state to choose the food items that will be included in its state WIC food package from the list of WIC-eligible items identified under the federal regulations. Although we understand the basis for this approach for the traditional WIC food package items, USDA's final rules should not permit states to specify individual produce items.

Specifically, state-by-state variations are difficult, confusing and expensive to administer under the current program. The scope of eligible produce items that will be included in the federal program is very large. If states are allowed to specify individual produce items that will be allowed or prohibited from the potential universe of 10,000 items, retailers will be overly burdened simply trying to administer the system.

² FDA's nutrition regulations for fresh produce, which allow posting of a single poster with generic nutritional information for all produce items, regardless of brand, inherently recognize this fact. See 21 CFR 101.44.)

Accordingly, the final federal rules should require states to allow WIC consumers to purchase any of the items on the federal list of WIC-eligible fruit and vegetables.

3. Product Exclusions in Produce Benefit Should Be Limited and Managed on Federal Level

The WIC program has historically excluded certain types of foods from the WIC food package based on added ingredients, such as sugars or oils. Although excluded foods are difficult to manage in the current system, the challenge will increase exponentially with the exponential increase in items that will populate the universe of eligible foods under the expanded fruit and vegetable benefit. FMI recommends the following measures to address the potential challenge.

First, the list of excluded food products should be managed at the federal level for the reasons stated above; fifty state-by-state program variations for the vast number of food products will be impossible for any given store to administer.

Second, no enforcement should take place against retailers if a WIC customer purchases an excluded food item until the federal list discussed above is in place and the program can be managed electronically. As long as the food item is in the family of fruits and vegetables, retailers should not be penalized if the WIC customer presents a produce item that has an excluded ingredient in it, at least until this list is in place and retailers have been given one year to implement. Otherwise, USDA will effectively require every front end cashier to read every can or bag of fruits and vegetables to ascertain whether one of the excluded ingredients is in the product.

Third and most importantly, state WIC agencies should educate WIC recipients on the best products for them to purchase for both value and nutritional benefit. Presumably, the purpose of the WIC program is to instill long-term nutritional practices for WIC recipients. WIC customers are only eligible to receive the WIC benefit for a limited amount of time. If they are dependent on retailers to police their food choices, they will not be prepared to make sound food choices once they are no longer eligible for the WIC benefit and one of the important goals of the WIC program will not be achieved. Accordingly, WIC recipients should be encouraged through education to choose food products wisely, rather than to depend on retailers to police their food choices.

4. Development of National UPC Database and Standard PLU Listings Will Be Critical

Given the broad expansion of the WIC food package, the development and implementation of a national Uniform Product Code (UPC) database with state product lists identified and flagged is more important than ever before. A transitional interim approach for list development, flagging and enforcement should be in effect until the national UPC database is available for this purpose.

Similarly, standardization of the Price Look Up (PLU) numbers for fresh produce becomes increasingly important with the inclusion of the fruit and vegetable benefit in the WIC food package. USDA's regulations should adopt federally and encourage state use of generic PLU numbers as maintained by the International Federation of Produce Standards.

5. We Encourage USDA To Exercise Reasonable Enforcement Measures

We urge USDA to implement the new fruit and vegetable benefit with reason, discretion and an emphasis on compliance rather than enforcement. As noted above, the expansion of the benefit is enormous, and the potential complexities are innumerable. Vendors will need adequate time to program all of the front end changes that will be required to accommodate at least the federal list of newly authorized foods. Cashiers will need to be trained to understand the new requirements and appropriately counsel confused consumers. Of course, none of these measures can be implemented until final rules are issued, otherwise confusion will abound.

Accordingly, we recommend that USDA implement a reasonable effective date for retailer compliance with the regulations. The final rules should include a comprehensive list of produce items that are eligible for the benefit and the effective date should be no sooner than twelve months following promulgation of the regulation and the list.

Moreover, we urge USDA to exercise reasonable discretion and emphasize compliance over enforcement in the first twelve months after the effective date. Retailers will need time to ensure that all cashiers are trained on the complexity of the new benefit and that all necessary programming has been accomplished. Therefore, enforcement should be very limited and only on items that are clearly outside of the produce category until at least twelve months after the final regulation with the national UPC database is live and any unavoidable state flags have been identified on the federal list. For example, a store should not be disqualified for selling red potatoes or a can of mixed vegetables that includes diced white potatoes as one of the four vegetables, etc, until systems can be fully programmed and complete employee training can occur.

We anticipate significant programming needs in order to allow retailers to enter data electronically (i.e flagging) and to split tender. Moreover, despite the recent statutory amendments, our members continue to advise of incidents where retailers are not told about violations from undercover buys until several have been accumulated and the state WIC agency moves for a severe penalty or disqualification. While this is an important issue under the current regulations, and one that we raised in the recent rulemaking that USDA conducted on the vendor rules, the importance of the issue increases significantly with the impending inclusion of 10,000 produce items. A first time warning would help significantly to identify issues that need to be addressed.

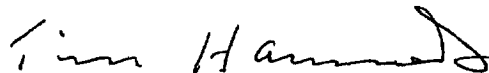
H. Future Use of EBT Will Ameliorate Many Issues

Electronic delivery of the enhanced WIC food package would solve many of the logistical issues discussed above, provided, of course, that adequate funding is available and a realistic implementation time frame is established. Clearly, EBT is not a short term solution, nor should it be considered in the short term. Even when a state is fully implemented with electronic delivery programs, it will take significant technological work to integrate the new package changes. Nonetheless, the relative ease with which the new benefit could be incorporated in an electronic system is worth noting as the food package will undoubtedly continue to change over time.

* * *

We commend USDA for the proposal to include fruits and vegetables in the WIC food package and respectfully request that you consider our comments in this regard. We look forward to continuing to work with you.

Sincerely,



Tim Hammonds
President and CEO