

November 21, 2005

VIA FACSIMILE AND FIRST CLASS MAIL

Ms. 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: Proposed Rule, Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Vendor-Related Provisions; 70 Fed. Reg. 143 (July 27, 2005)

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 amending various vendor-related provisions in the WIC program.¹

FMI is in full agreement with the important mission of the WIC program and supports its goals completely. Authorized retailers are proud of their role as the primary delivery means of nutritious food for WIC mothers and their children. There are two aspects of this proposed rule that could impact authorized food retailers.

First is the proposal to provide for an abbreviated administrative review when a Civil Money Penalty (CMP) results from a Food Stamp disqualification in lieu of a WIC disqualification because the state agency has determined that disqualification would result in a lack of participant access to the program. In these circumstances, the only issue remaining to be determined is the dollar amount of the fine. A full administrative review would not be necessary to make a reasonable determination

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.

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of an appropriate fine. However, we would strongly oppose any attempt to abbreviate due process hearings in the event of the reverse scenario, when a WIC disqualification could trigger a Food Stamp disqualification. A full hearing would be necessary to make that determination because of the tremendous number of complexities and variances in the two programs.

The proposed rule would also allow WIC state agencies to issue public notices of vendor disqualifications including the length of time and reason for the disqualification and to provide the information to authorized vendors and program participants. The preamble suggests that issuance of a public notice would deter vendor fraud and abuse.

While we support efforts to end all fraud and abuse, those efforts should not be limited to vendor fraud and should also include participant fraud and public official fraud. If the goal of this public notification is to deter those who might be inclined to commit fraud, it would be only fair and appropriate to extend the notice to include all those who are found guilty of fraud and abuse. This equal treatment should include listing in this public notification of any participants and government/program officials found guilty of fraud. It would be ineffective and unfair to publish a partial list of the perpetrators of fraud and we would support only the publication of a complete and accurate list. Moreover, this type of public notice should only be issued after due process had been exhausted and the disqualification determination was finalized.

Thank you for the opportunity to share our comments on this proposed rule. We look forward to continuing to work with you.

Sincerely,

George Green
Vice President
General Counsel