



February 1, 2010

Via Electronic Portal and U.S. Mail

Ms. Patricia N. Daniels
Director, Supplemental Food Programs Division
Food and Nutrition Services
United States Department of Agriculture
3101 Park Center Drive, Room 528
Alexandria, Virginia 22302

Re: 7 CFR Part 246; Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Interim Rule (Docket No. FNS-2006-0037)

Dear Ms. Daniels:

The Food Marketing Institute (FMI)¹ is pleased to respond to the U.S. Department of Agriculture's (USDA's) request for comments on the implementation of Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Interim Rule at 7 CFR Part 246.

FMI supports USDA's goal of providing WIC customers with access to and education about healthy fruits and vegetables as part of the new WIC food package. FMI surveyed its members on how the expansion of a program that has gone from some 500 approved food items to more than 12,000 items to date is progressing from the vendors' perspective. To that end, we provide the following comments relative to the new WIC Food Package, and then following, we present general comments on the WIC program as we also received those from our members. However, the general

¹ FMI conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 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 and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food 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 more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

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comments we received are indirect issues that arose partially because of the increase in the number of available products.

I. Revisions in the WIC Food Package

A. Stocking Requirements

The federal program should not permit the promulgation of 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 are finding it difficult to maintain minimum stock levels in items such as soy beverages and tofu. In this instance, there should not be a minimum stocking or inventory requirement since it is only a substitute for milk, and the product already has a limited customer base. This is an undue burden to retailers when inventory requirements exceed the product sold and the product must be discarded when the expiration date is reached. Another example of an undue hardship is the requirement of liquid concentrates of infant formula. This is a case where the minimum stock requirement is higher than the demand of WIC Recipients.

In another instance, some states allow only one brand of jar baby food for WIC eligible Recipients to purchase. If a Recipient has a prescription that allows her to purchase upward of thirty jars at a time, it will only take a few other WIC Recipients in a day to deplete the stock of that category of food, particularly in smaller grocery stores. USDA should encourage all states to approve more than one brand of jar baby food. As manufacturer and store coupons are available, the prices of different brands will fluctuate, thus encouraging WIC Recipients to learn how to avail themselves to the least expensive price.

Finding available stock of 16 oz. bread remains an issue. Traditionally, bread is baked and available in 20oz loaves and whole grain 20 oz. loaves in a store brand remain less expensive and more available than 16 oz. bread loaves. The same holds true for a 16 oz. whole grain/whole wheat tortilla. We respectfully request that USDA reconsider mandating the 16 oz whole grain bread and allow the purchase of “up to” a 20 oz loaf of bread.

B. WIC Package

New WIC package differences in the states complicate store operations for our multi-state retail operators and distributors. For example, our members tell us that some States allow only fresh fruits and vegetables, some States allow fresh, canned and frozen fruits and vegetables, some States allow only fresh and frozen fruits and vegetables and still other States allow only fresh and canned fruits and vegetables. Making uniform across the states the approved type (i.e. fresh, canned, frozen) of fruit and vegetable products will streamline retail processes and reduce costs for WIC Recipients. Additionally, increased access to all types of fruits and vegetables will give WIC Recipients more flexibility in their shopping choices.

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FMI also encourages USDA to make uniform among the states the acceptance of some sugar in canned vegetables. In some instances, such as in canned green peas, sugar is added during the canning process to keep the skin of the pea from rupturing. As you know, all ingredients must be listed with the nutrition fact box. Currently, there is no way to know if a sugar is added for flavoring or for canning processes.

C. Cash Value Vouchers and Split-Tender

The addition of cash value vouchers with random weights has caused time in the check-out lane to double for WIC Recipients and those in line behind them. Couple this with the prohibition by some states to allow the WIC Recipient to pay the difference (or to “split the tender”) between what her vouchers will cover and what she has brought to the cash register to purchase, and this slows down lane time and prevents the Recipient from completing her desired purchase. Some States allow WIC Recipients to pay any overage, between what her voucher allows and in what she wishes to purchase by using cash, credit, EBT SNAP benefits, etc. to pay the difference. Other States require the WIC Recipient to take away items from her cart in order to stay within the set amount that her voucher will cover. Disallowing the use of split tender is an unnecessary burden on the WIC Recipient and hails back to the pre-EBT SNAP days, when embarrassment and stigma were associated with public assistance. To completely prevent placing a spotlight on the WIC Recipient, another option would be to allow benefits to roll into the next month, as SNAP benefits do.

II. General WIC Comments

A. Shelf Tags

As you know, the new WIC package has increased food stuffs available for WIC Recipients to purchase from some 500 to around 12,000 items. A large and new number such as this brings with it additional complications in terms of what is known by both the retail clerk and the WIC Recipient about what is purchasable. One way to assist the WIC Recipient in picking out approved foods is the use of shelf tags as an aid. However, 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. Our members tell us that some States do not allow any identification of WIC products, some States only allow retailers to use state-issued tags and some States allow retailers to design and use their own WIC tag, but require state approval. We urge

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USDA to either amend the final regulations uniformly across the states to allow retailers to use shelf tags without requiring retailers to identify every single eligible item, or request that all States implement shelf tag policies to help WIC mothers become more aware of WIC eligible products.

B. National Universal Product Code (UPC) Database

In addition to using shelf tags as an aid to assist WIC recipients, a tool that would provide maximum benefits in terms of a pleasant, efficient and less stressful shopping experience is the use of a National UPC Database containing all approved products with their identifying UPC code. It is difficult to match a state description with an order book description that may result in the wrong items authorized at retail. As WIC converts to an Electronic Benefit Transfer (EBT) structure, a national UPC database is one critical component of supporting a more efficient process at the point-of-sale, helping to reduce confusion and time in the checkout lane for WIC Recipients.

FMI recognizes that this is a large undertaking, but providing the correct food stuffs to WIC Recipients from such a large quantity that includes substitutions and prohibitions such as sugar and salt, is a large undertaking as well. A transitional interim approach for list development, flagging and enforcement should be considered until the national UPC database is available for this purpose.

C. WIC Voucher – “Do Not Exceed” Field

WIC vouchers have a “do not exceed” field on the check, but it is not filled in. If it were to be filled in with the monetary amount that a WIC Recipient must not exceed, it would be less confusing between cash value vouchers and regular WIC vouchers as well as giving the WIC Recipient and vendor the knowledge of what the check is worth. Many times, a vendor will not know if the WIC Recipient has exceeded her monetary allotment until the check is deposited and returned, and in some cases, without being paid because of an overage. By having the “do not exceed” field filled in, a clerk would be able to input this information into the cash register, and receive a cash register prompt, for example, “thirty-five cents left” and the clerk would have the opportunity to inform the WIC Recipient, allowing her to decide if she would like to purchase any additional items with a different tender. This also allows the vendor to receive in good faith money that is owed them for food products that are sold.

D. WIC Store Licenses

Some States find it necessary to implement moratoriums on new WIC vendors, but this limits competition and slows growth to areas that need more retail outlets and does a disservice to the WIC Recipient by preventing their shopping at the newest and most up-to-date stores in a given neighborhood. Our members tell us that vendor approval continues to be a slow and painstaking task. Often stores change owners, and not store name, leaving the WIC Recipient in a quandary as well as confused as to how the store accepted WIC on Friday but can no longer take their WIC

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check on Monday. Along the same lines, it is very important that vendors have the flexibility to get a store licensed prior to opening day. If a store cannot accept WIC benefits on day one, WIC Recipients may never return to that store under the assumption that they don't and never will accept WIC benefits, even if it is the most convenient shopping location for them and provides the greatest access to healthy and nutritious foods.

At the very least, we recommend applications be expedited for those operators who already have a WIC vendor number in the state, through another store. 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, and we encourage USDA to provide the necessary resources to ensure vendors have the ability to obtain licenses for store opening days.

* * *

FMI recognizes that this is a large undertaking by Recipients, USDA and the vendor community. We commend USDA for the proposal to include fruits and vegetables in the WIC food package and we respectfully request that you consider our comments in this regard. FMI looks forward to continuing to work with you.

Sincerely,



Jennifer Hatcher
Group Vice President
Government Relations

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