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December 15, 2003

**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 520  
Alexandria, VA 22302

**Re: Advance Notice of Proposed Rulemaking  
Special Supplemental Nutrition Program for Women, Infants and  
Children (WIC): Revisions to the WIC Food Package;  
68 Fed. Reg. 178 (Sept. 15, 2003)**

Dear Ms. Daniels:

The Food Marketing Institute (FMI) welcomes the opportunity to comment on the U.S. Department of Agriculture's (USDA's) advance notice of proposed rulemaking for revisions to the WIC Food Package.<sup>1/</sup>

FMI is in full agreement with the important mission of the WIC program and supports its goals completely. However, the complexity of the program as it is currently structured limits flexibility, and reduces cost effectiveness and appeal/convenience to recipients, while increasing burdens on retail vendors and WIC administrators. From the perspective of authorized retailers, the complexity begins at the initial authorization of a store, continues through approved food items and packaging, customer checkout, and finally to retailer reimbursement. Our comments with regard to "Section XI. Review Issues," focus on two primary areas: #8 – flexibility in choosing among authorized food items and #11 – operational concerns for the foods.

<sup>1/</sup> 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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- 8. Recognizing that current legislation requires WIC food packages to be prescriptive, should participants be allowed greater flexibility in choosing among authorized food items? If so, how?**

Enforcement of the current prescribed items in a food package is unnecessarily stringent, particularly with regard to areas where there is no or very limited nutritional impact. Two examples may help to illustrate our concern and the flexibility that is needed.

Canned tuna is a product that is often prescribed for WIC food packages. Manufacturers now offer a canned tuna product that is packed in water with a twist of lemon. We are told that the twist of lemon prevents approval for inclusion in a WIC food package, even though there is minimal differentiation in packaging in the two products. It is unnecessary and counter-productive to expose a retailer to potential expulsion from both the WIC and Food Stamp programs for selling a product with such an insignificant additive (which, it could be argued, improves both the nutritional value, if only slightly, and appeal to customers).

Moreover, manufacturers often feature enhanced package sizes as a promotional measure. These products include a modest additional amount of product in the same or slightly larger sized packages. For example, Kix cereal was recently manufactured with extra ounces; as a result, it exceeded the WIC Program's maximum allowable ounces level, although it still fell below the maximum allowable price. Retailers generally remove the smaller sized boxes from the shelf while the promotion is running.

Current interpretation and enforcement of WIC food package rules in many instances do not allow WIC customers to take advantage of these offers. A retailer who does allow a WIC customer to take advantage of enhanced package size offers would be subject to potential program violations that could disqualify it from the program. WIC participants should be allowed to receive the extra food without subjecting retailers to penalties.

- 11. The WIC program's overall goal is to achieve the greatest improvement in health and development outcomes for WIC participants, achieved partly by providing food that targets nutrients determined to be lacking or consumed in excess in the diets of the WIC population. In addition to targeting these food nutrients, food selection criteria should address necessary operational concerns for the foods – for example, cost effectiveness; appeal to recipients; convenient and economical package sizes; complexity/ burden for the WIC administrative structure to manage; etc.**

The WIC program must be more attuned to changes in product packaging. Shelf-stable juice is particularly problematic. The most widely authorized prescription is

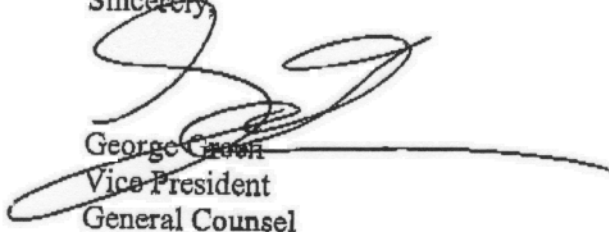
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for 46 ounce cans of juice, a non-traditional size container that is not purchased by customers outside of WIC. Thus, juice in these containers is difficult to find and usually more expensive than the standard 64 ounce plastic bottles. Juice in plastic bottles is less expensive, has a longer shelf life, and is available in more varieties than canned juice, which makes it much more attractive to WIC customers.

WIC customer selection of package sizes may also cause problems for authorized WIC vendors. For example, WIC participants may purchase two gallons of milk and they may do so in quart, half-gallon, or gallon packages. When the customer chooses 8 separate quart containers, the price may be as much as twice the price of two one-gallon containers. The WIC instrument will be rejected because it exceeds the maximum price. Although it may be resubmitted for secondary review with proof of purchase, it may not be redeemed for more than the maximum price calculated based on 2 one-gallon containers, rather than 8 quarts or any other package combination; this results in huge losses to the retailers.

Thank you for the opportunity to share our recommendations on this advance notice of proposed rulemaking. We look forward to working with you as this review continues.

Sincerely,



George Green  
Vice President  
General Counsel

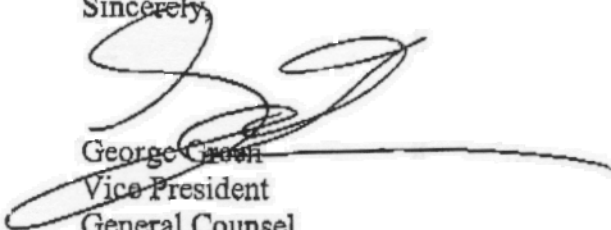
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