Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD39

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions to the WIC Food Packages

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The WIC Program provides supplemental food packages designed to provide specific nutrients critical to growth and development. WIC food packages and nutrition education are the chief means by which WIC affects the dietary quality and habits of participants. WIC food packages were designed to supplement participants' diets with nutritionally dense foods that prevent iron-deficiency anemia; complement the eating patterns of pre-school children; and address the special nutrition requirements of pregnant and breastfeeding women. The WIC food packages were last revised in 1980. While WIC has been successful in many areas, obesity and inappropriate dietary patterns have become significant concerns for many in WIC's target population. In this Notice, the Department is soliciting public comments on redesigning the food packages offered through the WIC Program to determine if the WIC food packages should be revised to better improve the nutritional intake, health and development of participants; and, if so, what specific changes should be made to the food packages. The Department plans to enlist independent technical experts via the Institute of Medicine's Food and Nutrition Board to review available science and comments submitted in response to this Notice and to develop recommendations on revising the WIC food packages for the Department's consideration. The Department will use comments received through the Notice and the Food and Nutrition Board recommendations to develop a proposed rule.

DATES: To be assured of consideration, comments must be postmarked on or before December 15, 2003.

ADDRESSES: Comments should be sent to Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302. Comments on this Notice should be clearly labeled ''Revisions to the WIC Food Packages.'' Comments which are not within the scope of this Notice should not be included. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, at the address indicated in the **ADDRESS** section or at (703) 305–2746 during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866

This action has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act of 1995

This action does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.570, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Civil Rights Impact Analysis

FNS has reviewed this action in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impact this Notice might have on minorities, women, and persons with disabilities. FNS has determined that this action presents no civil rights impact on minorities and other protected classes, nor does it present any barrier to program access or participation. With this action the Department is soliciting comments from the public on redesigning the WIC food packages to better meet the needs of WIC's diverse participants.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement describing the agency's considerations called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Over the years the Department has received numerous requests from WIC State agencies and participants to modify the current food packages to permit greater substitution of foods or introduction of additional foods. These requests have come from formal and informal discussions and with State and local officials on an ongoing basis regarding program implementation and food package policy issues, and from written proposals submitted to FNS by WIC State agencies to allow modifications and/or substitutions to the WIC food packages.

Need To Issue This Notice

Through this Notice, the Department is soliciting public comments on redesigning the food packages offered through the WIC Program to determine if the WIC food packages should be revised to better meet the nutritional needs of participants and, if so, what specific changes should be made to the food packages. The Department believes that public comment is necessary to inform decisions and to bolster the scientific and programmatic integrity of any rule that is proposed as a result of this process.

Executive Order 12998

This action has been reviewed under Executive Order 12998, Civil Justice Reform. This action is not intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation.

II. References

(1) Study of WIC Participant and Program Characteristics, 2000. Available at Internet site: *http://www.fns.usda.gov/oane/MENU/Published/WIC/WIC.HTM.*

(2) Review of the Nutritional Status of WIC Participants (CNPP), December 1999. Available at Internet site: *http://www.usda.gov/cnpp/Pubs/Wic/*

(3) *Nutrition and Your Health: Dietary Guidelines for Americans, Fifth Edition, USDA and U.S. Department of Health and Human Services, Washington, DC, 2000.* Available at Internet site: *http://www.usda.gov/cnpp/Pubs/DG2000/*

(4) WIC and the Nutrient Intake of Children (ERS), Food Assistance and Nutrition Research Report No. FANRR5, April 2000. Available at Internet site: *http://www.ers.usda.gov/publications/fanrr5/*

(5) Institute of Medicine. Dietary Reference Intakes. Panel on Macronutrients (Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (September 5, 2002, 936 pp.))

(6) Institute of Medicine. Dietary Reference Intakes. Panel on Micronutrients (Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc (2002, 800 pp.))

(7) Institute of Medicine. Dietary Reference Intakes. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes (Calcium, Phosphorus, Magnesium, Vitamin D, and Fluoride (1997, 448 pp.))

(8) Institute of Medicine. Dietary Reference Intakes. Dietary Antioxidants and Related Compounds (Vitamin C, Vitamin E, Selenium, and Carotenoids (2000, 529 pp.))

(9) Institute of Medicine. Dietary Reference Intakes. Panel on Folate, Other B Vitamins, and Choline (Thiamin, Riboflavin, Niacin, Vitamin B6, Folate, Vitamin B12, Pantothenic Acid, Biotin, and Choline (2000, 592 pp.))

(10) WIC Program Regulations Pertaining to Supplemental Food [7 CFR 246.10] available at Internet site: *http://www.fns.usda.gov/wic/PDFfiles/WICRegulations-7CFR246.pdf*

(11) FNS Instruction 804–1 ''WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring.''

(12) Standard reference values for nutrients in foods are available from USDA, Agricultural Research Service, Nutrient Data Bank, *http://www.nal.usda.gov/fnic/cgi-bin/nut_search.pl*

III. General Background

Since the creation of the WIC Program in the 1970's, and the last revision of the WIC food packages in the early 1980's, much has been learned about the nutritional needs of pregnant women, infants, and preschool aged children. In recent years the ability of the WIC Program to meet nutritional needs of WIC participants through its food packages and nutrition education has received growing attention. Significant interest in updating the food packages based on new information about the needs of low-income women, infants, and children has been voiced by WIC Program administrators, the medical and scientific communities, advocacy groups, and Congress.

Authorizing legislation requires that the supplemental foods provided by WIC contain nutrients known to be lacking in the diets of the target population [see the Child Nutrition Act, as amended (CNA), section 17(b)(14), (42 U.S.C. 1786)]. Indeed, because of the WIC Program and the larger nutrition safety net, progress has been made in filling many of these nutrient gaps. However, nutritional science and the Dietary Guidelines for Americans have evolved, and the overall nutritional needs and consumption patterns of WIC's target population have changed. The Department acknowledges the continuing advances in nutritional research since the current food packages were established in 1980. Recommended dietary practices are constantly evolving in response to new knowledge and may hold significant implications for the WIC Program. Food technology has also advanced substantially, resulting in a large number of new products.

With this Notice, the Department is seeking guidance on issues/questions concerning revisions to the WIC food packages that would address the nutritional needs of the WIC population given current scientific information and consumption patterns. The food package recommendations should not increase the cost or administrative burden to the WIC Program nor change the supplemental nature of the Program. Any modifications to the WIC food packages should be based on scientific evidence.

IV. Program Background

The authorizing legislation for the WIC Program, section 17 of the CNA established the WIC Program to provide supplemental foods and nutrition education to low income pregnant, breastfeeding, and postpartum women, infants, and children up to age 5 who are at nutritional risk. Nutritional risk is determined by a competent professional authority and includes conditions such as inadequate weight gain during pregnancy; history of inappropriate growth patterns in infants and children; anemia; and inadequate dietary patterns.

Sections 17(a) and (b)(14) of the CNA (42 U.S.C. 1786(a) and (b)(14)) clearly established the WIC Program as ''supplemental'' in nature; that is, the WIC supplemental foods are not intended to provide a complete diet but are designed to provide specific nutrients determined by nutritional research to be lacking in the diets of the WIC population. WIC was never intended to be a primary source of food, nor of general food assistance. Rather, WIC benefits are intended to meet the special nutritional needs of a very specific population. In addition to WIC, the Department administers a variety of other complementary nutrition assistance programs that work together to provide a more complete diet to low-income persons. Low-income families can, and frequently do, receive benefits from more than one of these programs. The largest of these programs, the Food Stamp Program, provides general food assistance intended to increase the food buying power of low-income households.

In addition to food assistance, WIC provides nutrition education, including breastfeeding promotion and support, and information about the dangers of alcohol, tobacco and other drug use to participants. The nutrition education provided by WIC enables participants to make informed decisions in choosing foods that, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs. The intent is to help participants to continue healthful dietary practices after leaving the Program.

WIC is a unique nutrition assistance program in that it also serves as an adjunct to good health care during critical times of growth and development to prevent the occurrence of health problems and to improve the health status of Program participants. Numerous studies have shown that WIC

is cost effective and successful in improving the health and nutritional status of its clients.

For example, WIC has played an important role in improving birth outcomes and containing health care costs.[1,2] A series of reports published by USDA based on linked 1988 WIC and Medicaid data on over 100,000 births found that Medicaid eligible pregnant women in 5 States who participated in WIC during their pregnancies had:

- Longer pregnancies;
- Fewer premature births;
- Lower incidence of moderately low and very low birth weight infants; [3]
- Fewer infant deaths;
- A greater likelihood of receiving prenatal care; and
- Savings in health care costs from $1.77 to $3.13 for each dollar spent on WIC.[4,5,6]

Studies have also found WIC to have a positive effect on children's diet and diet-related outcomes such as:

- Higher mean intakes of iron, vitamin C, thiamin, niacin and vitamin B6, without an increase in food energy intake, indicating an increase in the nutrient density of the diet; [7]
- Positive effects on the intakes of ten nutrients without an adverse effect on fat or cholesterol; [8]
- More effective than other cash income or food stamps at improving preschoolers' intake of key nutrients; [8] and
- Decline in the rate of iron deficiency anemia from 7.8 percent in 1975 to 2.9 percent in 1985 which the Centers for Disease Control and Prevention attributed to both a general improvement in iron nutrition and participation in WIC and other public nutrition programs.[2,9]

However, a comprehensive evaluation of the WIC program has not been completed in over 15 years.

References

1. Gordon, Anne; and Lyle Nelson. *Characteristics and Outcomes of WIC Participants and Nonparticipants: Analysis of the 1988 National Maternal and Infant Health Survey.* Alexandria, Virginia: U.S. Department of Agriculture, March 1995.

2. 7. U.S. General Accounting Office, ''Early Intervention: Federal Investments Like WIC Can Produce Savings,'' Document HRD 92–18, Washington, DC, April 1992.

3. Kowaleski-Jones, L. and GJ Duncan. *Effects of Participation in the WIC Program on Birth Weight: Evidence from the National Longitudinal Survey of Youth.* American Journal of Public Health Vol 92: 799–804. May 2002.

4. Devaney, Barbara, Linda T. Bilheimer, and Jennifer Schore. *The Savings in Medicaid Costs for Newborns and Their Mothers* from Prenatal Participation in the WIC Program. Alexandria, Virginia: U.S. Department of Agriculture, October 1990.

5. Devaney, Barbara. *Very Low Birthweight Among Medicaid Newborns in Five States: The Effects of Prenatal WIC Participation.* Alexandria, Virginia: U.S. Department of Agriculture, September 1992

6. Devaney, Barbara, and Allen Schirm. *Infant Mortality Among Medicaid Newborns in Five States: The Effects of Prenatal WIC Participation.* Alexandria, Virginia: U.S. Department of Agriculture, May 1993.

7. U.S. Department of Agriculture Food and Nutrition Service. *The National WIC Evaluation: An Evaluation of the Special Supplemental Food Program for Women, Infants, and Children. Vol. 1: Summary.* Alexandria, Virginia: U.S. Department Agriculture, 1987.

8. Rose, D., Habicht, J-P., and Devaney, B.: ''Household Participation in the Food Stamp and WIC Programs Increases the Nutrient Intakes of Preschool Children,'' *Journal of Nutrition,* 128:548–555, March 1998.

9. Oliveira, Victor, Elizabeth Racine, Jennifer Olmsted and Linda M. Ghelfi. *The WIC Program: Background, Trends, and Issues.* Alexandria, Virginia: U.S. Department of Agriculture, September 2000.

V. History and Development of WIC Food Packages

Early legislation for the WIC Program, Public Law 92–433 (1972) through Public Law 94–105 (1975), specifically identified protein, iron, calcium and Vitamins A and C as nutrients of particular concern for WIC participants. However, Public Law 95–627, enacted in November 1976, deleted the reference to these nutrients. Instead, it defined supplemental foods as those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants, and children, as prescribed by the Secretary of Agriculture. The Program direction announced by that law remains in effect today (section 17(b)(14) of the CNA, 42 U.S.C. 1786(b)(14)). The law also directs the Secretary in section 17(f)(11) of the CNA (42 U.S.C. 1786(f)(11)) to assure that, to the degree possible, the fat, sugar, and salt content of WIC foods is appropriate.

The law provides substantial latitude to the Department in designing WIC food to supply nutrients lacking in the diets of the WIC eligible population. Historically, the Department has based its prescriptions of WIC foods on sound nutritional research and input from State and local agencies, the health and scientific communities, industry and the general public.

In anticipation of the passage of Public Law 95–627, the Department, in October 1978, assembled a WIC Food Package Advisory Panel composed of State health officials, representatives of the nutrition community and advocacy groups, to review the original food packages and recommend changes. Panel recommendations included retaining high-quality protein, iron, calcium, and vitamins A and C as the targeted nutrients in the WIC Program and expanding the number of available packages. Based on the Panel's recommendations and an evaluation by the Department of the available nutrition research on the nutrient, fat, sugar and salt content of the WIC foods, the Department proposed retaining high-quality protein, iron, calcium, and vitamins A and C as the targeted nutrients in the WIC Program and expanding the number of available packages in 1979 (44 FR 69254–69270, November 30, 1979). Based on public response to proposed rules in 1979, new WIC food package regulations were published in 1980 (45 FR 74854, November 12, 1980) that are consistent with Public Law 95–627.

These food package requirements appear in 7 CFR 246.10 of the WIC Program regulations. The 1980 rule established six different monthly packages: Food Package I for infants 0–3 months; Food Package II for infants 4–12 months; Food Package III for children and women with special dietary needs; Food Package IV for children 1–5 years of age; Food Package V for pregnant and breastfeeding women; and Food Package VI for nonbreastfeeding postpartum women. The Department created an additional food package in 1992 (57 FR 56231, November 27, 1992). This enhanced food package, Food Package VII, is designed for breastfeeding women who elect not to receive infant formula through WIC for their infants.

Authorized WIC foods include iron-fortified infant formula, iron-fortified cereals, vitamin C-rich 100 percent fruit and/or vegetable juice, calcium/protein-rich milk and cheese, protein/iron-rich eggs, protein-rich peanut butter or dried beans/peas, and physician-prescribed formula/medical foods for participants with certain special dietary needs. The enhanced package for breastfeeding women increases allowable amounts of juice, cheese, peanut butter and dry beans/peas, and also allows protein-rich tuna fish and carrots that provide beta-carotene (precursor to vitamin A) and dietary fiber. All WIC foods are nutrient dense, economical, administratively manageable for WIC State agencies; readily available in retail stores; offer variety and versatility; have broad appeal; and generally can be apportioned into daily servings.

VI. Recent Science and National Dietary Guidance

During the last decade, science has provided new information on the

nutritional needs of Americans, including WIC's target population. As discussed previously, the WIC Program has focused historically on supplying participants with protein and four important micronutrients: Vitamins A and C, calcium, and iron. More recently nutrition research has identified other micronutrients of potential concern, such as folic acid, zinc, vitamin B6 and magnesium. In addition, dietary causes of chronic disease have been more clearly identified. The 2000 *Dietary Guidelines for Americans* provide advice, based on current scientific and medical knowledge, for healthy Americans ages 2 years and over about food choices that promote health and prevent disease. New Dietary Reference Intakes (DRI's) have recently been established by the Institute of Medicine, Food and Nutrition Board as guidelines for nutrient intake in the U.S. population. The next update of the *Dietary Guidelines for Americans*, to be completed in 2005, will reflect the new DRI's.

VII. Nutrition Risk and Demographic Changes in WIC's Population

WIC applicants must be determined to be at nutritional risk to meet eligibility requirements for the WIC Program. Nutrition risk means nutritionally-related medical conditions (*e.g.*, anemia, inappropriate growth or weight gain pattern) or dietary deficiencies (*e.g.*, inadequate or inappropriate nutrient intake) that impair or endanger health. According to the WIC Participant and Program Characteristics 2000 report, 56.3% of WIC participants are identified as having a dietary deficiency.

Obesity has become one of the most serious health problems in the United States, with direct implications for the health of WIC program participants. The National Center for Health Statistics revised growth charts, when used with WIC data from 1992 to 1998, show that overweight prevalence among children enrolled in WIC increased 20 percent over this 6-year period. Data from the early 1990s indicated that the prevalence of overweight in WIC children is similar to that of non-WIC children. WIC program data show that a majority of overweight WIC children have nutritional risks in addition to being overweight, *i.e.*, inadequate or inappropriate nutrient intake, anemia. A challenge facing the WIC program is to determine how it can most successfully improve the eating habits of low-income children.

The ethnic composition of the WIC Program has been changing steadily since 1992; the percentage of Hispanic enrollees has risen, while percentages of black and white (non-Hispanic) enrollees have decreased. The current racial/ethnic enrollment is: 37.4 percent White, 35.3 percent Hispanic, 21.9 percent Black, 3.3 percent Asian or Pacific Islanders, and 1.4 percent American Indian or Alaskan Natives. Low-income populations, including WIC participants, are faced with numerous barriers to good nutrition and to nutrition assistance. For populations of different cultures, especially those who have recently arrived in the United States and who lack orientation to service delivery here, the barriers to assistance can be of such magnitude as to adversely affect their health and well-being. To achieve the best overall outcomes the WIC community must give special consideration to its approach in delivering culturally appropriate, quality benefits to these growing subpopulations.

VIII. Requests for Revisions to the WIC Food Packages

Over the years the Department has received numerous requests from WIC State agencies and participants to modify the current food packages to permit greater substitution of foods or introduction of additional foods. Requests for revisions to the WIC food packages have also been received from Congress and other organizations with interests in the welfare of WIC participants. The focus of suggested changes is on improving outcomes for WIC recipients. For example:

- Congress has requested a WIC food package rule that includes fruits and vegetables and that allows for cultural food accommodations.
- The National Advisory Council on Maternal, Infant, and Fetal Nutrition, in its 1992, 1996 and 2002 Reports to Congress, recommended better accommodation of the nutritional and cultural needs of WIC participants.
- In 1999, the National WIC Association (then the National Association of WIC Directors (NAWD)) published a position paper entitled ''NAWD WIC Food Prescription Recommendations.'' NAWD made three recommendations designed to reframe the WIC food packages and one recommendation on research and policy analysis in support of the WIC food packages. Consistency with the Dietary Guidelines for Americans and allowing flexibility to provide culturally appropriate foods were among the recommendations.
- In an April 30, 2002, statement entitled ''Reauthorization of USDA Child Nutrition and WIC Programs,'' the American Dietetic Association recommended that WIC food packages be flexible to address cultural food practices and choices and participants' nutrition needs, consistent with national guidelines.

The Department wishes to consider these and other requests and in this notice solicits affordable, scientifically-based recommendations as well as other suggestions from the public for revisions to the WIC food packages that will improve the nutritional intake, health and development of participants.

IX. Design of the WIC Food Packages

The seven current WIC food packages were designed to help accomplish the following: Supplement participants' diets with nutritionally dense foods that follow current medical and nutritional guidance; complement the eating patterns of preschool children; and address the special requirements of pregnant and breastfeeding women. The WIC food packages were initially designed and adopted with regard to a set of fundamental considerations. These considerations should be taken into account when commenting on the issues presented in this Notice. The factors to be considered are discussed below.

1. Nutritional Risk

The provision of supplemental foods containing nutrients determined by research to be lacking in the diets of the WIC population is the cornerstone of the Program. Nutrient requirements are particularly high during times of rapid growth, development and replenishment. Therefore, the WIC population, composed of pregnant, breastfeeding and postpartum women, infants and children, represents individuals whose nutritional needs are among the highest and most critical for optimal growth and development. Ensuring optimal nutrient intakes during these vulnerable periods of life is paramount to prevent both immediate and long-term adverse health outcomes. Consequently, recommendations should reflect current nutritional science and assure that the various packages supplement the nutrition needs of WIC's at-risk population with nutrient-dense economical foods the recipients should be encouraged to acquire and/or continue to acquire with their own resources.

WIC foods should make a significant nutritional contribution to the diets and health of Program participants. Current nutritional science may reveal changing nutritional needs, and evolving needs in the population suggesting changes to the food packages. Addressing the nutritional needs is imperative if WIC is to remain an effective health-related

program. Congressional intent as evidenced both in statutory and legislative report language has continually emphasized that the WIC should provide foods and nutrients that current research demonstrates are lacking in the diets of WIC participants [Senate Report 106–288, Senate Report 107–41, Section 17(b)(14) of the CNA, 42 U.S.C. 1786(b)(14)]. However, WIC's success in providing important nutrients should not lead to the conclusion that WIC should no longer provide them. Accordingly, changes to the food package should weigh the risk and consequences of dietary inadequacy and make changes expected to maximize the positive outcomes on WIC recipient nutritional status, health and development.

2. Fat, Sugar, and Salt Content

As discussed previously, consideration of the fat, sugar and salt content of foods in the WIC food packages is required by section 17(f)(11) of the CNA. Several changes made to the WIC food packages in the 1980 rulemaking responded specifically to this mandate. For example, the Department established a limit on the amount of sugar allowable in WIC approved cereals. By regulation, WIC cereals per dry ounce must contain no more than 6 grams of sugar. This specification applies to added sugars and to those naturally occurring in ingredients such as dried fruits used in the cereal.

FNS policy guidance permits WIC State agencies to issue low-fat, low-cholesterol and low-sodium forms of WIC cheeses, as well as low-fat, nonfat and lactose-free milks. The Department encourages local program administrators to tailor the WIC food packages to meet the individual nutritional needs of participants and, when appropriate, to adjust the types of WIC foods prescribed to help reduce the amount of fat, cholesterol, sodium and sugar the WIC food packages contribute to the diet. Through WIC nutrition education, participants also receive advice on how to further moderate their intakes of fat, cholesterol, sodium and sugar and how to include adequate amounts of vegetables, fruits and whole grain products in their diets.

3. Cost

In addition to the criteria specified in legislation, a prime consideration in the design of the WIC food packages is cost. Efficiency in providing supplemental foods is important because increases in the total cost of the food packages reduce the number of participants served by the program. The packages are designed to encourage further cost control by permitting State and local agencies the flexibility to specify lower cost food brands, forms of foods, types and container sizes within regulatory parameters.

4. Practicality and Administrative Feasibility

In addition to meeting nutritional objectives, all WIC food packages are designed to address a number of practical considerations that reflect participant and Program needs. For example, the WIC foods are readily available in retail food stores, offer variety and versatility to participants in the ways these foods can be used in an overall diet, are nutrient-dense, can be easily divisible into servings on a daily basis, and have broad appeal. Additionally, all WIC food packages are individual food prescriptions which, in order to have the full effect in improving a participant's nutritional status, are intended to be consumed only by the participant and not by other family members.

The packages should be administratively manageable for State and local agencies and vendors. That is, they should be clearly describable and easily understood by both participants and vendors. WIC food packages are designed to strike a balance between acceptable, nutrient dense, readily available, low-cost food items, and administrative feasibility. This means that although there are certainly some foods that would be particularly beneficial for and appealing to WIC participants, the WIC Program is not always capable, within the limitations of its current structure, of easily delivering such foods. Also, WIC is limited in its ability to offer a wide range of food options since, from a management standpoint, each food option added to the food package magnifies the difficulties and increases the cost of program management and accountability. These practical considerations are necessarily a key consideration in the design of WIC food packages.

5. Food Package Flexibility and Meeting Participants' Special Needs

Food package flexibility regarding the quantities of foods provided by WIC food packages and participants' cultural eating patterns and nutritional needs are considerations in the design of the food packages. State and local agencies can tailor the quantities of foods provided by the food packages to better meet participants' special nutritional needs. Additionally, they are permitted flexibility in designing their food packages within the parameters of Program regulations. Commenters should be aware that the quantities in all WIC food packages are expressed as maximum levels. However, State and local agencies have the authority to tailor quantities according to the needs of individual participants or categories of participants when based on a sound nutritional rationale. These tailoring provisions established in Program regulations (7 CFR 246.10) and supplemented by FNS Instruction 804–1 ''WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring,'' are designed to permit State and local agencies to implement their own nutrition policies and philosophies within the parameters of food package requirements.

X. Review Considerations/Parameters

The principles outlined above (and discussed elsewhere in this Notice) constitute a framework upon which WIC food packages have been developed. The Department encourages commenters to present their recommendations in the context of their potential effects on the recipients that receive the affected food package(s) and their responsiveness to these principles or to alternate principles which the commenter believes should be considered. Further, comments ideally should include justification in terms of current nutritional research.

Responses to this notice should be developed with serious regard to the dietary needs of the WIC-eligible population, the supplemental nature of the program, the critical impact of the cost of program services, and the need to maximize the overall effect of the Program for WIC recipients. In addition, the Department encourages commenters to submit suggestions with the following considerations in mind: (1) Cultural and ethnic food preferences; (2) commercial availability, variety and appeal of foods; (3) versatility in food preparation; (4) feasibility of apportionment into daily servings for an individual over a month's time; (5) State and local agency flexibility to design the food prescription; (6) administrative feasibility and manageability by the State and local agencies and vendors; and (7) burden and incentive for participants, potential participants, and their families.

The following charts provide an overview of the foods currently offered in the food packages, including allowable substitutions, minimum Federal requirements and data on key nutrients in a selection of WIC-type foods. The charts may be helpful when commenting on issues such as the

amount of food provided by, or the allowable substitutions for, the current foods or nutrients provided in the WIC food packages.

CHART 1.—WIC FOOD PACKAGES

[Maximum monthly allowance]

Foods	Infants 0–3 mo. (I)	Infants 4–12 mos. (II)	Children/ women with special dietary needs (III)	Children 1–5 yrs. (IV)	Pregnant & breastfeeding women (up to 1 yr. postpartum) (V)	Nonbreastfeeding postpartum women (up to 6 mos. postpartum) (VI)	Breastfeeding women enhanced package [1] (VII)
Infant Formula (concentrated liquid) [2].	403 fl. oz.	403 fl. oz.	403 fl. oz.[3]				
Juice (reconstituted frozen) [4].		96 fl. oz.[5]	144 fl. oz.	288 fl. oz.	288 fl. oz.	192 fl. oz.	336 fl. oz.
Infant Cereal		24 oz.					
Cereal (hot or cold)			36 oz.	36 oz.	36 oz.	36 oz.	36 oz.
Milk [6] (whole, low-or fat free; or lactose free).				24 qt.	28 qt.	24 qt.	28 qt.
Cheese [7]							1 lb.
Eggs [8]				2½ doz.	2½ doz.	2½ doz.	2½ doz.
Dried Beans/Peas *and/or* Peanut butter.				1 lb. *or* 18 oz.	1 lb. *or* 18 oz.		1 lb. *and* 18 oz.
Tuna (canned)							26 oz.
Carrots (fresh) [9]							2 lbs.

[1] Available to breastfeeding women whose infants do not receive infant formula from WIC.
[2] 8 pounds powdered per 403 fluid ounces concentrate; or 26 fluid ounces ready-to-feed per 13 ounces concentrate may be substituted.
[3] Additional formula available up to 52 fluid ounces concentrate, 1 pound powder, or 104 fluid ounces ready-to-feed.
[4] 92 fluid ounces single strength juice may be substituted per 96 fluid ounces reconstituted frozen.
[5] Infant juice may be substituted at the rate of 63 fluid ounces per 92 fluid ounces of single strength juice.
[6] Fat free, low-fat, and full fat milk are allowed, as are lactose free and low-lactose milks. Goat's milk is also allowed.
[7] Cheese may be substituted at a rate of 1 pound per 3 quarts of fluid milk with a 4 pound maximum.
[8] Dried egg mix can be substituted at a rate of 1.5 pounds per 2 dozen fresh eggs, or 2 pounds per 2½ dozen fresh eggs.
[9] Frozen carrots may be substituted pound for pound; canned maybe substituted at a rate of 16–20 ounces per 1 pound fresh.

CHART 2.—WIC FOOD PACKAGES

[Minimum requirements and allowable foods]

General Foods	Nutrients	Minimum requirements and allowable foods
Milk	Calcium	Cow's milk, must conform to 21 CFR part 131 FDA standard of identity or Goat's milk: pasteurized fluid whole milk, lowfat, reduced fat, skim, fat free or nonfat milk, that contains 400 International Units of vitamin D per quart (or reconstituted fluid quart for evaporated and dry/powdered milks); and 2000 International Units of vitamin A per quart (or reconstituted quart for evaporated and dry/powdered milks) if the milk is lowfat, reduced fat, skim, fat free or nonfat milk.
Cheese	Calcium	Domestic cheese (pasteurized processed American, Monterey Jack, Colby, Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella part-skim or whole; or a cheese that is a blend of any of these cheeses). These same types of cheeses labeled low, free, reduced, less, or light in the nutrients of sodium, or fat, or cholesterol are also authorized.
Eggs	Protein	Fresh shell domestic hens' eggs or dried egg mix made from shell, liquid, whole eggs that have been pasteurized and dried.
Beans	Protein	Mature dry beans or peas, including but not limited to: lentils; black, navy, kidney, garbanzo, soy, pinto, and mung beans; and Crowder, cow, split and black-eye peas.
Peanut Butter	Protein	Creamy or chunky, regular or reduced fat and conforms to FDA, Standard of Identity for peanut butter as defined by 21 CFR § 164.150.
Cereal	Iron	Includes ready-to-eat and instant and regular hot cereals as defined by FDA (21 CFR Part 170.3(n)(4)) that also contain a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per dry ounce).
Infant Cereal	Iron	Contains a minimum of 45 milligrams of iron per 100 grams of dry cereal. Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not authorized.
Juice	Vitamin C	Must be pasteurized 100 percent fruit and/or vegetable juice or blends of these juices and contain a minimum of 30 milligrams of vitamin C per 100 milliliters juice. Juices fortified with other nutrients that also meet the minimum WIC requirements are allowable.
Infant Juice	Vitamin C	Must be pasteurized 100 percent fruit juice and contain a minimum of 30 milligrams of vitamin C per 100 milliliters juice.
Carrots	Vitamin A	Raw, canned or frozen. Mature raw; canned and frozen carrots containing only the mature root of the carrot plant packed in water.
Tuna	Protein	Canned white, light, dark or blended tuna packed in water or oil, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; and grated.

CHART 2.—WIC FOOD PACKAGES—Continued

[Minimum requirements and allowable foods]

General Foods	Nutrients	Minimum requirements and allowable foods
Infant Formula	Iron	All authorized infant formulas must meet the definition and requirements for an infant formula established by FDA, DHHS; citations section 201(z) Federal Food Drug and Cosmetic Act (21 U.S.C. 321(z)) and requirements under section 412 of 21 U.S.C. 350a and regulations at 21 CFR parts 106 and 107. Designed for enteral digestion via an oral or tube feeding. Iron fortification level must be 10 milligrams per liter.
Exempt Infant Formula		Infant formulas must meet the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350 a(h)) and the regulations at 21 CFR parts 106 and 107.
Medical Foods		Certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted or inadequate.

CHART 3.—NUTRITIONAL CONTENT OF CURRENT FOOD PACKAGES—NUTRIENTS PROVIDED PER DAY

[Nutrient yields for entire package, assuming selection of whole milk and legumes. A number of dairy and other options are typically available.]

Current WIC food packages	Energy Kcal	Protein g	Fiber g	Fat g	Sat Fat g	Chol. mg	E AE	A RE	B6 mg	Folate µg	B12 µg	C mg	Ca mg	Mag mg	Iron mg	Zinc mg
Children—Package IV	853	42.5	5.4	32.3	18.0	319	1.9	840	1.3	264	5.1	106	1,058	217	13.4	6.0
Pregnant and Breastfeeding Women—Package V	933	46.8	5.4	36.7	20.7	336	2.0	880	1.3	270	5.6	107	1,214	234	13.5	6.5
Postpartum Women—Package VI	763	38.4	2.9	32.1	17.9	319	1.7	822	1.2	217	5.1	73	1,018	184	11.7	5.5
Breastfeeding Women—Package VII	1,119	61.3	8.6	43.2	23.8	353	2.7	1,782	1.5	315	6.2	126	1,356	279	15.6	7.8

Notes.—Nutrients analyzed, in order of appearance: Energy, Protein, Dietary Fiber, Total Fat, Saturated Fat, Cholesterol, Vitamin E, Vitamin A, Vitamin B6, Folate, Vitamin B12, Vitamin C, Calcium, Magnesium, Iron and Zinc. All packages assume single strength orange juice for juice, Post Oat Flakes for cereal, Great Northern Beans for legumes, American cheese for cheese, and whole milk. Daily nutritional values are derived through dividing monthly WIC allotments by 30 days.

CHART 4.—SOME KEY NUTRIENTS IN A SELECTION OF WIC-TYPE FOODS

[Data from USDA, Agricultural Research Service, Nutrient Data Bank, http://www.nal.usda.gov/fnic/cgi-bin/nut_search.pl]

Food item	Serving size	Energy kcal	Protein mg	Fiber mg	Fat mg	Sat fat mg	Chol mg	E AE	A RE	B6 mg	Folate mg	B12 mg	C mg	Ca mg	Mag mg	Iron mg	Zinc mg
Dairy:																	
Milk, 3.5 to 3.8% fat	1 cup	150	8.0	0.0	8.1	5.1	33	0.2	76	0.1	12	0.9	2	291	33	0.1	0.9
Milk, 3.5 to 3.8% fat, calcium fort.	1 cup	151	8.1	0.0	8.2	5.1	33	0.2	76	0.1	12	0.9	2	1,033	33	0.1	0.9
Milk, low-fat or skim >1% fat	1 cup	85	8.3	0.0	0.4	0.3	4	0.1	149	0.1	13	0.9	2	301	28	0.1	1.0
Milk, calcium fortified, > 1 % fat	1 cup	103	8.1	0.0	2.6	1.6	10	0.1	146	0.1	13	0.9	2	550	34	0.1	1.0
Milk, skim or nonfat	1 cup	86	8.4	0.0	0.4	0.3	4	0.1	149	0.1	13	0.9	2	302	28	0.1	1.0
Cheese, American	1.5 oz.	152	9.2	0.0	11.9	7.5	34	0.2	104	0.0	5	0.4	0	267	12	0.3	1.3
Cheese, Brick	1.5 oz.	158	9.9	0.0	12.6	8.0	40	0.2	128	0.0	9	0.5	0	286	10	0.2	1.1
Cheese, Natural Cheddar	1.5 oz.	171	10.6	0.0	14.1	9.0	45	0.2	118	0.0	8	0.4	0	307	12	0.3	1.3
Cheese, Cheddar/Colby, low-fat	1.5 oz.	74	10.4	0.0	3.0	1.8	9	0.0	27	0.0	5	0.2	0	176	7	0.2	0.8
Cheese, Colby	1.5 oz.	167	10.1	0.0	13.7	8.6	40	0.1	117	0.0	8	0.4	0	291	11	0.3	1.3
Cheese, Monterey Jack	1.5 oz.	159	10.4	0.0	12.9	8.1	38	0.1	108	0.0	8	0.4	0	317	11	0.3	1.3
Mozzarella, whole	1.5 oz.	120	8.3	0.0	9.2	5.6	33	0.1	102	0.0	3	0.3	0	220	8	0.1	0.9
Mozzarella, part-skim	1.5 oz.	119	11.7	0.0	7.3	4.6	23	0.2	81	0.0	4	0.4	0	311	11	0.1	1.3
Mozzarella, non-fat	1.5 oz.	63	13.5	0.8	0.0	0.0	8	0.1	86	0.0	4	0.4	0	375	14	0.1	1.7
Juice:																	
Orange juice, unsweetened [1]	3/4 cup	78	1.1	0.4	0.3	0.0	0	0.2	34	0.2	34	0.0	64	15	21	0.8	0.1
OJ, sweetened	3/4 cup	98	1.1	0.4	0.3	0.0	0	0.2	33	0.2	33	0.0	62	15	20	0.8	0.1
OJ, frozen, unsweetened, reconstituted—09215.	3/4 cup	84	1.3	0.4	0.1	0.0	0	0.4	7	0.1	82	0.0	73	17	19	0.2	0.1
OJ, frozen, sweetened, reconstituted	3/4 cup	85	1.3	0.4	0.1	0.0	0	0.2	15	0.1	83	0.0	73	20	19	0.2	0.1
OJ, canned, unsweetened—09207	3/4 cup	78	1.1	0.4	0.3	0.0	0	0.2	17	0.2	34	0	64	15	21	0.8	0.1
Grape juice, frozen, sweetened, reconstituted, C added—09137.	3/4 cup	44	0.4	0.2	0.2	0.1	0	0.1	0	0.1	2	0	45	8	8	0.2	0.1
Cereal:																	
Total Corn Flakes—08246	1 oz	106	1.7	0.7	0.5	0.1	0	19.0	121	1.9	378	5.7	57	945	7	17.0	14.2
Oatmeal Squares—08214	1 oz	107	3.1	2.0	1.2	0.3	0	0.8	84	2.8	223	0	3	57	33	8.6	2.1
Grape-Nuts—08329	1 oz.	102	3.1	2.5	0.5	0.1	0	na	109	0.2	49	0.7	0	10	28	7.9	0.6
Oat Bran Flakes—08258	1 oz.	99	3.1	3.7	1.0	0.2	0	0.3	222	2.0	381	5.7	5.7	15	43	7.9	3.5
Cheerios—08013	1 oz.	105	3.1	2.6	1.7	0.3	0	0.2	142	0.5	189	1.4	5.7	94	38	7.7	3.5
Oatmeal, reg. & instant, dry—08120	1 oz.	109	4.5	3.0	1.8	0.3	0	0.2	0	0.0	9	0	0	15	42	1.2	0.9
Oatmeal, reg. & inst., cooked—08180	3/4 cup	109	4.6	0.5	1.8	0.3	0	na	0.0	0	7	0	0	14	42	1.2	0.9
Cream of Wheat, cooked—08169	3/4 cup	100	2.8	1.3	0.4	0.1	0	na	0	0.0	45	0	0	38	8	7.7	0.2

CHART 4.—SOME KEY NUTRIENTS IN A SELECTION OF WIC-TYPE FOODS—Continued

[Data from USDA, Agricultural Research Service, Nutrient Data Bank, http://www.nal.usda.gov/fnic/cgi-bin/nut_search.pl]

Food item	Serving size	Energy kcal	Protein mg	Fiber mg	Fat mg	Sat fat mg	Chol mg	E AE	A RE	B6 mg	Folate mg	B12 mg	C mg	Ca mg	Mag mg	Iron mg	Zinc mg
Cream of Wheat, dry—08102	1 oz.	105	3.0	1.1	0.4	0.1	0	0.0	0	0.0	34	0	0	40	8	8.1	0.2
Tuna:																	
Tuna, canned, oil pack	2 oz.	112	16.5	0.0	4.7	0.9	10	0.7	13	0.1	3	1.2	0	7	18	0.8	0.5
Tuna, canned, water pack	2 oz.	66	14.5	0.0	0.5	0.1	17	0.3	10	0.2	2	1.7	0	6	15	0.9	0.4
Legumes:																	
Lentils, cooked from dry	1/2 cup	92	7.2	6.3	0.3	0.0	0	0.1	1	0.1	144	0.0	1	15	29	2.7	1.0
Beans, Great Northern, navy from dried	1/2 cup	121	8.5	5.5	0.3	0.1	0	0.2	0	0.1	70	0.0	0	78	55	3.2	1.2
Peas, crowder, field, black eyed from dried	1/2 cup	97	6.5	5.5	0.4	0.1	0	0.2	2	0.1	175	0.0	0	20	45	2.1	1.1
Eggs:																	
Egg, whole, large	1 egg	75	6.2	0.0	5.0	1.6	213	0.5	96	0.1	24	0.5	0	25	5	0.7	0.6
Egg, scrambled from dried	1/2 cup	229	10.0	0.0	20.4	4.9	356	2.7	174	0.1	27	0.7	0	54	10	1.4	1.1
Peanut Butter: Peanut butter	2 TBS	190	8.1	1.9	16.3	3.3	0	3.2	0	0.1	24	0.0	0	12	51	0.6	0.9
Vegetables: Carrots, raw	1 cup	47	1.1	3.3	0.2	0.0	0	0.5	3094	0.2	15	0.0	10	30	17	0.6	0.2

XI. Review Issues

The Department carefully considered how best to present the issues in this Notice. The following questions address the types of issues the Department is interested in receiving comments on; however, commenters may address additional issues that are within the scope of this review. Some of the questions below are focused on ideas for regulatory or policy redirection; others simply are seeking information on better ways to meet needs within current requirements.

The Department believes that this review will benefit from the broadest possible scope of public input with minimal Departmental direction. Therefore, the following issues proposed for consideration are broadly stated without Departmental comment. Within the context of these broad issues, commenters are encouraged to state their responses as specifically as possible. Comments that are not within the scope of this Notice will not be considered and therefore should not be included. Please be sure to include the rationale and/or scientific basis underlying the suggested changes.

1. Please indicate what elements of the WIC food packages you would keep the same and why.

2. What changes, if any, are needed to the *types* of foods currently authorized in the WIC food packages? If you recommend additions or deletions to the types of foods currently offered, please discuss recommended quantities and cost implications.

3. Should the quantities of foods in the current WIC food packages be adjusted? If yes, by how much and why? Please discuss cost implications.

4. Recognizing that the WIC Program is designed to provide supplemental foods that contain nutrients known to be lacking in the diets of the target population, what nutrients should be established as priority nutrients for each category of WIC participant, *e.g.*, pregnant women, children 1–5, etc.? Please provide the scientific rationale for them.

5. Keeping in mind that foods provided by WIC are designed to be supplemental, can the WIC food packages be revised (beyond what is allowed under current regulations) to have a positive effect on addressing overweight concerns? If so, how? Please be specific.

6. Are there other concerns that affect foods issued through the WIC food packages that should be considered in designing the food packages? For example, should WIC provide options to address allergies (the American Dietetic Association notes that the most common food allergies are to milk, eggs, peanuts, soybeans, tree nuts, fish, shellfish and wheat), cultural patterns or food preferences?

7. What data and/or information (please cite sources) should the Department consider in making decisions regarding revisions to the WIC food packages, *e.g.*, nutritional needs of the population, ethnic food consumption data, scientific studies, acculturation practices, and participant surveys, etc.?

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?

9. How can WIC food packages best be designed to effectively meet nutritional needs in culturally and ethnically diverse communities?

10. Should WIC State agencies be afforded more or less flexibility in designing WIC food packages? Please explain.

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. It would be helpful if commenters would identify/recommend WIC food selection criteria, describe how the criteria interact, indicate their relative weighting or importance, and provide supporting rationale.

Authority: 42 U.S.C. 1786.

Dated: September 10, 2003.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 03–23498 Filed 9–12–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–097–1]

Importation of Eucalyptus Logs, Lumber, and Wood Chips From South America

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to require that logs and lumber of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide or heat treated prior to