



Jeb Bush
Governor

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary

November 29, 2006

Patricia N. 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: "Docket ID Number 0584-AD71, Vendor Cost Containment Interim Rule"

Dear Ms. Daniels:

We are submitting herewith our comments on the WIC Vendor Cost Containment Interim Rule published in the Federal Register on November 29, 2005.

As you are aware, the retail food industry is one of the most highly competitive industries in terms of consumer prices. In order to maintain this competitive market in Florida, the Florida WIC Program adopted policies and procedures for vendor cost containment many years ago. The program goal is to serve the maximum number of participants with the available funds. In order to achieve this goal, the program always monitors the prices charged by vendors to ensure that they are reasonable. Above-50-percent vendors, approved in Florida since the 1980s, have historically been required to charge prices similar to their most comparable peer group, other independent grocery stores. For this reason, we supported the action of Congress to ensure that "WIC-only" (above-50-percent) stores did not charge more than conventional grocery stores.

The interim rule, however, disallows Florida's current practice by requiring the average payment per food instrument paid to an above-50-percent vendor not exceed the average payment per food instrument to all other vendors. Thus the rule in effect requires above-50-percent stores to charge *less* than some conventional stores in order for a state to meet cost neutrality requirements.

Under section 17(h)(11)(III)(bb) of the Child Nutrition Act of 1966, states must establish competitive price criteria and allowable reimbursement levels that do not result in higher food costs if food vouchers are redeemed at above-50-percent stores rather than regular vendors. Section (17)(h)(11)(E) of the Child Nutrition Act of 1966 states that allowable reimbursement levels for above-50-percent vendors cannot result in higher average payments per voucher than average payments per voucher to comparable vendors. However, FNS has interpreted these provisions to mean that allowable reimbursement levels for above-50-percent stores cannot exceed the statewide average of all other vendors.

In declaring that an above-50-percent store can charge no more than the average payments for a given type of food instrument, the rule removes a store's ability to charge a normal range of competitive prices for WIC foods. The statewide average compounds this problem by not taking into account regional variations in prices for WIC foods as well as other consumer goods. It creates a standard that would be difficult for even large chain stores to meet, and the state believes that the test for cost neutrality should be equitable and reasonable if applied to any peer group or category of vendors.

If the intent of the law was to contain overall costs, it doesn't make sense from a mathematical perspective to simply target the above-50-percent vendors. The result of this provision will most likely result in the closure of these small, minority businesses in Florida.

In addition, the interim rule imposes significant workload requirements on state agencies that elect to authorize above-50-percent vendors. To ease the administrative burden and to make the rule equitable and reasonable to all vendors, Florida proposes the following:

- 246.12 (g)(4)(i)(D) requires the average cost per food instrument to be weighted to reflect the relative proportion of food instruments redeemed by each category of vendors in the peer group system. This requirement significantly increases the complexity of computing the averages, thereby increasing a state agency's administrative workload for minimal benefit. We recommend that this requirement be eliminated or at a minimum be made optional at a state's discretion.
- Any metric used to determine whether the prices are normal should permit these stores (if a state chooses to authorize them) to charge within the normal range of prices found in conventional grocery stores.
- Florida supports the concepts and use of peer groups, price surveys, and price limits - if those limits reflect actual marketplace conditions and are not established through an arbitrary process.
- The single statewide average for check types can and should be eliminated as the threshold beyond which either the state agency or the vendors will face financial penalties. Such limits should be determined by the economic and/or geographic region where a vendor is located, in acknowledgement of variations in food prices within a broad area, and by current prices in a comparable peer group
- While the interim rule mentions flexibility, it actually significantly limits a state's flexibility in the operation of this component of their food delivery system. By not only prescribing the desired outcome but also by dictating the precise process to follow in order to reach the outcome, a state's ability to be innovative in controlling food costs while meeting the service needs of as many clients as possible is hampered. We would encourage the final rule to allow a state more flexibility in determining how to achieve cost neutrality.
- While the vendor cost containment provision provides a solution to a problem that may exist in some states, the rule prescribes a new, elaborate and complex system that has never been tested or employed in the actual marketplace.

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Attached is a letter, for inclusion in the comments, from members of Florida's Congressional Delegation to Secretary Johanns requesting that the Department of Agriculture, FNS modify the interpretation of the Child Nutrition and Reauthorization Act so it does not unfairly burden independently owned above-50-percent stores.

In closing, Florida remains supportive of controlling WIC Program food costs; however, we believe there are more effective, reasonable and less administratively burdensome methods to accomplish cost containment. Florida requests that the regulations be modified to restore state flexibility in the determination of cost containment.

Thank you for the opportunity to comment, and thank you for considering these remarks.

Sincerely,



Debbie Eibeck, Director
Florida WIC Program

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Attachment

Congress of the United States
Washington, DC 20515

September 29, 2006

The Honorable Michael O. Johanns
United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Dear Secretary Johanns:

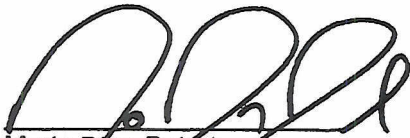
As members of the Florida Congressional Delegation, we write to you on behalf of the independently operated WIC-only stores within our respective districts and the population they serve. We fear that unless action is taken to amend certain Federal regulations these small businesses are in danger of closing their doors.

As you may know, the 2004 reauthorization of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), P.L. 108-265, included a "vendor cost containment" provision. This provision was included as a response to fraud and abuse discovered in the WIC program and is intended to improve the integrity, as well as contain the food and administrative cost of the program. Florida has been committed to eliminating wasteful spending of tax-payer dollars in the WIC program and has maintained an effective and responsible model for its WIC vendors. While we support the general intent of the provision, we fear that the Food and Nutrition Services (FNS) interpretation of the legislation negatively impacts independently owned WIC-only stores and could potentially lead to them going out of business, surely not the original intent of Congress.

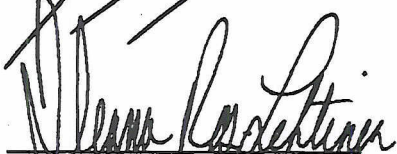
It is our understanding that the WIC Vendor Cost Containment Interim Final Rule, issued by the United States Department of Agriculture, Food and Nutrition Services (FNS) and published in the Federal Register on November 29, 2005, places substantial limits on above-50-percent vendors. This rule requires that state agencies implement a vendor peer group system. As a result, on December 21, 2005, Florida submitted its WIC-only cost containment certification request, proposing that above-50-percent stores be categorized in a vendor peer group with independent stores of the same economic regions. This statewide average reimbursement level incorporates the average of large discount stores as well as independently owned small businesses. This rule impedes WIC-only stores' ability to compete.

We respectfully request, within all applicable rules and regulations, that the Department of Agriculture, FNS modify the interpretation of the Child Nutrition and WIC Reauthorization Act so it does not unfairly burden independently owned WIC-only stores.

Sincerely,



Mario Diaz-Balart
Member of Congress



Ileana Ros-Lehtinen
Member of Congress



Lincoln Diaz-Balart
Member of Congress



Mel Martínez
U.S. Senate



Katherine Harris
Member of Congress