

WIC Food Packages....Time for a Change

Frequently Asked Questions

* = New or Updated as of 09/17/10

I. OVERVIEW

Links to background on the regulation, manufacturer's information, breastfeeding and the food package, and monthly allowances

<http://www.fns.usda.gov/wic/benefitsandservices/foodpkg.HTM>

Links to WIC Works Resource System resources

http://www.nal.usda.gov/wicworks/Learning_Center/Food_Package_PR.html

II. IMPLEMENTATION OF THE NEW FOOD PACKAGES

a. Can State agencies conduct a pilot test of new food package issuance (on a small-scale) prior to State-wide rollout?

If the State agency is referring to pilot testing the actual issuance of food benefits, the answer is no. As stated in the interim rule, the State agency may phase-in the new food packages on a participant category basis, but once the State agency begins issuing the new food packages, it must be done on a Statewide basis. Because of issues of equity and participant and vendor confusion, piloting the issuance of food benefits is not authorized. If the State agency's question pertains to the testing of processes and systems without the actual issuance of food benefits, then yes, that is acceptable.

b. If State agencies are using a 2 or 3-month issuance cycle, do they begin issuing new packages in August for the August/September/October benefit periods to assure new packages are received in October 2009?

Any participant issued benefits on or after October 1, 2009, must receive a food package based on the interim rule. It is up to the State agency to decide the process for making this work. The State agency is encouraged but not required to offer participants the opportunity to exchange food instruments for the new food package in multiple-month issuance situations. We would also encourage a State agency that issues vouchers in August or September for a 3-month or 2-month benefit period to configure its system so that vouchers valid in October are reflective of the new food packages.

c. Categorical Tailoring

(1) May State agencies categorically tailor the regulatory monthly maximum amounts of food in the current food packages as a means of moving toward the food package changes that will be implemented because of the new Food Package Rule?

Under current WIC food package regulations, categorical tailoring of food packages, for nutrition reasons only, is authorized with FNS approval. In accordance with Section 246.10 of Federal WIC regulations and FNS Instruction 804-1, “WIC Program Food Package Design: Administrative Adjustments and Nutrition Tailoring,” regulatory maximum quantities of WIC foods may be reduced, but only for sound nutrition reasons.

(2) May State agencies categorically tailor the regulatory monthly maximum amounts of food in the food packages as a means of cost savings for caseload management?

No. Categorical tailoring of food packages can only be approved for nutrition reasons. Although reductions in the regulatory monthly maximum amounts of food made through categorical tailoring may result in a cost savings, reduction of the Federal regulatory quantities for other than nutrition reasons, even to accommodate anticipated or imminent food over-obligations, is **not** an acceptable caseload management strategy.

(3) Does the ability to categorically tailor a food package end when the new food package regulations become effective on February 4, 2008?

The new WIC food package regulations (72 FR 68966) become effective February 4, 2008, and State agencies must be in compliance with the new provisions no later than October 1, 2009. During the phase-in period for the new provisions, State agencies are required to issue food benefits based on **either** the new food packages or current food packages but may not combine the two. State agencies may phase in the new food packages on a participant category basis only, but may not “piecemeal” a food package based on combinations of the new and current regulations. Once implemented, the new food package must be issued statewide. Under the new WIC food package regulations, categorical tailoring is no longer authorized, i.e., the regulatory quantities of foods must be provided in full. Therefore, once the new food package is implemented, State agencies may not categorically tailor the amounts.

III. FARMERS AND FARMERS’ MARKETS

a. May a State agency authorize a farmer to accept the cash-value voucher if the State agency does not currently administer the WIC Farmers’ Market Nutrition Program (FMNP)?

Yes, any WIC State agency has the option to authorize farmers at farmers’ markets to accept the cash-value voucher. The interim rule adds a new 7 CFR 246.12(v) that specifies the requirements regarding the authorization of farmers at farmers’ markets. However, the interim rule requirements were designed to build on an FMNP infrastructure that already exists.

b. If a State agency authorizes farmers' markets to accept WIC cash-value vouchers, do the farmers need to be included in the TIP report?

According to WIC Program definitions, farmers are not vendors and therefore would not need to be included in the TIP report.

c. Are authorized farmers included in the pool of vendors that must have compliance buys?

No. On page 68971 of the December 6th interim rule, the preamble states "The farmers may also be excluded from the WIC monitoring requirements provided they are included in the sample of farmers upon which the FMNP monitoring requirement is drawn." Under the FMNP, State agencies must do on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers' markets, which includes those farmers and markets identified as being the highest risk.

d. If we authorize farmers to accept the F&V benefit, will we need to track their redemptions via peer group like other vendors?

The peer group requirements do not apply to farmers. Further, State agencies do not need to track the cash-value voucher redemptions of vendors or farmers to apply maximum allowable reimbursement levels per peer group.

e. Does the minimum stocking requirement of at least two varieties of fruits and two varieties of vegetables apply to farmers who are authorized to accept the cash-value voucher?

No. The minimum stocking requirement does not apply to farmers authorized to accept the cash-value voucher. However, the intent of the cash-value voucher is to allow participants choice and variety. State agencies that authorize farmers to accept the cash-value voucher should consider issuing cash-value vouchers in small denominations so that participants may shop at multiple authorized farmers and farmers markets.

f. Can a State agency sign an agreement with the FMNP rather than individual farmers as vendors?

No, assuming you mean signing an agreement with the farmers' market rather than the farmer. Although under the FMNP State agencies are given an option to establish the agreement with the farmer or farmers' market, this provision was established at a time when most FMNP State agencies were issuing coupons that were turned into a market manager for payment. Now most FMNP State agencies are using checks which farmers deposit directly into their bank accounts which negate the need for an agreement with the farmers' market. Also, even though FMNP State agencies may establish agreements with farmers' markets, the farmers' market must establish agreements with individual farmers. As such, an agreement with the farmer is always required.

IV. CASH-VALUE VOUCHER

Updated 9/17/10

*** a. May a participant pay the difference when the purchase of allowable fruits and vegetables exceeds the value of the fruit and vegetable voucher?**

This is a State option. However, because it may be difficult to accurately estimate the exact purchase price of the fruit and vegetable selections, particularly when fresh, canned, frozen **or dried** items are combined in one purchase, FNS recommends that participants be allowed to pay the difference when the purchase price exceeds the value of the voucher. FNS believes that this promotes increased consumption of fruits and vegetables because participants would be more likely to use the full cash value, rather than partially redeem the voucher for fear of exceeding its cash value. Since allowable WIC purchases would also be allowable Food Stamp purchases, a WIC participant who is also a Food Stamp recipient could opt to use Food Stamp benefits, cash or credit for payment of the price difference. Participants may not, however, be given cash or credit for any unused portion of the voucher.

b. CFR 246.12(h)(3)(v) requires that vendors ensure the purchase price is entered on the cash value voucher, either by the checker or the participant. Is this necessary if the voucher is pre-printed with a dollar amount?

Yes. A purchase price is needed even if the cash-value voucher is for a fixed dollar amount, since the actual purchase price may be less than the fixed dollar amount of the cash-value voucher.

c. Do WIC cost containment provisions apply to the cash-value vouchers for fruits and vegetables?

No. State agencies do not need to track the cash-value voucher redemptions of vendors to apply maximum allowable reimbursement levels per peer group.

d. If a cash-value voucher is used at a farmers' market, does the farmer need to collect a signature upon redemption?

Yes, the farmer must collect a signature upon redemption just as a vendor must collect a signature. Because the cash-value voucher can be used at either a farmers' market or a grocery store, it is important that transaction procedures for participants are consistent for both farmers and vendors to avoid confusion.

e. Would the farmer need to write in the exact dollar amount of the sale? Or could we pay the farmer the maximum amount of the cash-value voucher (and assume that the participant will get most if not all the value of the cash-value voucher)?

Yes, the exact dollar amount of the sale must be written in on the cash-value voucher. The State agency has the discretion to determine whether the farmer or participant enters the purchase price before the cash-value voucher is signed.

f. If the participant takes multiple cash-value vouchers to the check-out line, is each cash-value voucher considered a separate transaction?

State agencies may permit the use of more than one cash-value voucher for one purchase. If, for example, two six-dollar cash-value vouchers were used for one purchase of vegetables, one receipt would be sufficient. This is a State agency option; a State agency may also require that the use of each cash-value voucher be treated as a separate transaction. Regardless of which option is chosen, all of the information required by §246.12(f) must be provided on each cash-value voucher that is redeemed.

g. Can sales tax be applied to purchases made with the cash-value voucher?

No, sales tax may not be applied to purchases made with the cash-value voucher. However, if a participant's purchase of fruits and vegetables exceeds the amount of the cash-value voucher and the State agency allows the participant to pay cash for the additional amount, the balance is subject to sales tax. If the participant pays the balance with food stamps, the balance is not taxed.

h. Can beans be purchased with the cash-value voucher?

Footnote 5 of Table 4 of the interim rule lists items that are not for purchase with the cash-value voucher. These items include mature legumes (beans and peas) in dry-packaged or canned forms because these are provided as separate food categories under the legume category and are provided via the regular food instrument. Beans that are not authorized under the legume category, e.g., frozen beans of any kind, including frozen forms of the types of beans authorized in the legume category, may be purchased via the cash-value voucher.

To summarize:

- Dried and canned mature legumes authorized under the legume category (dry beans, peas, or lentils in dry-packaged or canned forms)—*food instrument only*
- Frozen beans and any other kind of bean not authorized under the legume category—*cash-value voucher only*

V. FRUITS AND VEGETABLES

Updated 9/17/10

a. Can a State agency authorize only fresh fruits and vegetables?

Yes. However, if the State agency chooses to only authorize fresh fruits and vegetables it must assure that such a decision would not adversely impact participants, such as situations where droughts limit availability of produce and homeless individuals who may have no ability to properly store fresh produce. The State agency must also consider the impact such a decision would have on small vendors.

*** b. Can a State agency authorize only processed fruits and vegetables?**

No. The IOM recommended fresh produce issued through cash-value vouchers. At the State agency's option, processed fruits and vegetables (canned, frozen **and dried**) may be substituted when fresh produce is limited or to accommodate participants who prefer processed forms. For example, the State agency may establish a different minimum stock and variety requirement for small vendors versus larger vendors that allows small vendors to meet the requirement by solely stocking processed fruits and vegetables.

*** c. Can a State agency authorize canned fruit or canned vegetables (one or the other but not both)?**

Yes. State agencies may choose to authorize one or more of the following processed fruits and vegetables: canned fruit, canned vegetables, frozen fruit, frozen vegetables, **dried fruit, and/or dried vegetables**. State agencies must, however, offer both fresh fruits and fresh vegetables.

*** d. Do State agencies have the authority to selectively choose which fruits or vegetables are available to WIC participants?**

No. The cash-value voucher may be redeemed for any eligible fruit and vegetable (refer to Table 4 of §246.10(e)(12) and its footnotes). States may not impose further restrictions on eligible fruit and vegetables. **For example, if a State chooses to offer dried fruits, it must authorize all WIC-eligible dried fruits, i.e., those without added sugars, fats, oils, or sodium.**

e. Are State agencies allowed to disallow the cut fresh fruit or vegetables, since Table 4 of the interim rule says “whole or cut”?

No. “Whole or cut” refers to the minimum requirement/specification of the fruit/vegetable, not the State's ability to disallow one or the other. State agencies may not disallow cut fresh fruit or vegetables, except for those available for purchase on salad bars and party trays (refer to Table 4 of §246.10(e)(12) and its footnotes). The purpose of the cash-value voucher is to allow participants to choose among a variety of fruits and vegetables, with few restrictions.

f. Are State agencies authorized to disallow bagged lettuce or salad greens?

No.

g. Are frozen beans (e.g., lima, black beans, kidney beans) allowed?

Yes, if purchased with the cash-value voucher.

h. Is there a list of the various names/types of white potatoes that are excluded?

No, FNS does not have such a list. Only sweet potatoes and yams are allowed. All other potatoes are not allowed.

i. Are the following allowed?

Canned hominy (without added sugar, fats, oils)	Yes
Canned tomato sauce and tomato paste (without added sugar, fats, oils)	Yes
White and red yams (in addition to orange)	Yes
Mixed vegetables containing beans	Yes
Mixed vegetables containing potato	No
Dried white potatoes	No
Mixed vegetables containing noodles, nuts or sauce packets	No
Salsa (without added sugar, fats, oils)	Yes
Spaghetti sauce (without added sugar, fats, oils or meat)	Yes

j. How can I tell if WIC-eligible processed fruits and vegetables have no added sugar, salt, fat, or oils?

To determine whether or not sugar, salt, fat, or oils have been added to processed fruits and vegetables, State agencies should review the product's *ingredient list*. If sugar, salt, fat, or oils have been added to the food during processing, they will be listed as ingredients. Using the *Nutrition Facts Label* is not appropriate for this purpose because some foods may naturally contain sugar, sodium, or fat, which would be reflected in the Nutrition Facts label.

k. What are other names for added “sugar” in processed fruits and vegetables that we should be looking for?

Other names for added sugars include: corn syrup, high-fructose corn syrup, maltose, dextrose, sucrose, honey, and maple syrup. Fruits packed in juice or with added fruit juice concentrate are allowed.

l. Some foods like canned sweet peas have some sugar added for processing purposes, not as added sweeteners. Are these allowable foods under the "no added sugar" restriction?

It has come to the attention of the Food and Nutrition Service that the requirement for "no added sugar" in canned vegetables may exclude some commonly consumed foods from WIC State food lists. We have learned from the Food and Drug Administration that small amounts of sugar are added to some foods that are naturally sugar-containing during the canning process to prevent stress resulting in membrane rupture (i.e. sweet peas). This small amount of added sugar is minimal and helps to maintain the quality and structure of the food. To encourage greater variety in food choices in the WIC food packages, canned vegetables that contain a small amount of sugar for processing purposes, such as plain canned sweet peas and corn, are allowed. (See also the FAQ related to canned beans under "LEGUMES.")

m. What is considered an herb or spice?

The intent of the interim rule is to disallow herbs primarily used as flavoring ingredients. The following herbs are **not** authorized:

Anise	Dill	Parsley
Basil	Fenugreek	Rosemary
Bay leaves	Horseradish	Sage
Caraway	Lemon grass	Savory
Chervil	Marjoram	Tarragon
Chives	Mint	Thyme
Cilantro	Oregano	Vanilla bean

This list is not exhaustive. For items not on this list, it is up to the State agency to determine what to consider an herb or spice, knowing that the intent of the interim rule is to disallow produce primarily used as flavoring ingredients, and the purpose of the CVV is for participants to purchase fruits and vegetables to increase the number of these foods in their diets. The decision about what to consider an herb or spice is one that should be made by the State agency in consultation with their nutritionists.

n. Are platters containing a variety of cut up fruit but no dips considered party trays?

FNS considers a party tray as a platter of fresh fruits and/or vegetables (with or without dips) as something that is marketed as a prepared party tray, meant to be purchased and served to a group of people at a gathering or a party. Party trays are not allowed to be purchased with the cash-value voucher.

*** o. Can State agencies disallow organic fruits and vegetables?**

State agencies may not disallow organic fruits and vegetables purchased with the cash-value voucher. The cash-value voucher may be redeemed for any eligible fruit and vegetable (refer to Table 4 of §246.10(e)(12) of the interim rule and its footnotes) **within the types (fresh, frozen, canned and/or dried) authorized by the State**. States may not impose further restrictions on eligible fruit and vegetables.

State agencies continue to have the authority to disallow, for administrative purposes, organic forms of WIC-eligible foods provided via the regular food instrument.

*** p. If we choose to authorize canned and/or frozen vegetables, must we identify all products in that category that meet the requirements in the interim rule? We would like to authorize the most commonly used and easily identified canned and frozen products.**

If the State agency chooses to authorize **either** canned, frozen, **or dried** fruits and vegetables, it must authorize all eligible frozen, canned **or dried** fruit and vegetables (refer to the Table 4 of §246.10(e)(12) of the interim rule and its footnotes). The purpose is to offer a wide variety of fruits and vegetables for participants to choose from. However, vendors need not be expected to carry all eligible fruits and vegetables. Thus, the State agency may require only the most commonly used and easily identified canned, frozen **and/or dried products** when establishing the minimum variety and quantity standard per §246.12(g)(3)(i).

VI. MILK AND MILK ALTERNATIVES

Updated 9/17/10

a. Are lactose-reduced and lactose-free milk allowed? Is medical documentation required for participants to receive lactose-reduced and lactose-free milk?

These milks are allowed without medical documentation.

b. Are flavored soy-based beverages that meet the nutrient standards allowed?

Yes.

c. Are we allowed to provide low-fat milk to a child who is between 13-23 months of age if medical documentation is provided?

No. There is no provision in the rule allowing children between the ages of 13-23 months of age to receive low-fat milk, even with medical documentation.

*** d. The interim rule states that FNS is aware of at least one soy-based beverage in the marketplace that meets the established nutrient standards. Can you tell us the name of that product?**

The Supplemental Food Programs Division (SFPD) has formally reviewed **four** products submitted by manufacturers and found them to be eligible based upon the information submitted by the manufacturer.

- **A reformulated version of 8th Continent Soymilk Original.** The manufacturer has informed FNS that the reformulated version of the product (which meets our requirements) will be available on the West coast starting in June 2009. This schedule will also apply to any key accounts in the East who may need the product sooner than national launch. The reformulated product will be available nationwide in August 2009.
- **Pacific's Ultra Soy Plain and Ultra Soy Vanilla.** The manufacturer has noted that they have taken steps to make these products available nationwide.
- **Kikkoman Pearl Organic Soymilk Smart Creamy Vanilla and Kikkoman Pearl Organic Soymilk Smart Chocolate**

We have also been informed of a reformulated soy-based beverage from Driftwood Dairy in California that is being made available through the National School Lunch Program. However, this product has not been submitted to SFPD by the manufacturer for review of eligibility for the WIC program.

State agencies should contact manufacturers to determine which soy-based beverages that meet WIC's requirements are available. This is particularly important since there could be a mixture of new and old versions of a product on the market depending on location.

States are encouraged to continue to dialog with Regional soy-based beverage producers about the possibility of producing a WIC-eligible product for their Region. State agencies that choose to offer soy-based beverages to their participants are encouraged to implement their food packages in a manner that does not preclude soy-based beverage when it becomes more widely available (e.g., make the appropriate MIS changes, etc).

e. We cannot find a whole milk (fluid or evaporated) that meets the new vitamin A requirement.

There has been no change in the nutrient requirements for any WIC-authorized milks. All WIC-authorized milks must be pasteurized and contain 400 International Units (IU) of vitamin D per quart of whole milk and 400 IU of vitamin D plus 2000 IU of vitamin A per quart of reduced-fat, low-fat, or fat-free milk. Vitamin A is naturally found in the fat portion of milk, which is removed (all or partially) during the production of reduced-fat, low-fat, and fat-free milks. For this reason, Vitamin A fortification is required for these milks, but not whole milk. The nutrient requirement pertains to all authorized milks; for dried milk (i.e. powdered) and evaporated milk, vitamin requirements are per reconstituted quart.

f. Is it allowable for State agencies to make available only low-fat and fat-free types of milk for women and children (2-4 years)? Do State agencies have to make reduced-fat milk available to these participants if they request it?

FNS would support a State agency's decision to offer only low-fat and fat-free types of milk to women and children two through four years of age. The State agency is not required to make other types of milk available upon participants' requests.

The Interim Rule specifies that reduced-fat, low-fat, and fat-free milk are all authorized types of milk for women and children two through four years of age. State agencies decide which brands, types, and packaging of allowable foods to include on their State WIC food lists. However, States must make more than one type of milk available to participants. More than one milk refers to any milk that meets FDA's standard of identity for milk (21 CFR part 131) and the minimum specifications in Table 4 of §246.10(e)(12). Providing low-fat and fat-free milks would meet this minimum specification. FNS encourages State agencies to provide as much choice and variety as possible to accommodate the diverse needs of WIC participants (e.g., also offering low-fat lactose-free milk). The 2005 Dietary Guidelines for Americans and the MyPyramid Food Guidance System encourage the consumption of low-fat and fat-free milk as part of an overall healthy diet. Consumption of low-fat and fat-free milk in place of whole and even reduced-fat milk can help participants two years and older meet dietary recommendations for saturated fat intake and maintain a healthy body weight. With the imminent changes to the food packages, FNS encourages State agencies to consider how to assist WIC participants in switching from whole milk to lower fat milks. Information on nutrition education for assisting participants in changing the type of milk consumed can be found on WIC Works at http://www.nal.usda.gov/wicworks/Learning_Center/FP/Milk.pdf.

Cheese Substitution

g. With the new rule, children and women participants can receive up to one pound of cheese as a substitute for milk. If we offer cheese, this will result in a "dangling quart" for each of the food packages. Can State agencies drop the “dangling” quart?

No. The WIC benefit to participants is the full authorized amount; therefore, State agencies may not “drop the dangling quart” of milk. If a State agency chooses to offer cheese as a substitute for 3 quarts of milk, then they **must** provide the remaining quart of milk (or other authorized milk or milk alternative such as dried milk, soy-based beverage, tofu, etc.) to fulfill the maximum allowance in the food package. In addition, participants should be provided nutrition education about the importance of milk (and/or fluid milk alternatives), in the quantities provided by WIC, in the participant's diet.

The new foods and the new quantities of food are intended to deliver priority nutrients to participants to meet their supplemental nutrition needs; therefore, food packages need to be offered in full and may not be categorically tailored as in the past.

Tofu

h. Is calcium chloride considered a calcium salt? Products with calcium salts seem to contain less calcium than those with calcium sulfate.

Yes, calcium chloride is considered a calcium salt.

Common types of calcium salts found in tofu

Calcium sulfate (gypsum)
Calcium citrate
Calcium chloride
Tricalcium phosphate

Even when these calcium salts are on the ingredient list, the amount of calcium in tofu varies from brand to brand and even within a brand, depending on the type of tofu produced (firm, soft, etc.)

In choosing the brands and types of calcium-set tofu to include on a State food list, read the label to choose, if possible, the tofu with the highest amount of calcium. The % Daily Value (DV) is a general guide to help determine if a food is high or low in a nutrient—5% or less is low, 20% or more is high.

FNS has reviewed a number of tofu labels and found that certain brands (Nasoya, White Wave, Soyboy) make a variety of tofu with anywhere from 10-30% of the DV for calcium.

Note: Nigari (primarily consisting of magnesium chloride) and gluconolactone are also used to process tofu, but they are not sources of calcium. Without an added calcium salt, these products have small or negligible amounts of calcium and, therefore, are not authorized.

VII. JUICE

a. For children, the juice requirement is 128 ounces. Since 12-ounce frozen (48 ounces reconstituted) and 46 ounce cans of single strength juice do not divide evenly into 128 ounces, can a State agency round down?

The State agency must ensure that the maximum juice allowance is provided. Therefore, they may not round up or round down. The State agency must use the appropriate physical form to achieve the maximum:

For example:

Food Package IV: Two 64-ounce containers single strength juice

Food Package V and VII: Three cans 11.5/12-ounce shelf stable or frozen (48 ounces reconstituted)

Food Package VI: Two cans 11.5/12-ounce shelf stable or frozen (48 ounces reconstituted).

(See also **XIV(c)** under Miscellaneous)

b. How do we “use the appropriate physical form to achieve the maximum” for homeless participants?

Section 246.10(b)(1)(ii) of the interim rule states that State agencies must make food package adjustments to better accommodate participants who are homeless. At the State agency's option,

these adjustments would include, but not be limited to, issuing authorized supplemental foods in individual serving-size containers to accommodate lack of food storage or preparation facilities.

State agencies must provide the regulatory maximum amounts of juice. FNS has reviewed available container sizes and finds a variety of single-serve juice bottles and cartons and cans (e.g., 8, 10, and 12 fluid ounces), some available in multi-packs, that are evenly divisible by the maximum allowances for the food packages for children and women. The maximum monthly allowance may be divided into smaller amounts and issued via multiple food instruments when feasible. Where appropriate, food packages may be individually tailored to meet the homeless participant's situation.

c. Do State agencies still have to submit a request to FNS to authorize issuance of calcium-fortified juice?

No. Calcium-fortified juice is authorized at the State agency's option without prior approval.

VIII. CANNED FISH

a. Is Jack mackerel WIC-eligible?

No. Jack mackerel is the scientific common name for *Trachurus symmetricus*; a number of other species are also commonly called Jack mackerel. According to the Food and Drug Administration (FDA), Jack mackerel is distinct from the two mackerel species—Chub Pacific (*Scomber japonicus*) and N. Atlantic (*Scomber scombrus*) that are authorized in the interim rule. The authorized mackerel species in the interim rule were chosen because they are lower in mercury. FDA has recently advised FNS that they do not have information on the mercury content of Jack mackerel; therefore, Jack mackerel cannot be authorized as a WIC-eligible canned fish.

b. We find salmon and other canned fish in 14.75 ounce cans. Can we authorize two of those cans since they come close to the 30 ounce maximum for canned fish?

No. State agencies must make available to participants the maximum monthly allowances of authorized supplemental foods. The State agency must use the appropriate physical form to achieve the maximum. (See also **XIV(c)** under Miscellaneous)

For example:

Five 6-ounce cans salmon

Four 3.75-ounce cans sardines plus one 15-ounce can salmon⁺

Four 7.5-ounce cans salmon

Three 9 ounce cans tuna plus one 3 ounce can tuna

⁺*State agencies are reminded that the FDA/EPA consumer advisory on fish consumption recommends that breastfeeding women limit fish consumption to 12-ounces per week.*

c. Are canned sardines with tomato sauce or mustard allowed? What about canned sardines or other fish with flavoring, e.g., chili oil, lemon, or smoked?

Canned sardines and other fish with added sauces and flavorings are authorized at the State agency's option.

IX. LEGUMES

a. Are canned refried beans allowed?

Yes, but only those without added sugars, fats, oil or meat as purchased are allowed.

b. Some canned beans, such as kidney beans have some sugar added during processing. Are these allowable foods under the "no added sugar" restriction?

It has come to the attention of the Food and Nutrition Service that the requirement for "no added sugar" in canned beans may exclude some commonly consumed beans from WIC State food lists. We have learned from the Food and Drug Administration that small amounts of sugar are added to some foods that are naturally sugar-containing during the canning process to prevent stress resulting in membrane rupture (i.e., kidney beans). This small amount of added sugar is minimal and helps to maintain the quality and structure of the food. To encourage greater variety in food choices in the WIC food packages, canned beans that contain a small amount of sugar for processing purposes, such as canned kidney beans, will be allowed.

X. CEREAL

a. How do we count and consider the number of whole grain cereals versus total cereals? For different flavors of the same cereal, i.e., Honey Bunches of Oats, there are four flavors or varieties of this cereal - Honey Roasted, Almonds, Cinnamon and Vanilla. Is this counted as one or four?

The State agency should first determine how many types of grains will be offered on their food lists—at least half must be whole grain. Different varieties/flavors of the same cereal could be offered, and counted separately, if they individually meet the nutrition/wholegrain requirements, but remember that the purpose is to offer a wide variety of grains. Different store brands of the same cereal, however, would count as **one** cereal.

b. At one time, FNS allowed “grandfathering” of cereals in the WIC Program. Are State agencies allowed to continue this practice?

WIC Policy Memorandum #95-13 dated April 4, 1995, allowed “grandfathering” of cereals. At that time, grandfathering was allowed to accommodate the difference in the reported nutrient amounts using the old labeling system. It is possible that some, if not all, of these cereals have been reformulated since that time. State agencies must reevaluate each cereal to determine if it meets the minimum Federal requirements by requesting manufacturer-provided information that

verifies that the cereal meets the WIC minimum Federal requirements for sugar and iron per 100 grams of dry cereal. If a cereal which was previously approved no longer meets the minimum Federal requirements, it cannot be added to the State agency's food list.

c. When we use the *WIC Worksheet for Determining Iron and Sugar Requirements for Cereals* we get iron and sugar amounts that are different from what the product manufacturer provides. Can the amount of iron and sugar be “rounded up”?

It has come to our attention that State agencies attempting to use the % Daily Value (DV) on the Nutrition Facts panel to calculate the amount of iron and sugar in cereals are getting values that are inconsistent with iron and sugar amounts provided by manufacturers. The Food and Drug Administration permits manufacturers to apply rounding in their calculation of %DVs for vitamins and minerals listed on products' Nutrition Facts panel. For instance, nutrients that fall within 10-50% of the DV can be expressed to the nearest 5% of the %DV.

Due to the rounding that may be applied to the %DV, it is not possible to get an accurate and specific calculation of the amount of iron in the cereal using information from the Nutrition Facts panel. This could result in the misidentification of cereals that do and do not meet WIC eligibility criteria. Instead of trying to use the %DV to perform such calculations, State agencies should request information from the manufacturer specifying the iron and sugar content per 100 grams of dry cereal when reviewing cereals for WIC-eligibility.

In addition, in determining WIC-eligibility of whole grain cereals, the Whole Grains Calculator on the WIC Works Resource System prompts users to obtain iron and sugar amounts from product manufacturers.

d. FNS has issued product eligibility letters in the past as verification that cereals do or do not meet the minimum Federal requirements for WIC eligibility. How recent must these eligibility letters be to provide valid verification for WIC-eligibility of cereals?

Only cereal product eligibility letters issued by FNS since October 1, 2007, can be used to verify WIC-eligibility of cereals under the Food Package interim rule. Manufacturers periodically reformulate their cereal products. To ensure that these products still meet WIC minimum Federal requirements, State agencies should request information from the manufacturer verifying the iron and sugar content per 100 grams of dry cereal.

XI. BREAD AND WHOLE GRAINS

a. What are some of the ingredients that are allowed for corn tortillas?

Corn tortillas made from ground masa flour (corn flour) using traditional processing methods are WIC-eligible. Examples of primary ingredients meeting the WIC-eligibility criteria include: whole corn, corn (masa), whole ground corn, corn masa flour, masa harina, and white corn flour.

b. Can oatmeal be issued as a cereal and also as a whole grain option?

Yes, oatmeal may be issued as both a cereal and a whole grain. The maximum allowances are different for oatmeal in the cereal category versus the grain category; also, oatmeal provided in the cereal category must meet the iron and sugar requirements.

c. Do State agencies have to offer bread or can we choose to offer only the whole grain options?

State agencies must offer whole wheat or whole grain bread. It is a State agency option to authorize the whole grain options.

d. Are whole grain rolls and buns allowed?

Yes. As long as they meet the criteria for whole grain as defined in the interim final rule, they may be authorized.

e. We found a product called Thomas' Mini Squares Bagelbread that has whole wheat as the first ingredient and comes in 1 pound packages. Is it a WIC-eligible bread?

No, this product is not WIC-eligible. We confirmed with the Food and Drug Administration (FDA) that Thomas' Mini Squares Bagelbread does not meet the standard of identity for whole wheat bread. The whole wheat bread standard of identity applies to sliced bread, buns, and rolls. Thomas' identification of the product as "bagelbread" categorizes the product as a bagel (not a bun, roll, or sliced bread) and as such is not a whole wheat bread under the FDA standard of identity.

Are whole grain breads with added fruit, nuts and seeds allowed in the WIC Program?

Yes, whole grain breads with added fruit, nuts, and seeds are allowed provided they meet the minimum Federal requirements as specified for whole grain bread under the interim rule. The minimum Federal requirements for whole grain breads do not prohibit the addition of fruit, nuts, and seeds. However, State agencies are reminded that Section 246.10(b)(1)(i) of the interim rule allows the State to establish criteria in addition to the minimum Federal requirements for WIC supplemental foods; therefore State agencies may choose to disallow whole grain breads with added fruit, nuts, or seeds. State agencies are also reminded that the Whole Grains Calculator on the WIC Works Resource System website is a valuable tool designed to help State agencies determine WIC eligibility of whole wheat and whole grain breads and cereals. It can be found at: http://riley.nal.usda.gov/wicworks/resources/whole_grain_form.php.

XII. FOOD PACKAGES FOR INFANTS

a. Can tube-fed infants receiving a standard infant formula in Food Package II receive additional quantities of formula in lieu of complementary foods?

No. There is no provision that allows infants served by Food Package II to receive additional amounts of infant formula in lieu of complementary foods. However, infants served by Food

Package III who are greater than 6 months of age, and whose medical condition prevents them from consuming complementary foods, may receive exempt infant formula or WIC-eligible medical foods (but not standard formula) at the same maximum monthly amount as infants 4-5 months old of the same feeding option. This would be in lieu of receiving complementary foods.

b. Must the full nutrition benefit (FNB) be provided to all infants receiving infant formula and exempt infant formula?

Yes, State agencies must provide the FNB to all infants. This includes contract as well as non-contract formulas (infant formula and exempt infant formula). State agencies must issue these formulas per the method (i.e., monthly issuance or use of Rounding Methodology) that provides the FNB without exceeding the maximum amounts for the physical form. It is the responsibility of the State agency to determine which method (i.e., monthly issuance or use of Rounding Methodology) it will use to provide the FNB without exceeding the maximum monthly allowance for the WIC formulas authorized on the State food list. The Rounding Methodology more closely provides the FNB of formula to participants. WIC State agencies serving less than 1,000 participants not covered by infant formula bid solicitations must also provide the FNB to all infants using either the monthly issuance or the rounding methodology. Technical assistance for determining formula issuance is available on the WIC Works Resource System Food Package pages at www.nal.usda.gov/wicworks. For partially breastfed infants, even those issued the “fully formula” package, WIC staff are expected to tailor the amount of infant formula based on the assessed needs of the breastfeeding infant and provide the minimal amount of formula that meets but does not exceed the infant’s nutritional needs. This is consistent with FNS guidance “Providing Quality Nutrition Services in Implementing the Breastfeeding Promotion and Support Requirements of the New WIC Food Packages,” dated May 20, 2009.

XIII. FOOD PACKAGE III FOR MEDICALLY FRAGILE PARTICIPANTS

Can participants receive both milk and formula in Food Package III?

Yes. Food package III is issued to women, children and infants who have a documented qualifying medical condition **that requires use of a WIC formula**/medical food because use of conventional foods is precluded, restricted, or inadequate to address their special nutritional needs. Other WIC foods, including milk, may also be provided to an individual participant if medically warranted and with medical documentation. State agencies do not have the option to require participants to choose either milk or formula.

XIV. FOOD PACKAGES FOR THE BREASTFEEDING DYAD *Updated 9/17/10*

a. Can infant formula amounts in the fully formula fed packages for infants who are “combo” feeding but require more formula than is allowed under the partially breastfed infant food packages be “tailored down” to meet the specific needs of the infant?

Yes, WIC staff are expected to tailor the amount of infant formula based on the assessed needs of the breastfeeding infant and provide the minimal amount of formula that meets but does not exceed the infant's nutritional needs. The maximum monthly allowance is rarely warranted.

The newly created food packages for partially breastfed mothers and infants are designed to provide for the supplemental nutrition needs of the breastfeeding dyad, provide minimal formula supplementation to help mothers maintain milk supply, and provide incentives for continued breastfeeding. The benefits of these food packages are lost if the dyad is issued the fully formula food packages.

State agencies should develop policies for formula requests that encourage substantial and continued breastfeeding when mothers do not fully breastfeed. With proper support and counseling from WIC, the number of breastfeeding infants receiving the fully formula fed food packages should be small.

b. For a partially breastfeeding mother of twins--if both infants are receiving over the maximum allowed for a partially breastfed infant, what package would the mother be entitled to receive? If the infants are over 6 months of age, would she get no food at all, even though she will still be breastfeeding?

If the infants are under 6 months of age, the mother would receive Food Package VI. If the infants are over 6 months of age, the mother would not receive a food package. In that case, the mother's infants would be old enough to receive infant foods in addition to receiving significant formula from WIC; therefore, it is presumed she is minimally breastfeeding. If an assessment reveals otherwise, and she qualifies for Food Package V, then her food package can be switched and her infants provided the partially breastfed infant food package.

c. What happens if one twin is getting over the maximum formula allowed for a partially breastfed infant, and the other infant is getting less than the maximum? Which food package should the mother be issued?

The mother is issued Food Package V because one of her infants qualifies to receive the partially breastfeeding package. The partially breastfed food packages are designed to provide for the supplemental nutrition needs of mothers who are feeding mostly breastmilk to their infants and to provide incentives for continued breastfeeding.

d. In issuing Food Package VII, would "breastfeeding multiples" apply to a mother who is tandem nursing a 2 month old and an 11 month old?

No. Food Package VII is issued to partially breastfeeding mothers who are breastfeeding multiple infants from the same pregnancy and whose infants receive formula from WIC in amounts that do not exceed the maximum formula allowance for partially breastfed infants. The Institute of Medicine recommended that these women be provided Food Package VII to meet their higher nutrient needs.

*** e. A woman who is partially (“minimally”) breastfeeding and whose infants greater than 6 months of age receive formula from WIC in amounts that exceed the maximum formula allowance for partially breastfed infants do not receive a food package. However, these women continue to count as breastfeeding women and receive nutrition services. Can they participate in the Commodity Supplemental Food Program (CSFP) while still being counted as a WIC participant?**

By law, a person cannot participate simultaneously in both WIC and CSFP. Therefore, if an individual is counted as a WIC participant, that individual cannot also participate in CSFP. This is true for the “minimally breastfeeding” woman who is greater than 6 months postpartum but is not receiving a food package, as well as a fully breastfed infant less than 6 months of age (of a participating breastfeeding woman) who is not receiving a food package from WIC.

*** f. Can a “minimally breastfeeding” woman not receiving a WIC food package be issued Farmers Market Nutrition Program coupons?**

Yes.

XV. MISCELLANEOUS

a. 246.10(b)(2)(B) states "Make available to participants more than one food from each WIC food category except for the categories of peanut butter and eggs, and any of the WIC-eligible fruits and vegetables (fresh or processed) in each authorized food package as listed in paragraph (e) of this section." What is the purpose of this provision?

Current WIC regulations require State agencies to make available at least one food from each food category. This provision was to ensure that all food categories were offered, i.e., a State couldn't decide not to offer milk. The interim rule requires that State agencies make available to participants more than one food from each food category. The purpose of this provision is to implement the IOM's recommendation that State agencies allow as much variety and choice from the authorized foods as is feasible considering cost constraints and availability. Providing more variety and choice will accommodate the diverse needs of WIC participants, including different ethnic or cultural needs. **The provision should not be interpreted to mean that State agencies should limit the number of foods within a category.**

b. Are artificial sweeteners allowed?

Yes, this continues to be a State agency option.

c. Can State agencies authorize package sizes that do not evenly divide into the maximum allowance?

State agencies must authorize container sizes that provide the full maximum monthly allowances of authorized supplemental foods on the State food list. The only exception is for an infant food

or formula since rounding up is authorized in order to provide the full nutritional benefit for infants. However, in order to provide variety and choice FNS will allow State agencies the option to also authorize package sizes that provide less than the maximum allowance provided the nutritional integrity of the food package is not compromised. For example, a 15.5-ounce can of beans can be authorized as long as the State agency also authorizes a 16-ounce can that provides the maximum. It would not be appropriate to allow a 46 or 48-ounce container of juice as an option for the 64-ounce container of juice for a child. At least one package size (or combination of sizes) must add up to the full maximum monthly allowance that participants are authorized to receive. The choice to achieve the full maximum allowance must be made available to participants and local agencies must provide appropriate education to participants about how to obtain their full food package benefit.

d. How should container sizes be specified on the food instrument?

The food instrument must specify the container size, e.g., 2- 64-ounce containers of juice or 3- 11.5 or 12 ounce containers juice concentrate. If a range of sizes are authorized, specify the range on the food instrument, e.g., 16-18 ounces peanut butter. For cereal, a State agency may use language it currently uses on its food instrument, e.g., 36 ounces, or not to exceed 36 ounces, or up to 36 ounces. Educational materials should demonstrate to participants how to obtain their full food package benefit. Vendor minimum stock and training materials should also be developed in a way that enables the participant to obtain the full benefit.

e. Can State agencies pro-rate food items, including the Cash-Value Voucher?

State agencies may continue to pro-rate foods except single item foods such as bread or other whole grain options, peanut butter or beans (dry or canned), and the cash-value voucher. The exception to the single food item is eggs because they are available in ½ dozen cartons. The full value of the cash-value voucher must be provided.

Clarifications:

- Under the interim rule, the maximum allowance of whole wheat/grain bread or other whole grain options in Food Package IV for children is two pounds. State agencies may pro-rate to one pound for this food package.
- Under the interim rule, both food Package V (pregnant and partially breastfeeding women) and Food Package VII (fully breastfeeding women) provide 1 pound of beans and 18 ounces of peanut butter. State agencies may pro-rate these items by offering the woman the opportunity to choose either the beans or the peanut butter. The food instrument could read “18 ounces of peanut butter or 1 pound of beans.” State agencies may not pro-rate these items by specifying only “1 pound beans” or only “18 ounces peanut butter” on the food instrument.

f. How do we offer 1.5 times the maximum allowance of authorized foods for women in Food Package VII who are fully breastfeeding multiple infants from the same pregnancy?

Some foods do not lend themselves easily to the provision of “halves,” e.g., bread, peanut butter, dried beans, cheese.

For women fully breastfeeding multiples **only**, State agencies are allowed to issue foods in Food Package VII in amounts averaged over a 2-month timeframe. This will eliminate concern about providing “half” of a food package. It is up to the State agency how to do this, but it shouldn’t be complicated, i.e., the State agency would issue double the “regular” fully breastfeeding package one month and the “regular” fully breastfeeding package the next month.

g. Can State agencies substitute peanut butter for eggs for homeless packages? If so, what substitution rate should be used? (Revised answer)

Section 246.10(b)(1)(ii) of the WIC regulations allows State agencies to make food package adjustments to better accommodate participants who are homeless. At the State agency’s option, these adjustments would include, but not be limited to, issuing authorized supplemental foods in individual serving-size containers to accommodate lack of food storage or preparation facilities. This has not changed from previous WIC regulations.

As general guidance, the State agency may issue 64 ounces of canned beans as a substitute for 1 dozen eggs for homeless participants. In lieu of canned beans, 18 ounces of peanut butter may be substituted for 1 dozen eggs. Combinations of peanut butter and canned beans may be issued. As a reminder, the interim rule allows hard boiled eggs, where readily available for purchase in small quantities, to be issued to participants with limited cooking facilities.

Providing additional legumes or peanut butter as a substitute for eggs may significantly increase the amount of these foods participants receive. In issuing additional quantities of beans or peanut butter, State agencies should assess the amount of these food items participants would reasonably consume in a month’s time.

h. Can State agencies aggregate foods for families and thereby authorize container sizes larger than the maximum allowance for an individual participant?

State agencies may aggregate WIC supplemental food amounts for families. However, State agencies may not authorize container sizes that exceed the monthly maximum allowance for an individual. It is important that the foods on the State authorized food list meet the needs of the individual food package prescription. Federal regulations require that local agencies advise participants or their caretakers, when appropriate, that the supplemental foods are only for their personal use. This information would be an important component of nutrition education for agencies that aggregate food benefits.

May State agencies authorize WIC foods in a general manner, without specifying brands and types? For example, may State agencies simply state on the food card “100% whole wheat bread” or whole grain breads with “whole grain listed on label as first ingredient” and then allow participants to go to the store and review food labels and choose the specific brands/types they want to purchase?

Section 246.10(b)(2)(i) of the interim rule requires State agencies to “identify the brands of foods and package sizes that are acceptable for use in the Program in their States.” It is the responsibility of WIC State agencies to determine WIC eligibility of whole grain breads and other WIC foods” in accordance with Table 4 of §246.10(e)(12) and its footnotes)--Minimum Requirements and Specifications for Supplemental Foods. It is also the responsibility of State agencies to maintain a list of all WIC-eligible foods it authorizes for participants.

State agencies must ensure that WIC foods purchased by participants are eligible and authorized. Making the participant or vendor responsible for these determinations will likely lead to confusion and frustration on the part of participants and vendors. Product labeling is not always consistent and participants might choose foods that do not meet WIC eligibility requirements.

FNS realizes that food cards for participants have space limitations that may preclude listing all possible authorized foods. At a minimum, the following foods **must** be identified by brand, type and size on the food cards/materials for participants and vendors:

- Whole wheat and whole grain breads
- Tortillas
- Cereal
- Non-citrus juices
- Soy-based beverage
- Tofu
- Infant foods (infant cereal, fruits, vegetables, meat)

If a State agency has already printed a food card without specifying the brand, type and size of the foods mentioned above, they should use whatever process they currently do to inform participants/vendors of a change in the foods listed on the food card until the next time the food card is printed.

For breads and cereals, the Whole Grains Calculator on the WIC Works Resource System website is a valuable tool designed to help State agencies determine WIC eligibility of whole wheat and whole grain breads and cereals. It can be found at:

http://riley.nal.usda.gov/wicworks/resources/whole_grain_form.php.