



United States
Department of
Agriculture

Food and
Nutrition Service

Mid-Atlantic Region

300 Corporate Blvd
Robbinsville, NJ
08691-1598

Date: **01-09-2009**

Cross Reference WIC Policy Memorandum #2009-1

Re: **SFP 09-020**

Subject: **Clarification on Use of the WIC Acronym and Logo**

To: **All WIC State Agencies**

This policy memorandum supplements an Instruction of the Department of Agriculture (USDA) Food and Nutrition Service (FNS), WIC Program – Use of WIC Acronym and Logo, FNS Instruction 800-2, June 2, 1992, (the “Instruction”), concerning use of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Acronym and the WIC Logo by for-profit organizations.

The WIC Acronym and the WIC Logo are registered service marks of the USDA for USDA’s WIC, Registration Nos. 1,630,468 and 1,641,644, respectively, hereinafter referred to collectively as the “service marks.” A purpose of the Instruction was to prevent use of the service marks by private sector organizations in ways likely to cause confusion in regard to their involvement with the WIC Program. It is USDA policy to avoid endorsements, directly or indirectly, of any commercial product, service, or enterprise.

This policy memorandum discusses uses of the service marks in three areas: 1) infant formula marketing; 2) vendor names and vendor advertising; and 3) brand identification channel strips or shelf talkers.

Infant Formula Marketing

The Instruction provided that USDA would not permit the application of the service marks to food products or the promotional materials for these products. One purpose of this restriction was to prevent a product marked or referred to as “WIC approved” or “WIC eligible” from being marketed in a place or at a time where the product was not approved for WIC. Another purpose of this restriction was to prevent a food manufacturer’s use of the service marks from being interpreted as a general endorsement of the product by USDA.

Some food manufacturers have continued to use the terms “WIC approved” or “WIC eligible” in advertising and other promotional materials following USDA’s registration of the service marks and issuance of the Instruction. Such use of the WIC acronym might cause confusion, mistake, or deception, regarding the specific

nature of the approval or eligibility of the food products involved, depending on how the WIC acronym was used and whether an explanation was provided limiting this use of the WIC acronym to the specific nature of the food product's involvement with the WIC Program.

In February 2006, the Government Accountability Office (GAO) issued a report on the impact of infant formula marketing on WIC breastfeeding rates, *BREASTFEEDING Some Strategies Used to Market Infant Formula May Discourage Breastfeeding; State Contracts Should Better Protect against Misuse of WIC Name*, GAO-06-282. This report found that infant formula advertising and other promotional materials using the WIC Acronym, directed at the general public and health-care providers, were reaching WIC mothers. Some advertising directed at health-care providers marketed infant formula as "WIC approved" or "WIC eligible."

The report observed that WIC mothers might not understand that the WIC Program strongly recommends breastfeeding and that, therefore, it was important for FNS to protect its service marks from inappropriate use in infant formula advertisements in order to avoid the perception that FNS is promoting formula feeding over breastfeeding. The report concluded that FNS would be better able to guard against misuse of the service marks if State agency WIC contracts with infant formula manufacturers restricted the use of the service marks in infant formula marketing materials. However, the report stated that most State agencies do not include such a restriction in their infant formula rebate contracts and may not be aware of the FNS policy restricting use of the service marks. Thus, in order to better protect the service marks from being used inappropriately in infant formula advertisements, the GAO recommended that the Secretary of Agriculture educate all State agencies about FNS policy restricting the use of the service marks and ensure that all State agency infant formula contracts include provisions restricting the use of these marks in infant formula advertisements.

Accordingly, all food manufacturer contracts, including rebate contracts for infant Formula or other foods must include the following provisions:

"Use of WIC Service Marks

Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

Manufacturer shall not use these service marks in any manner on its goods or their containers or packaging or on tags or labels affixed thereto. Manufacturer also shall not use the WIC Logo in advertising or other promotional materials (collectively: “advertising”).

Manufacturer shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Manufacturer with the WIC Program, or as to the sponsorship or approval of manufacturer’s goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

Manufacturer shall include the following statement with any use of the WIC Acronym in advertising: “WIC is a registered service mark of the U.S. Department of Agriculture for USDA’s Special Supplemental Nutrition Program for Women, Infants and Children.”

We recognize that the terms and conditions of existing food manufacturer contracts have been previously negotiated and implemented, including rebate contracts for infant formula or other foods, and that extensions of those existing contracts continue the terms and conditions of those existing contracts. Thus the provision noted above must be incorporated into the State agency’s next food manufacturer contract(s), including rebate contracts for infant formula or other foods. The requirement for the above provision would not apply to extensions of existing contracts which have been previously negotiated and implemented. The requirement for the above provision applies to all food manufacturer contracts entered into by State agencies following issuance of this policy memorandum, including rebate contracts for infant formula or other foods, regardless of the type of food delivery system, i.e., retail, direct distribution, or home delivery.

Vendor Names and Vendor Advertising

As set forth in the Instruction, WIC-authorized retail vendors are not permitted to use the service marks, including close facsimiles thereof, in total or in part, either in the official name in which the vendor is registered or in the name under which it does business, if different. The purpose of this restriction is to avoid giving the impression to Program participants that the business is affiliated with or sponsored by the State agency, USDA, or the WIC Program, when this is not true. The Instruction also provides that the State agency is responsible for determining whether a vendor’s name is impermissibly similar to the service marks, although FNS reserves the right to overrule the State agency.

FNS has worked with several State agencies in recent years to stop infringement of the WIC Acronym in vendor names. Examples of such infringement include using the letters “W,” “I,” and “C” in that order next to one another in the vendor’s name, or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters. There may be other examples of this type infringement. When in doubt, State agencies should contact FNS for advice.

However, as indicated in the Instruction, WIC-authorized food vendors may describe themselves as such. This may be done by placing signs on their storefronts stating that they are WIC-authorized, although the State agency may limit the number and size of the signs for this purpose. For example, the State agency may restrict such signs to only those issued by the State agency. Such restrictions should be set forth in the vendor agreement. This is a matter of State agency discretion.

WIC-authorized food vendors also must be restricted in regard to any use of the service marks in their advertising and other promotional materials in a manner similar to food manufacturers. Advertising may be used to inform the public that a vendor is WIC-authorized, but the WIC acronym may not be used in a manner which states or implies that the vendor itself is affiliated with or sponsored by the State agency, USDA, or the WIC Program. For example, a vendor may not place the term “WIC Program” directly above the name of the vendor in an advertisement. Also similar to the restrictions on manufacturers, vendors must not be permitted to use the WIC logo in advertising or other promotional materials.

To ensure enforcement of WIC requirements and protect against infringement of the service marks, State agencies must clearly state these requirements and the means of enforcing compliance in their vendor agreements. The State agency may establish service mark violations as a selection criterion pursuant to 7 CFR 246.12(g), and/or may establish State agency sanctions for violations pursuant to 7 CFR 246.12(l)(2).

Brand Identification Channel Strips or Shelf Talkers

On August 28, 1992, FNS issued a memorandum (“Use of the WIC Acronym and Logo”) to clarify that WIC State agencies may permit WIC-authorized retail vendors to use brand identification channel strips or shelf talkers containing the service marks to identify WIC-approved supplemental foods. As with storefront signs stating that the vendor is WIC-authorized, the State agency may place restrictions on these channel strips or shelf talkers. For example, the State agency may allow channel strips or shelf talkers provided by food manufacturers or

distributors or may allow use only of channel strips or shelf talkers provided by the State agency. Such restrictions should be set forth in the vendor agreement. These issues are matters of State agency discretion.

The 1992 memorandum also pointed out that vendors are not permitted to affix stickers using the service marks to WIC-approved supplemental foods. This is for the same reason that manufacturers are not permitted to apply the service marks to product labels or packages – the potential confusion for participants. Accordingly, to ensure enforcement of this prohibition, State agencies must clearly state this prohibition and means of enforcing compliance in their vendor agreements. As indicated above, the State agency may establish service mark violations as a selection criterion and/or may establish State agency sanctions for violations in the schedule of sanctions.

Summary

1) State agencies must incorporate the language provided above into their next food manufacturer contracts, including rebate contracts for infant formula or other foods, to ensure that: the service marks are not used on a manufacturer's goods; the WIC Logo is not used in manufacturer advertising; and, the WIC Acronym is not used in manufacturer advertising in any manner likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of a manufacturer with the WIC Program, or as to the sponsorship or approval of a manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

2) Vendors may not use the service marks in their names. Vendors also may not use the WIC logo in advertising or promotional literature. Vendors may use the WIC Acronym in advertising and other promotional material only to inform the public that the vendor is WIC-authorized. At the discretion of the State agency, vendors may put signs on their storefronts stating that they are WIC-authorized. State agencies must include provisions to this effect in their vendor agreements, and may enforce these agreement provisions through the use of selection criteria, sanctions or both.

3) Vendors may not apply stickers, tags, or labels having the service marks thereon to WIC-approved products. At the discretion of the State agency, vendors may use channel strips or shelf talkers using the service marks to identify WIC-approved products, including channel strips or shelf talkers provided by manufacturers. State agencies must include provisions to this effect in their vendor agreements, and may

enforce these agreement provisions through the use of selection criteria, sanctions or both.

All WIC State Agencies

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This memorandum is effective immediately.

If you have any questions, please contact Jeanne Kelleher at 609-259-5103.



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