

**Special Supplemental Nutrition Program for
Women, Infants and Children (WIC Program)
Tribal Consultation Meeting
WIC Proposed Rules
November 30, 2021
12:30 PM – 2:30 PM EST
Zoom Session**

I. Welcome & Introductions

- a. **Opening Prayer** – Executive Director Gilbert Vigil, Eight Northern Indian Pueblos Council, Inc.; and former Governor of Tesuque Pueblo.
- b. **Welcome** - Heather Dawn Thompson, Director, USDA Office of Tribal Relations
- c. **Introductions and Opening Remarks** of USDA Food and Nutrition Service (FNS) Leadership, Tribal Leadership, and select FNS Staff
 - i. FNS Leadership, in order of introduction:
 1. Cindy Long, Administrator (Consulting Official)
 2. Diane Kriviski, Deputy Administrator, Supplemental Nutrition and Safety Programs (SNAS)
 - ii. Tribal Leaders, Proxies, and/or Representatives, in order of introduction:
 1. Gilbert Vigil, Executive Director, Eight Northern Indian Pueblos Council, Inc.; and former Governor of Tesuque Pueblo
 2. Lona Johnson, Health Director, Nooksack Indian Tribe
 3. Cheri Nemec, President, National Indian and Native American WIC Coalition; and Program Director, Cooperative American Indian Health, Native Breastfeeding Coalition of Wisconsin, Supplemental Nutrition Assistance Program (SNAP-ED), Women, Infants & Children
 4. Alisa Portley-White, WIC Coordinator, Yellowhawk Tribal Health Center
 5. Timothy Nelson, Tribal Administrator, Kaibab Band of Paiute Indians
 6. Summer Hammons, Legislative Policy Analyst for Treaty Rights & Government Affairs, Tulalip Tribes
 7. Allison Ball, Health and Human Services Director, Confederated Tribes of the Colville Reservation
 - iii. FNS Staff, in order of introduction:
 1. Amy Herring, Acting Director, SNAS Supplemental Food Programs Division (SFPD)
 2. Sara Olson, Chief, Policy Branch, SFPD
 3. Patricia Bailey, Acting Chief, Program Integrity and Monitoring Branch, SFPD
 4. Valery Soto, Chief, Nutrition Services Branch, SFPD
 5. Dana Rasmussen, Senior Technical Advisor, SFPD

II. **Proposed Rule: WIC Online Ordering and Transactions**
a. **Overview by USDA FNS - Amy Herring, Acting Director, SFPD**

Gretchen Swanson Center for Nutrition Online Ordering Grant

- Beginning in 2020, FNS made a significant investment by awarding a \$2.5M grant to the Gretchen Swanson Center for Nutrition (GSCN) to work toward developing and testing secure models of online ordering and transactions in the Special Supplemental Nutrition Program from Women, Infants, and Children (WIC Program).
- During the past year, GSCN developed and released the Blueprint for WIC Online Ordering (the Blueprint). The Blueprint is a resource for WIC State agencies and their partners that are working to implement online ordering projects. The Blueprint suggests activities to successfully plan, implement, and maintain WIC online ordering projects.
- Both the Blueprint and a sub-grant Request For Proposals (RFP) were released on June 15, 2021. Sub-grant proposals were due by August 27, 2021 and, as of November 30, sub-grant award announcements are expected near term. The RFP encouraged applicants to use the Blueprint as a resource to devise and propose innovative projects to test both online ordering and transactions in WIC.
- Over the next two years, GSCN will:
 - Work with sub-grantees to test and implement online ordering and transactions,
 - Evaluate and report on the results to inform future expansion of online ordering and transactions, and
 - Update the Blueprint to include revisions and best practices learned through the evaluation of the sub-grant projects.

WIC Task Force on Supplemental Foods Delivery

- The Consolidated Appropriations Act, 2021 (P.L. 116-260, the Act) required the Task Force to study online ordering and payment for WIC foods, along with curbside pickup, home delivery, and self-checkout, along with other measures that could limit or eliminate the need for WIC participants to shop in a physical store.
- USDA established the Task Force in spring 2021, and the independent Task Force met weekly through September. FNS referenced a handout which provided further details.
- The Task Force was required to submit a report to the USDA that included:
 - the results of their study, and
 - recommendations with respect to such results.
- The Task Force submitted its report on September 30, 2021, with the report linked at the Task Force [homepage](#).
- USDA thanked the Task Force including its Chair, Melinda Newport, who is the Director of Chickasaw Nation WIC; along with the Co-Chair, Ellen M. Thompson, Vice President of Program Modernization Consulting, for Maximus.

- USDA will submit the report to Congress which includes:
 - a plan with respect to carrying out the recommendations received, and
 - an assessment of whether legislative changes are necessary to carry out such plan.
- As of 11/30, The Congressional report is in the final stages of clearance.

WIC Online Ordering and Transactions Proposed Rule

- Gretchen Swanson's and the Task Force's efforts, along with input received during this Tribal consultation, will inform USDA FNS' WIC Online Ordering and Transactions proposed rule, which is currently under development.
- With this proposed rule, USDA intends to address key regulatory barriers to online ordering in the WIC Program by making changes to the current regulatory provisions that prevent online transactions and types of online capable stores from participating in WIC.
- The proposed rule would also allow FNS to modernize WIC vendor regulations to reflect current technology.
- USDA anticipates publication as early as spring 2022 (tentative timeframe), with an opportunity for public comment.

b. Dialogue – Comments & Questions Received

During the meeting, Tribal leaders and representatives, and/or Program representatives, expressed general support for the proposed rule and shared additional comments and questions.

- A Tribal Leader asked how the rule would impact local vendors wanting to join the WIC Program, with currently one retail store potentially interested in being authorized for the WIC Program.
 - FNS responded that, as of right now, there are no changes regarding how retail vendors are authorized.
- A Tribal leader and a Tribal and/or Program representative cited support for the proposed rule for varied reasons.
 - A Tribal and/or Program representative cited the proposed rule would benefit participants' ability to access benefits where they typically may not have access under the current model, mentioning the Supplemental Nutrition Assistance Program (SNAP) as a program which currently permits this approach. The attendee cited it as an equity issue for remote Tribal areas, which do not have authorized vendors, while supporting the health and safety of participants during the pandemic.
 - A Tribal leader highlighted the importance of allowing online ordering and transactions to support participant equity and access for Tribal communities, while emphasizing the need for systems training for small local/Tribal vendors. The Tribal leader highlighted participant transportation issues in attempting to reach larger national chain stores. The attendee further highlighted the need for attention to the impact of

supply chain issues on Tribal areas and the need to support small Tribally-owned vendors.

- A Tribal leader cited challenges with vendors having the variety of vegetables needed and asked who would be the vendor(s) when allowing for online ordering and transactions, and whether a Food Distribution Program [likely the Food Distribution Program on Indian Reservations (FDPIR)] distribution site could serve as a WIC vendor given limited resources locally.
 - USDA FNS responded that WIC State agencies, including Indian Tribal Organizations (ITOs), are able to, and responsible for, authorizing retail vendors currently, and authorizing WIC foods. FNS provided that the Agency is being proactive in addressing supply chain issues as they relate to FNS programs. FNS further emphasized that the ITO may request technical assistance from the appropriate FNS Regional Office in setting up a WIC direct distribution system, if interested.
- Two Tribal and/or Program representatives emphasized the need to support small vendors, with one attendee citing the need to look at the issue from an equity lens with a need for inclusiveness. Both attendees referenced the need for plug-and-play models for point-of-sale systems to ensure feasibility and increase economic capacity, with one attendee encouraging USDA to view the vendor authorization process from an equity lens.
 - FNS recognized the importance of local, regional and Tribal producers.
- A Tribal and/or Program representative also highlighted concerns about additional fees which could be incurred for online ordering and transactions, asserting that participants should not pay fees for such transactions.
- One Tribal and/or Program representative asked via chat where the WIC supplemental foods order would go in an online ordering environment.
 - USDA FNS provided that, in general, in a retail food delivery system, the order would go directly to the authorized retail vendor.

III. **Proposed Rule: Revisions in the WIC Food Packages**

a. **Overview by USDA FNS - Amy Herring, Acting Director, SFPD**

Current WIC Food Packages

- WIC food packages, together with nutrition education, are the primary means by which the Program affects participants' dietary quality and habits. The food packages are scientifically based and intended to address the supplemental nutritional needs of WIC's pregnant, breastfeeding, and postpartum women, and infants and children.
- Revisions to the WIC food packages are intended to:
 - address the prevalence of inadequate and excessive nutrient intakes for each WIC participant category,
 - be consistent with the latest Dietary Guidelines for Americans or "DGAs" and infant and toddler feeding practice guidelines, and
 - deliver priority nutrients to participants to meet their supplemental nutrition needs.

- USDA highlighted the types and amounts of WIC foods that are currently offered by referring to a handout, and scrolling down to the Attachments within that handout.
- Depending on the food package, the authorized food categories are infant formula, cereal, and foods; exempt infant formulas; WIC-eligible nutritionals; milk; cheese; breakfast cereal; juice; fresh fruits and vegetables; whole wheat/whole grain bread; eggs; legumes and peanut butter; and canned fish.
- The food categories and quantities, as well as minimum nutritional requirements, are established at the Federal level and outlined in Federal WIC regulations at 7 CFR Part 246.10.
- WIC State agencies, including ITOs that administer the Program, are responsible for authorizing WIC foods for their participants. They identify the brands and package sizes in accordance with Federal WIC regulations, considering factors such as product availability, participant acceptance, and cost.

WIC Food Packages Review

- The Child Nutrition Act of 1966, as amended, requires the USDA to conduct a comprehensive scientific review of the WIC food packages at least every 10 years.
- On January 5, 2017, the National Academies of Sciences, Engineering, and Medicine (NASEM) released its report entitled *WIC Food Packages: Improving Balance and Choice* with numerous, cost-neutral recommendations.
- These recommendations were based on NASEM's approach to the food packages being a supplemental source of nutrients to the diets of WIC participants, among other considerations.
- NASEM found that the current food packages provide 100 percent or more of the recommended intake of several nutrients and food groups, considered these more than supplemental, and recommended reduced amounts to align with the supplemental nature of the Program.
- NASEM also identified inadequate nutrient intakes and recommended increased/added foods with these nutrients.
- NASEM recommended reducing the amounts of: (1) juice; (2) milk; (3) peanut butter; (4) legumes; (5) whole grains for children; and (6) infant foods; and
- NASEM recommended increasing the amounts of (1) whole grains for women; (2) fruits and vegetables; and (3) canned fish.
- NASEM also recommended changes to support breastfeeding initiation and duration.

Dietary Guidelines for Americans

- In addition to NASEM's recommendations, in December 2020, the USDA and the Department of Health and Human Services released the Dietary Guidelines for Americans (DGA) 2020-2025 first to include recommendations for infants and toddlers, as well as pregnant and breastfeeding women.

- USDA FNS noted that links to both the 2020-2025 DGA and NASEM's report were included in a handout provided to consultation attendees.

Revisions to the WIC Food Packages Proposed Rule

- USDA FNS is developing a proposed rule to amend regulations governing the WIC food packages to incorporate recommendations from NASEM's 2017 report and the 2020-2025 DGA.
- These revisions are intended to ensure the WIC food packages are based on the most recent nutritional science while providing increased flexibilities, variety, and choice for participants.
- FNS anticipates publication as early as spring 2022 (tentative timeframe), with an opportunity for public comment.

b. Dialogue – Comments & Questions Received

During the meeting, Tribal leaders and representatives, and/or Program representatives, expressed general support for the proposed rule and shared additional comments.

- One Tribal and/or Program representative expressed support for a permanent cash-value benefit (CVB) increase to introduce healthy, nutrient dense foods at a young age; delay onset of chronic disease in Indian Country; and address poverty impacts. The individual urged USDA to publish the proposed rule as quickly as possible to positively impact Tribal communities, with no interruption to the increased CVB (currently provided under a Continuing Resolution through the end of Q2 of FY 2022).
- The representative emphasized the need for increased calcium given prevalence of lactose intolerance in Native American communities (e.g., calcium fortified orange juice).
- The same representative cited historical, sub-optimal diets and the need for traditional foods (e.g., salmon in Alaska) across Tribes, based on geographic location.
- The same individual also emphasized the need to support establishing a separate category of seafood in addition to legumes and nut butters, based on traditional eating patterns, including fresh and frozen fish and seafood, as well as canned salmon and tuna. The attendee requested expanded access to canned fish beyond pregnant and breastfeeding women, as well as to fresh and frozen fish, given the health benefits seafood offers. The attendee did not support the inclusion of farmed fish, only wild.
- The representative also expressed support for Tribal and local vendors/producers. The attendee believes in utilizing Tribal and local vendors, and building Tribal/local capacity to address health disparities in impacted areas.
- Another Tribal and/or Program representative expressed support for eliminating juice in its entirety and replacing it with the CVB. The attendee emphasized that some participants in her area do not like canned fish, and proposed flexibility to customize food packages, including for food allergies. The individual cited the need for more detail on the draft proposed rule in order to provide more detailed comments.

- USDA FNS shared that it will provide ample time for public comment on the proposed rule provisions. Additionally, USDA recommend that she take a look at the NASEM report, which provides recommendations in detail (linked in handout).
- A Tribal leader expressed the need for traditional foods, as an extension of the Food Distribution Program on Indian Reservations (FDPIR). The Tribal leader provided that the need for nutritious, traditional foods varies by area (e.g., blue corn meal, fish, buffalo, and wild rice). The individual mentioned that many individuals face diabetes, and that nutritious, traditional foods provide a good opportunity to address that.
- A Program (Indian Tribal Organization) representative expressed the need to increase the value of the WIC food package overall and emphasized how meaningful the recent increase to the CVB has been. The attendee expressed concern over the timing of the rule and the need to continue the CVB increase without interruption.
 - USDA FNS recognized the need to move as quickly as possible in rulemaking, and acknowledged the authority for the recent increase the CVB came from Congress.
- A Tribal and/or Program representative re-emphasized the importance of equity, and the need for local choice and locally-sourced foods.
- A Tribal and/or Program representative emphasized Tribal food sovereignty and the different cultural and traditional food needs across the country, and asked whether the State agencies will have flexibility once the rules change to work together on the food packages available locally.
 - USDA FNS emphasized that these revisions are intended to ensure the WIC food packages are based on the most recent nutrition science while providing increased flexibility, variety, and choice for participants. WIC State agencies, including ITOs, currently have the flexibility to authorize the foods that work for them within overarching Federal regulations.

IV. Additional WIC Items for Discussion Posed by Tribal Leaders – Comments & Questions Received

a. Dialogue – Comments & Questions Received

- One Tribal leader mentioned an issue with eligibility based on the receipt of certain payments, and potential confusion on what income must be excluded in WIC income eligibility determinations.
 - USDA FNS referred the Tribal leader to the appropriate FNS Regional Office for technical assistance and will offer to assist the Regional Office as well.
- A Tribal leader expressed concern about counting unemployment assistance payments in WIC income eligibility determinations.
 - USDA FNS recognized the Tribal leader’s concerns.
- Another Tribal and/or Program representative asked when public comments would be due.

- USDA FNS emphasized that the proposed rule, once published, will provide instructions and the timeframe for accepting comments and FNS will amplify that message to Program stakeholders.
- A Tribal and/or Program representative expressed frustration around Program requirements related to the budget being on a fiscal year basis versus the Program being on a calendar year basis, asserting hourly staff reporting has become onerous.
 - USDA FNS referred the issue to the FNS Regional Office for further assistance and offered to assist the Regional Office as needed as it provides technical assistance.

V. Timeframes/Next Steps – Cindy Long, Administrator

- For both proposed rules, USDA FNS anticipates publication as early as the spring of 2022.
- This is a *tentative* timeframe, subject to change.
- Once published, both rules will provide instructions related to the opportunity for the public to comment on the proposed provisions.
- USDA looks forward to the public's input on these two proposed rules, which will inform the final rules that follow.
- In each final rule, USDA FNS will provide an effective date for implementation. Those dates are not available yet, as the analysis of proposed rule public comments, rule drafting and clearance take time.

VI. Closing Prayer – Tribal Leader – Executive Director Gilbert Vigil, Eight Northern Indian Pueblos Council, Inc.; and former Governor of Tesuque Pueblo.

VII. Adjourn

Enclosure – Registrants in Addition to Individuals
Introduced During Tribal Consultation Call

**Enclosure – Registrants in Addition to
Individuals Introduced During Tribal
Consultation Call**

<u>Last Name</u>	<u>First Name</u>
Acosta	Samantha
Allen	Darrell
Baker	Melissa
Baker	Laren
Bakshi	Hitesh
Beatty	Shelly
Benton-Davis	Sandra
Blondin	Kelly
Brown	Claire
Brown	Michaeleen
Bunner	Katura
Clark	Sandra
Clark	Lauren
Clark	Veronica
Contreras	Sheryl
Culbertson	Kay
Curley	Cal
Damaso	Joseph
Denson	Iva
Dewey	Mary
Diego	Christina
English	Tim
Finch	Alicia
Fong	Amy
French	Greg
Frieder	Julie
Fulton	Carol
Gamble	Cindy
Gasco-Bentley	Regina
Griego-Kite	Karen
Haake	Melanie
Hankins	Sanda
Harris	Jeffrey
Hazard	JoAnna
Huff	Laura
Hymes	Melanie
Jimerson	Dolores

John Jr.	Lehigh
Jossefides	Mindy
Kalauli	Jennie
Karlstrum	Daniel
Keith	Nickole
Kennedy	Cheryl
Klos	Sara
Kouri	M
Krueger	Scott
Lambert	Kim
Lankster	Leslie
Larson	Kiley
Lola	Kim
Lopez	Barbara
Lowe	Vicki
Lucero	Shelby
Lucero	Esther
Majka	Kathleen
Moreno	Tina
Morris	Michele
Nagy	Jennifer
Newport	Melinda
Nguyen	Jimmy
Oldenbourg	Helena Rose
Olmstead	Jan
Parker	Erin
Post	Allison
Ramos	Jaime
Romero	Ysabell
Ross	Royleen
Ruggieri	Christine
Sanchez	Lavina
Schnakenburg	Alexei
Scott	Marilyn
Siow	Jackie
Swanaset	Leinani
Taylor	Manon
Throne	Paul
Tingook	Janelle
Tucker	Amanda
Van Lieu	Jaime
Vicks	Virginie
Walker	LaShonda

Warwick-Thier	Brandy
Watanabe	Libby
Widor	Sarah
Wilson	Tyrik
Young	Kathy