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An Agricultural Law Research Article

**Separating Food from Culture: The USDA's Failure to  
Help Its Culturally Diverse WIC Population**

by

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# SEPARATING FOOD FROM CULTURE: THE USDA’S FAILURE TO HELP ITS CULTURALLY DIVERSE WIC POPULATION

*Brandi M. King*

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## I. INTRODUCTION

The WIC Program is a federal program that was designed to increase the health of the general public by giving funds to needy people for specific foods. Over time, it appears the WIC Program is failing some of its intended beneficiaries, particularly those whose ethnic classification is not Caucasian. The WIC Program has been criticized for ignoring the food needs and uses of ethnic minorities by including in the approved foods list only foods that are normally used by “Americans” or immigrants who have been “Americanized.” This Note will give a brief overview of the WIC Program, including approved foods. It will also discuss foods preferred by different ethnic groups, the process for approving a cultural food substitution, why the process does not work, and what can and should be done to improve the WIC Program’s policy regarding culturally appropriate foods.

## II. BACKGROUND OF THE WIC PROGRAM

The Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC” or “WIC Program”) was established as part of the Child Nutrition

Act of 1966.<sup>1</sup> The program was established after Congress found that pregnant, postpartum, and breastfeeding women, as well as children and infants from low income families were more likely to suffer from adverse health effects as a result of inadequate nutrition or health care.<sup>2</sup> The WIC Program is a public health program, and like all public health programs it focuses on good health and prevention of disease, and works to protect large populations.<sup>3</sup> WIC was designed to be supplemental to other federal programs, such as the Food Stamp Program, and was intended to contribute to good health during critical times of development, thus eliminating problems such as substance abuse and birth defects.<sup>4</sup> It is worthwhile to note that "WIC is not an entitlement program as Congress does not set aside funds to allow every eligible individual to participate in the program. WIC is a federal grant program for which Congress authorizes a specific amount of funds each year for the program."<sup>5</sup>

The WIC Program is administered by the Food and Nutrition Service of the United States Department of Agriculture ("USDA") and operates in all "50 states and the District of Columbia, through 33 Indian tribal organizations, and in Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of Puerto Rico."<sup>6</sup> These 88 entities administer the program through approximately 1,846 local WIC agencies, which are public or nonprofit health or human services agencies.<sup>7</sup> Nearly forty-five percent of all babies born in the United States are eligible for WIC benefits.<sup>8</sup> Approximately 7.5 million participants were expected to receive benefits during federal fiscal year 2000.<sup>9</sup> Forty percent of WIC participants do not participate in any other federally funded programs, such as the Food Stamp Program or the Family Investment Program.<sup>10</sup> Also, legal immigrants to the United States can receive WIC benefits without becoming public charges,<sup>11</sup> which would jeopardize their immigration status and possibly subject them to deportation.<sup>12</sup>

1. See 7 C.F.R. § 246.1 (2000).

2. See *id.*

3. See Barry R. Bloom, *The Wrong Rights*, NEWSWEEK, Oct. 11, 1999, at 92.

4. See 7 C.F.R. § 246.1 (2000).

5. *Program Basics: WIC at a Glance* (visited Jan. 12, 2000) <<http://www.fns.usda.gov/wic/CONTENT/Glance/basic.htm>>.

6. U.S. GENERAL ACCOUNTING OFFICE, GAO/RCED-99-224, EFFORTS TO CONTROL FRAUD AND ABUSE IN THE WIC PROGRAM CAN BE STRENGTHENED 4 (1999) (hereinafter "EFFORTS TO CONTROL FRAUD").

7. See *id.* at 4, 5.

8. See U.S. Department of Agriculture, *Women, Infants, and Children: Frequently Asked Questions* (visited Jan. 12, 2000) <<http://www.fns.usda.gov/wic/menu/faq/faq.htm>> (hereinafter "Frequently Asked Questions").

9. See S. REP. NO. 106-80, at 109 (1999).

10. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL BRIEF 1 (1995).

11. "Public charge" means an alien who is or is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense." IMMIGRATION AND

In order to be certified as eligible to participate in the WIC Program, infants, children, and pregnant, postpartum, or breastfeeding women must reside within the jurisdiction state from which they are seeking benefits,<sup>13</sup> must meet the income criteria established by the USDA,<sup>14</sup> and must be found to be at nutritional risk by a medical professional.<sup>15</sup> Two types of nutritional risk are recognized for WIC eligibility: medically based risks (for example, anemia, obesity, maternal age, history of pregnancy complication, poor pregnancy outcomes) and diet-based risks due to poor eating habits.<sup>16</sup>

The USDA typically provides food benefits to eligible participants via the use of vouchers, coupons, checks, electronic benefits transfer cards, or other documents, collectively referred to as "food instruments."<sup>17</sup> Food instruments are redeemable only at retail outlets authorized by the state agency.<sup>18</sup> In addition, the types and quantity of food, otherwise known as the food package, a particular participant can receive are also dictated by these food instruments.<sup>19</sup> The food package is tailored to the individual needs of the participant by a dietitian after a nutrition consultation.<sup>20</sup>

NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, FACT SHEET: PUBLIC CHARGE, *available in* <[http://www.ins.usdoj.gov/graphics/publicaffairs/factsheets/public\\_cfs.htm](http://www.ins.usdoj.gov/graphics/publicaffairs/factsheets/public_cfs.htm)>. "An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry." *Id.*

12. *See id.*

13. *See* 7 C.F.R. § 246.7(c)(1) (2000). In order to participate in WIC, the person need not be a United States citizen, he or she need only reside in one of the states or territories where the WIC Program is administered. *See id.* This is because WIC is not seen as an entitlement program like other programs such as the Food Stamp Program. *See id.* § 246.1. Rather, WIC is a public health program that is supplemental in nature. *See id.* WIC has been explicitly excluded by recent welfare reform statutes that only allow benefits to bona fide citizens of the United States. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 § 402, 8 U.S.C. § 1612 (Supp. V. 1999). To be eligible for WIC, potential participants need only show that they are residing in the state, thus a utility bill, rent or mortgage receipt, or bank statement showing the applicant's address can be used to meet the residency requirement. *See* IOWA DEP'T OF PUBLIC HEALTH, WIC CERTIFICATION POLICY & PROCEDURE MANUAL §§ 215.41, 215.50 (rev. Nov. 1, 2000). Also, states may not use length of residency as a requirement for eligibility. *See* 7 C.F.R. § 246.7(c)(1) (2000).

14. *See* 7 C.F.R. §§ 246.7(c)(2), 246.7(d) (2000). The income guidelines may not exceed those set for reduced-price school meals under section 9 of the National School Lunch Act and cannot be less than 100 percent of the poverty income guidelines issued annually by the Department of Health and Human Services. *See id.* § 246.7(d)(1). Also, if a person is a participant in the Food Stamp Program, the Family Investment Program (formerly, Aid to Families with Dependent Children), or Medicaid, that person will be automatically eligible for WIC. *See id.* § 246.7(d)(2)(vi)(A).

15. *See id.* §§ 246.7(c)(3), 246.7(e).

16. *See Frequently Asked Questions, supra* note 8.

17. *See* 7 C.F.R. § 246.2 (2000).

18. *See* EFFORTS TO CONTROL FRAUD, *supra* note 6, at 4.

19. *See id.*

20. *See* 7 C.F.R. § 246.10(b) (2000).

Generally, WIC has been shown to be especially cost-effective and particularly successful in improving the health and nutritional status of its participants.<sup>21</sup> Studies have found that average birth weights of infants born to mothers who were WIC participants were significantly higher than birth weights of infants of non-WIC participants,<sup>22</sup> and that WIC participation during pregnancy was significantly associated with longer pregnancy duration and lower frequency of premature delivery.<sup>23</sup> Studies have also found that women who were WIC participants had twenty-five percent fewer low birth weight<sup>24</sup> infants than demographically similar women who were not WIC participants.<sup>25</sup> WIC participation has also been associated with decreased prevalence of anemia in infants and toddlers.<sup>26</sup> In general, the United States government has concluded that WIC is a cost-effective public health program because for every dollar spent, between \$2.89 and \$3.50 in medical costs was saved during the first 18 years of life.<sup>27</sup>

### III. AN OVERVIEW OF CURRENTLY APPROVED FOODS

There are only certain foods that are approved by the USDA for inclusion in any food package.<sup>28</sup> Currently, the only foods a participant may receive are infant formula, infant and adult cereal, infant and adult juices, milk, domestic cheese, eggs (or dried egg mix), certain legumes, peanut butter, tuna, and carrots.<sup>29</sup> However, if a participant has special health care needs due to medical or developmental conditions, such as metabolic disorders, gastrointestinal disorders, severe food allergies, or a wired jaw,<sup>30</sup> other foods such as toddler formula and modular components can be prescribed.<sup>31</sup> The list of approved foods is so short because from the outset, WIC was designed to be a supplemental program that was not designed to provide a

21. See *id.* at 32,408.

22. See Anita L. Owen & George M. Owen, *Twenty Years of WIC: A Review of Some Effects of the Program*, 97 J. AM. DIETETIC ASS'N 777, 779 (1997) (citing Kennedy et al., *Evaluation of the Effect of WIC Supplemental Feeding on Birth Weight*, 80 J. AM. DIETETIC ASS'N 220 (1982)).

23. See *id.* (citing Rush et al., *Review of Past Studies of WIC*, 48 AM. J. OF CLINICAL NUTRITION 394 (1988)).

24. Infants are diagnosed with suffering from low birth weight if they weigh less than 2.500 grams, or 5.5 pounds, at birth. See *id.*

25. See Sheila Avruch & Alicia Puente Cackley, *Savings Achieved by Giving WIC Benefits to Women Prenatally*, 110 PUB. HEALTH REP. 27, 32 (1995).

26. See Owen & Owen, *supra* note 22, at 781 (citing Yip et al., *Declining Prevalence of Anemia Among Low-Income Children in the United States*, 258 J. AM. MED. ASS'N 1619 (1987)).

27. See U.S. GENERAL ACCOUNTING OFFICE, GAO/HRD-92-18, *EARLY INTERVENTION: FEDERAL INVESTMENTS LIKE WIC CAN PRODUCE SAVINGS* 29 (1992).

28. See *id.*

29. See *id.*

30. See IOWA DEP'T OF PUBLIC HEALTH, *WIC CERTIFICATION POLICY & PROCEDURE MANUAL* § 215.06 (rev. Oct. 1, 1997).

31. See *id.* § 235.55 (rev. Oct. 1, 1999).

complete diet.<sup>32</sup> Rather, Congress identified nutrients traditionally lacking in the diets of the WIC population, specifically, iron, calcium, protein, vitamin A, and vitamin C, and then left it up to the USDA to find and approve foods that were good sources of those nutrients.<sup>33</sup>

In Iowa,<sup>34</sup> the list of WIC-approved foods is relatively short. It includes low fat, reduced-fat, or fat-free milk; natural cheeses; certain types and brands of orange, apple, grape, grapefruit, and blended juices; certain brands of infant and adult cereal; and eggs, specific legumes, peanut butter, tuna, and raw carrots.<sup>35</sup> Additionally, there are many types of infant formula that can be purchased with WIC funds.<sup>36</sup>

The foods approved for inclusion in the WIC food packages were chosen mainly based on the nutrients they contained.<sup>37</sup> However, there were also other considerations taken into account by the USDA, specifically, cost, practicality, administrative feasibility, and food package flexibility.<sup>38</sup>

#### IV. FOOD PREFERENCES OF DIFFERENT CULTURAL GROUPS

As stated before, the foods chosen by the USDA for inclusion in the approved foods list were based primarily on their nutrient content.<sup>39</sup> However, what Congress did not take into account is that "people want more from food than nutrients."<sup>40</sup> The WIC Program has also been criticized for not providing culturally diverse Americans with foods they can use.<sup>41</sup> So what do people who were not raised on fast food and TV dinners eat?

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32. See Accommodation of Cultural Food Preferences in the WIC Program, 59 Fed. Reg. 32,406, 32,407 (1994).

33. See *id.*

34. Because of federal regulations, the list of approved foods does not vary greatly from state to state. The list of approved foods in Iowa will be used as an example in this paper.

35. See IOWA DEP'T OF PUBLIC HEALTH, WIC APPROVED FOODS FLYER (2000-2001) (on file with author).

36. See IOWA DEP'T OF PUBLIC HEALTH, WIC PATH MANUAL § 900.05 (rev. Oct. 1, 1999).

37. See Accommodation of Cultural Food Preferences in the WIC Program, 59 Fed. Reg. 32,406, 32,407 (1994).

38. See *id.* at 32,409.

39. See *id.* at 32,407.

40. DIANE VEALE JONES & MARY E. DARLING, ETHNIC FOODWAYS IN MINNESOTA: HANDBOOK OF FOOD AND WELLNESS ACROSS CULTURES (1996) (tabbed section entitled "Meanings of Food" at 1).

41. See generally NAT'L ASS'N OF WIC DIRECTORS, NAWD WIC FOOD PRESCRIPTION RECOMMENDATIONS (1999) (stating that state WIC programs should be allowed the flexibility to offer culturally appropriate foods that can be readily assimilated into eating patterns).

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### A. *Native Americans*

Studies show that Native Americans tend to have a high incidence of lactose intolerance, and therefore milk products are not widely used in their traditional diet.<sup>42</sup> However, some groups may use powdered milk or evaporated milk in coffee, cereal and other baked goods.<sup>43</sup> Native Americans have also assimilated processed breads and cereals into their diets, although the traditional diet consisted of corn and wild rice.<sup>44</sup> Although meats have been widely valued in Native American society for their health benefits, beans, especially kidney, navy, and pinto beans, have also been an important source of dietary protein.<sup>45</sup> Fruits and vegetables have always been a staple in the Native American diet.<sup>46</sup>

### B. *Mexicans*

As with Native Americans, lactose intolerance among Mexicans is high, thus making use of dairy products relatively rare among people of this ethnic group.<sup>47</sup> Vegetables are the main protein source for rural inhabitants and the urban poor, and most meat is mixed with vegetables or cereals in the infrequent times that it is consumed.<sup>48</sup> Eggs and some legumes were common foods in the past, although beans are eaten less frequently today.<sup>49</sup> Corn and rice are staples throughout most Mexican regions, and the principal bread is the tortilla.<sup>50</sup> Fruits and vegetables continue to remain popular, while recently there has been an increase in the consumption of processed breakfast cereals.<sup>51</sup> Studies of low-income Latinos and Mexican migrant workers in the United States, however, show that most prefer traditional foods for the majority of their meals.<sup>52</sup>

### C. *Caribbean Islanders*

Caribbean Islanders also use very little milk in their diets, although use increases in those who move to the United States.<sup>53</sup> The traditional Caribbean diet

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42. See PAMELA GOYAN KITTLER & KATHRYN P. SUCHER, CULTURAL FOODS: TRADITIONS AND TRENDS 70-71 (2000).

43. See *id.*

44. See *id.*

45. See *id.*

45. See *id.*

46. See *id.*

47. See *id.* at 200-01.

48. See *id.*

49. See *id.*

50. See *id.*

51. See *id.*

52. See *id.* at 207.

53. See *id.* at 220-21.

primarily includes rice and legumes, which are high in vegetable protein.<sup>54</sup> Eggs are also a common source of protein, particularly among the poor.<sup>55</sup> Cassava<sup>56</sup> bread is popular, as is short-grain rice.<sup>57</sup> Processed cereals, however, do not seem to have a place in the diets of Caribbean immigrants.<sup>58</sup> Starchy fruits and vegetables such as bananas, gooseberries, cabbage, potatoes, and squash are usually consumed on a daily basis.<sup>59</sup> Today, immigrants to the United States tend to stick to their traditional diets.<sup>60</sup>

#### D. *Asians*

Dairy products are not normally consumed or used in cooking in most Asian cultures, although adaptation to the American lifestyle has made dairy products more popular.<sup>61</sup> Traditional sources of calcium in Asian cultures include tofu, soybean products, and small bony fish.<sup>62</sup> The major source of protein usually comes from all sorts of meats, poultry, and fish, while rice is the most important component of most Asian diets.<sup>63</sup> A wide variety of fresh fruits and vegetables are also common.<sup>64</sup>

#### E. *Asian Indians*

The traditional adult Asian Indian diet is devoid of milk, which is primarily used as a beverage for children, although cheese and ice cream are popular among immigrants to the United States.<sup>65</sup> Due mainly to religious beliefs, a large number of Asian Indians are vegetarians, thus the primary source of protein is beans, peas, and legumes.<sup>66</sup> However, non-vegetarians may consume beef, goat, pork, chicken, fish, and a variety of other meats depending on their beliefs.<sup>67</sup> Rice is considered a staple in the diet, as are unleavened breads.<sup>68</sup> Fruits and vegetables are also common foods.<sup>69</sup>

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54. *See id.*

55. *See id.*

56. Cassava is a starchy tuber similar to a potato and is an important food staple in many non-American countries. *See id.* at 236.

57. *See id.* at 220-21.

58. *See id.*

59. *See id.*

60. *See id.*

61. *See id.* at 252-53, 270-71, 282-83.

62. *See id.* at 252-53, 270-71.

63. *See id.*

64. *See id.*

65. *See id.* at 372-73.

66. *See id.* at 371-73.

67. *See id.* at 371.

68. *See id.* at 372-373.

69. *See id.*

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## V. USDA POLICY REGARDING CULTURAL FOOD SUBSTITUTIONS

In 1975, Congress first mandated to the USDA that it take cultural eating patterns into account in administering the WIC Program<sup>70</sup> and later directed the agency to permit cultural food adjustments.<sup>71</sup> Surprisingly, the USDA only has three criteria that must be met in order for a traditionally non-approved food to be substituted for an approved food for cultural reasons:

- (i) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.
- (ii) The proposed substitute must be widely available to participants in the areas where the substitute is intended to be used.
- (iii) The cost of the substitute must be equivalent to or less than the cost of the food it is intended to replace.<sup>72</sup>

At first glance, these criteria seem pretty easy to meet. In reality, this is not true because individual states are not allowed to make the decision whether a certain food meets the above criteria. Instead, when a state decides there is a need for a cultural food substitution, it is required to write up a proposal that must be approved by a USDA regional office.<sup>73</sup> If the regional office approves the proposal, it will be forwarded to USDA headquarters for approval.<sup>74</sup> Both the regional office and headquarters must give approval before a cultural food substitution will be allowed.<sup>75</sup> In order to be accepted for evaluation by one of the USDA's regional offices, the proposal must contain the state's justification for the substitution, including a specific explanation of the cultural eating pattern that requires the substitution, and all technical support and research required to show that the three criteria from section 246.10(e)(2) of the *Code of Federal Regulations* are met.<sup>76</sup>

The stringent standards set by the USDA have made it virtually impossible for a state to have a cultural food substitution approved. In a 1994 edition of the *Federal Register*, the USDA admitted that only one cultural food substitution had been allowed between 1980 and 1994.<sup>77</sup> The USDA defended itself on multiple grounds. First, it stated that only three state agencies had submitted proposals to it

70. See Child Nutrition Act Amendments of 1975, Pub. L. 94-105, 89 Stat. 511 (1975).

71. See Child Nutrition Act Amendments of 1978, Pub. L. 95-627, 92 Stat. 3603 (1978).

72. 7 C.F.R. §246.10(e)(2) (2000).

73. See Memorandum MPSF:WC-98-16-P from the Mountain Plains Regional Office of the Food and Consumer Service of the USDA to All WIC State Agencies 5 (on file with author) (hereinafter "Memorandum MPSF: WC-98-16-P").

74. See *id.*

75. See 7 C.F.R. § 246.10(e)(4) (2000).

76. See *id.* § 246.10(e)(1). See also Memorandum MPSF:WC-98-16-P, *supra* note 73, at 5.

77. See Accommodation of Cultural Food Preferences in the WIC Program, 59 Fed. Reg. 32,406, 32,410 (1994).

for approval between 1980 and 1994.<sup>78</sup> The agency also asserted that in order to maintain the nutritional integrity of the WIC food package, only foods that “effectively and economically supply those nutrients critical to growth and development and which are lacking in the diets of the WIC-eligible population” could be approved for inclusion.<sup>79</sup> The USDA went on to maintain that some “culturally appealing” foods that had been informally suggested for inclusion in the WIC food package, such as tofu, yogurt, and rice, would not be nutritionally close enough to milk and cereal to justify their inclusion.<sup>80</sup> The USDA cited a number of problems with tofu, including the insufficient amount of calcium contained in it and no guarantee that it would be bacteria-free due to the lack of FDA regulation over the product.<sup>81</sup> The USDA conceded that yogurt is nutritionally comparable to milk, but then mentioned that because many yogurts are flavored, they tend to have added sugar.<sup>82</sup> Rice was attacked for not containing enough iron or other target WIC nutrients.<sup>83</sup>

While researching this paper, I contacted a number of people in various state WIC offices to ask about their experiences with cultural food substitutions. Again and again, I ran into state WIC administrators frustrated with the USDA’s current rules. For instance, a respondent from the Massachusetts WIC Program indicated that the state had never applied for a cultural food substitution because it had not been able to meet all of the USDA’s requirements.<sup>84</sup> Specifically, Massachusetts WIC administrators cited three main reasons for not following through: (1) the inability to pinpoint exactly how many participants would be interested in a food substitution, which would lead to an inaccurate cost analysis; (2) the inability to find an exact nutritional equivalent for approved foods; and (3) vendor management and

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78. *See id.* The first proposal, received in 1980, asked for the substitution of soy formula or powdered milk for fluid whole milk for Southeast Asians; this substitution was approved. *See id.* The second proposal, submitted in 1988, asked the USDA to allow a substitution of rice and tofu for cereal and milk to accommodate the food habits of Hispanics and Southeast Asians. *See id.* In response to this proposal, the USDA requested additional documentation from the state agency, stating that the nutritional equivalency of the proposed foods was a concern. *See id.* When the USDA received no response from the state agency, it presumed that the state had withdrawn its proposal. *See id.* The third proposal, sent to the USDA in 1988, asked for the addition of potatoes as a WIC food in order to accommodate a dominant eating pattern among Eskimos. *See id.* The USDA rejected the third proposal for three reasons, stating that it allowed only substitutions, and not additions to the approved foods list, that potatoes did not supply the required amounts of target nutrients, and that fruit juices could be used to replace some servings of fruits and vegetables lacking in the traditional Eskimo diet. *See id.*

79. *Id.*

80. *See id.*

81. *See id.*

82. *See id.*

83. *See id.*

84. *See* E-mail message from Jan Kallio, Massachusetts WIC Program, to Brandi King (Nov. 21, 1999) (on file with author).

administrative issues.<sup>85</sup> The frustration of not being able to meet the requirements led one responder to say, "I do not feel that I have served our participants as fully as I could."<sup>86</sup> As a result of my research, I believe the main reason so few states apply for a cultural food substitution is not that they do not have a need for such substitutions, but rather because the regulations are just too onerous.

## VI. SUPPORT FOR CHANGING USDA REGULATIONS

In the early 1990s, groups began to express disapproval about the foods permitted by the USDA for use in the WIC Program.<sup>87</sup> There was also a push for more tolerance for cultural food preferences. In a 1991 memorandum to Catherine Bertini, the Assistant Secretary for Food and Consumer Services, the National Association of WIC Directors ("NAWD")<sup>88</sup> urged the USDA to amend regulations to allow WIC food packages to be tailored to fit the needs of different ethnic groups.<sup>89</sup> In 1992, the USDA's own National Advisory Council on Maternal, Infant, and Fetal Nutrition recommended that "USDA develop policy and guidance on WIC food package options, including possible food substitutions, that would better accommodate food preferences of the culturally diverse populations that WIC serves."<sup>90</sup> The Council "strongly encouraged" the USDA to:

1. Obtain information from the state WIC agencies on the current cultural food preferences of WIC participants.<sup>91</sup>
2. Convene a culturally diverse task force knowledgeable of the WIC population's life style, health and nutrition status, and eating habits.<sup>92</sup>
3. Request Standards of Identity be established for possible food substitutes that do not currently have an identity.<sup>93</sup>

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85. *See id.*

86. *Id.*

87. *See, e.g., Food Packages for the WIC Program*, 91 J. AM. DIETETIC ASS'N 293 (1991) (suggesting that "some improvements can and should be made" to the WIC food package); Memorandum from National Association of WIC Directors to Catherine A. Bertini, Assistant Secretary of Agriculture for Food and Consumer Services, USDA, August 30, 1991 (on file with author) (presenting NAWD's recommendations for changes to the WIC food package).

88. NAWD is an organization of the WIC directors in every U.S. state, territory, and Indian Tribal Nation. *See NAT'L ASS'N OF WIC DIRECTORS, supra* note 41, at 2.

89. *See* Memorandum from National Association of WIC Directors to Catherine A. Bertini, Assistant Secretary of Agriculture for Food and Consumer Services, USDA 2, August 30, 1991 (on file with author).

90. NAT'L ADVISORY COUNCIL ON MATERNAL, INFANT, & FETAL NUTRITION, FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., 1992 BIENNIAL REPORT ON THE SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN AND ON THE COMMODITY SUPPLEMENTAL FOOD PROGRAM 14 (1991).

91. *See id.* at 15.

92. *See id.*

As a response, in 1994 the USDA called for public comments regarding issues related to accommodation of cultural food preferences.<sup>94</sup> The USDA purported to want information concerning cultural food habits, as well as ways to deal with an increasingly diverse population.<sup>95</sup> Four years later, the USDA issued a memorandum to all state WIC agencies laying out its answer to the cultural food accommodation problem. In that memo, the USDA indicated that 7 C.F.R. section 246.10(e) “should be interpreted broadly to encompass food or eating patterns that do not include currently authorized WIC foods.”<sup>96</sup> In a later memo, the USDA basically admitted that it is not meeting the needs of all its participants when it stated, “As WIC continues to provide benefits to an increasingly diverse population, it has become a challenge to provide quality services to participants with a wide variety of backgrounds and cultures.”<sup>97</sup> Thus, the USDA is obviously aware of the problem, but what has it actually done to alleviate it?

Although the USDA purported to make it easier for states to be granted cultural food substitutions, there seems to have been no change in policy, and criticism regarding the USDA continues to exist. For example, in 1998, the USDA’s Center for Nutrition Policy and Promotion was directed to review WIC approved foods.<sup>98</sup> In a parallel move, NAWD decided to conduct its own independent study. NAWD offered a number of recommendations for changes to the WIC food package.<sup>99</sup>

Some members of Congress have also encouraged the USDA to expand the list of approved foods. As Senator Stevens noted during a congressional debate on the WIC food package, “[the WIC Program] provide[s] women and their children with a very limited range of food options.”<sup>100</sup> Senator Feinstein may have summed up the issue best when she stated:

Our goal, quite simply, should be to promote a healthy diet for all Americans. USDA nutrition policy should consider the totality of U.S. eating habits and aim for consumer education and program implementation that deals with a person’s overall diet rather than one burdened by requirements attached in a piecemeal fashion. It is unfortunate that the grip

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93. See *id.*

94. See Accommodation of Cultural Food Preferences in the WIC Program, 59 Fed. Reg. 32,406, 32,406 (1994).

95. See *id.* at 32,407.

96. Memorandum MPSF:WC-98-16-P, *supra* note 73, at 3.

97. Memorandum MPSF:WC-99-04-I from the Mountain Plains Regional Office of the Food and Consumer Service of the USDA to All WIC State Agencies 1 (on file with author).

98. See NAT’L ASS’N OF WIC DIRECTORS, *supra* note 41, at 1. The Center for Nutrition Policy and Promotion’s recommendations were not yet available at the time this Note was written.

99. See *id.* at 3-6.

100. 145 CONG. REC. S10,201-01 (daily ed. August 4, 1999) (statement of Sen. Stevens).

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of political consideration has taken hold of a matter best left to nutritionists and those trained in the science of public health.<sup>101</sup>

## VII. WHY USDA POLICY SHOULD BE CHANGED

The USDA must change its policy and come into the 21<sup>st</sup> century. WIC was established in the 1970s, and the food packages were based on dietary information from the 1940s and 50s.<sup>102</sup> Most of the information was based on young, white males, and was then extrapolated to apply to the total population.<sup>103</sup> Dietary information has changed since then and there is now a different understanding of what is considered healthy.<sup>104</sup> For instance, dietitians now recognize the fact that lactose intolerance is widespread among the world's population, affecting nearly eighty-five percent of adults.<sup>105</sup> Furthermore, the food models that WIC food packages are based on do not adequately account for cultural food preferences and food taboos recognized by cultural minorities.<sup>106</sup>

Another factor to consider is that the WIC population has become exceedingly diverse since the program was founded.<sup>107</sup> Nearly one-half of WIC participants today are from culturally diverse groups.<sup>108</sup> People from Latino nations, the Mid-East, Southeast Asia, and the Pacific Islands are all part of today's WIC population,<sup>109</sup> and they all have different eating patterns. As a result, the regulations must be changed in order to reflect this diversity.

There are also social policy reasons for changing the WIC regulations. Minority immigrants face tough enough problems when they move to the United States. For instance, in 1996, California voters passed a referendum that bans racial preferences by the government, and in 1998, the state of Washington followed suit.<sup>110</sup> Faced with such discriminatory behavior from the outset, immigrants who find

101. 145 CONG. REC. S12,405-02 (daily ed. Oct. 12, 1999) (statement of Sen. Feinstein).

102. See Sharon L. Stowers, *Development of a Culturally Appropriate Food Guide for Pregnant Caribbean Immigrants in the United States*, 92 J. AM. DIETETIC ASS'N 331, 332 (1992).

103. See Kathryn P. Sucher & Pamela Goyan Kittler, *Nutrition Isn't Color Blind*, 91 J. AM. DIETETIC ASS'N 297, 297 (1991).

104. See Stowers, *supra* note 102, at 332.

105. See KITTLE & SUCHER, *supra* note 42, at 16. After World War II, the U.S. supplied powdered milk to many developing nations. See *id.* Widespread reports of stomachaches, gas, bloating, and diarrhea were attributed to the recipients not properly diluting the powdered milk or mixing it with dirty water. See *id.* It was not until 1965 that scientists discovered most of the adverse symptoms were due to widespread lactose intolerance among non-Americans. See *id.* This is just one example of how some arrogant Americans believe that what is good for them must be good for everybody.

106. See Stowers, *supra* note 102, at 332.

107. See EFFORTS TO CONTROL FRAUD, *supra* note 6, at 14.

108. See *id.*

109. See *id.*

110. See George F. Will, *Let's Play 20 Questions*, NEWSWEEK, Mar. 15, 1999, at 86, 86.

themselves in need of assistance from WIC should not also be forced to completely overhaul their eating habits. Many times, their traditional eating patterns will be the only thing to remind them of their homes and ancestral roots once they come to live in America.

The USDA is also wasting money by forcing WIC participants to spend WIC dollars on foods that they are allergic to, that they may not know how to prepare, or that their cultural upbringing has taught them an aversion to. What the USDA does not seem to recognize is that "the WIC food prescription must have 'personal value' to participants for it to be fully utilized."<sup>111</sup>

A recent study published in the *Journal of the American Dietetic Association* showed that Chinese immigrants who come to rely on WIC after moving to the United States rarely consume some of the foods given to them in their WIC packages, especially cheese.<sup>112</sup> The most common reasons these participants gave for not consuming all the foods available to them were "dislike of the taste" and "does not fit in my everyday diet pattern."<sup>113</sup> Responding to food preferences and food traditions is essential for effective and equal access to WIC services. In addition, the USDA must recognize the simple fact that dietary practices are very unlikely to be altered during pregnancy and lactation.<sup>114</sup> If pregnant and lactating WIC participants will not consume the current WIC foods, then the USDA must find new foods that will be consumed in order to help this needy segment of our population.

### VIII. RECOMMENDATIONS FOR THE USDA

States are given an impossible task with the current WIC regulations and policies. Policies claim to allow a broad interpretation of the regulations, yet the regulations continue to require in-depth proposals before a cultural food substitution will be considered.<sup>115</sup> Proposals require states to submit research and technical information regarding not only nutritional content of the proposed food substitution, but also cost containment and neutrality, administrative feasibility, and equal access to the substituted food.<sup>116</sup> This adds up to a tremendous amount of work that state WIC offices may not have the staff or the money to conduct.

To address current WIC problems, the states must be given the power to decide whether or not the substitution "makes sense" and is administratively possible. State WIC personnel should not be forced to justify a cultural food

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111. NAT'L ASS'N OF WIC DIRECTORS, *supra* note 41, at 18.

112. See Lynn Janas Horswill & Christine Yap, *Consumption of Foods from the WIC Food Packages of Chinese Prenatal Patients on the US West Coast*, 99 J. AM. DIETETIC ASS'N 1549, 1551 (1999).

113. *Id.*

114. See NAT'L ASS'N OF WIC DIRECTORS, *supra* note 41, at 18.

115. See Memorandum MPSF:WC-98-16-P, *supra* note 73, at 5-6.

116. See *id.*

substitution to the USDA in an in-depth proposal when those state personnel have the best perspective to determine whether such a substitution would work. The USDA should change its regulations and give state WIC offices the autonomy they deserve.

NAWD is the premier association of dietitians and WIC Directors, composed of WIC personnel from all over the country.<sup>117</sup> NAWD has made a number of recommendations related to nutritional aspects of WIC food packages. NAWD recommends that a national food preference survey of WIC participants be conducted in order to identify foods that are most readily accepted by different ethnic groups.<sup>118</sup> Another of its recommendations is to “allow States the flexibility to offer regionally or locally available, culturally appropriate foods that are affordable and can be assimilated into dietary patterns contributing to life-long health.”<sup>119</sup> As part of this general recommendation, NAWD encourages the USDA to “offer foods that reflect the cultural dietary consumption patterns of the participants served” and “allow for variety and versatility in a way that can be easily incorporated into the regular dietary pattern.”<sup>120</sup> Due to lactose intolerance and aversion to milk products in many ethnic groups, NAWD recommends that alternative sources of calcium-rich foods, such as tofu, yogurt, or calcium-fortified juices, should be allowed.<sup>121</sup> Ultimately, NAWD stresses that WIC foods should be chosen not based on their *individual* nutrients, but how they can be incorporated into a diet that is rich in *all* essential nutrients.<sup>122</sup>

In the era of decreased WIC funding, there may be an argument that NAWD’s food package recommendations are too expensive to be implemented. However, by properly tailoring the food package, money can actually be saved. The following table shows how current WIC food dollars are spent.

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117. See *NAWD Mission Statement* (visited Feb. 27, 2001) ,<http://www.wicdirectors.org/home>>.

118. See NAT’L ASS’N OF WIC DIRECTORS, *supra* note 41, at 5.

119. *Id.* at 4.

120. *Id.* at 4-5.

121. See *id.* at 16.

122. See *id.* at 6.

Table 1: Post-Rebate<sup>123</sup> WIC Food Costs (1997)<sup>124</sup>

Food Category	Percent	Food Costs (millions)
Milk	30.69	863.9
Juice	14.99	422.1
Adult Cereal	13.73	386.4
Cheese	12.80	360.2
Eggs	4.62	130.0
Peanut Butter	1.34	37.8
Infant Cereal	.91	25.7
Beans	.76	21.5
Formula	20.16	567.6

As the table shows, when formula is not considered, milk and juice are the two largest categories of food expenditures. NAWD and the American Dietetic Association (“ADA”) have both stated that the current WIC food packages contain too much milk and juice.<sup>125</sup> By cutting back on those food groups, there would be additional funds for cultural food substitutions.

Also, there has been a major movement in the USDA to control fraud and abuse in the WIC Program.<sup>126</sup> The USDA recently passed new regulations to strengthen the rules relating to vendor fraud and abuse.<sup>127</sup> With further reductions in money lost to fraud, there will be more money available for other uses, including making accommodations for cultural food preferences.

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123. Rebates refer to infant formula rebates that are offered to the WIC Program by formula manufacturers, such as Ross Pharmaceuticals and Mead Johnson Nutritionals. Because rebates are paid back to the states, the final cost per category is accurately reflected by looking at post-rebate expenditures. Infant formula rebates save the WIC Program nearly 1.3 billion dollars each year. See Memorandum MPSF:WC-99-05-1 from the Mountain Plains Regional Office of the Food and Consumer Service of the USDA to All WIC State Agencies (on file with author).

124. See *id.*

125. See NAT’L ASS’N OF WIC DIRECTORS, *supra* note 41, at 4; *Food Packages for the WIC Program*, 91 J. AM. DIETETIC ASS’N 293, 293 (1991)

126. See EFFORTS TO CONTROL FRAUD, *supra* note 6, at 18-20.

127. See 7 C.F.R. § 246.12 (2000); 65 Fed. Reg. 83,248, 83,248 (2000) (to be codified at 7 C.F.R. pt. 246).



## IX. BENEFITS OF ALLOWING CULTURAL FOOD SUBSTITUTIONS

The USDA seems to ignore one simple maxim in regulating the WIC Program: it is impossible to separate someone's food habits from their culture.<sup>128</sup> Often people outside a given cultural group find it difficult to understand and accept the food practices of the group.<sup>129</sup> For instance, the traditional Greek Eastern Orthodox post-Lenten meal consists of red-dyed Easter eggs and *mayeritsa*, a soup made of the internal organs of a lamb.<sup>130</sup> Many Westerners would no doubt find such a meal both unappealing and bizarre. The USDA must realize that many new arrivals to the United States feel the same way toward typical American eating habits. WIC participants often feel forced into Western food patterns that may not be as healthy as their own eating patterns.<sup>131</sup> There is also evidence indicating that pregnant women may not be consuming all the WIC foods purchased by them.<sup>132</sup> This is probably due to the fact that dietary practices are very unlikely to be altered during pregnancy and lactation.<sup>133</sup> As a result, the USDA should change its policy regarding the food package for culturally diverse WIC participants in order to decrease the likelihood of cultural conflicts, thus increasing the chance that the WIC foods will be consumed. WIC was meant to help the general public health of the nation; its intended effects will not be realized unless the foods it provides are actually consumed.

In addition, dietitians are quick to point out that traditional food habits are not only closely linked to cultural identity, they are also usually not unhealthy.<sup>134</sup> Food Guide Pyramids have been developed for Asian, Hispanic, and Mediterranean cultures, and they all promote daily consumption of fruits, vegetables, and legumes as the core components of the diet.<sup>135</sup> The USDA cannot argue that such food choices are unhealthy.

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128. See JONES & DARLING, *supra* note 40 (tabbed section entitled "Food and Culture" at 1).

129. See *id.*

130. See KITTLER & SUCHER, *supra* note 42, at 355.

131. See NAT'L ASS'N OF WIC DIRECTORS, *supra* note 41, at 11. It cannot be doubted that the U.S. population is sorely in need of a more healthy diet. The top killers in the U.S. are heart disease, cancer, and stroke, all of which are caused in part by the unhealthy American diet. See Barry R. Bloom, *The Wrong Rights*, NEWSWEEK, Oct. 11, 1999, at 92. Furthermore, 50.7% of women and 59.4% of men are overweight. See Karen Springer, *Making Calories Count*, NEWSWEEK SPECIAL EDITION: HEALTH FOR LIFE, Spring/Summer 1999, at 88, 89. Obesity contributes to a wide variety of illnesses, including heart disease, infertility, diabetes, and many cancers. See *id.* To combat the American obesity problem, \$33 billion worth of weight-control products and services are sold in this country every year. See *id.*

132. See CTR. FOR NUTRITION POL'Y AND PROMOTION, U.S. DEP'T OF AGRIC., REVIEW OF THE NUTRITIONAL STATUS OF WIC PARTICIPANTS ES-14 (1999). See also Horswill & Yap, *supra* note 112, at 1551 (showing that some pregnant WIC participants do not consume many of the foods in their WIC packages, especially cheese, peanut butter, and hot cereal).

133. See NAT'L ASS'N OF WIC DIRECTORS, *supra* note 41, at 18.

134. See Sucher & Kittler, *supra* note 103, at 297.

135. See NAT'L ASS'N OF WIC DIRECTORS, *supra* note 41, at 12.

There is also evidence that adverse effects can result from changing an ethnic diet to fit into Western cultural patterns.<sup>136</sup> For instance, researchers have found that the prevalence of diabetes and obesity increased significantly in Alaska Natives once they adopted more Western eating patterns.<sup>137</sup> Other studies show that Caribbean immigrants who enroll in WIC do not receive comprehensive, culturally appropriate nutrition counseling, and that American food models are biased and do not accommodate food habits of Caribbean immigrants.<sup>138</sup> By sticking with culturally appropriate diets, the purpose of the WIC Program—to promote the nutritional integrity of the nation—can be achieved.

#### X. CONCLUSION

The USDA regulations regarding cultural food substitutions are overly restrictive, out of date, and do not reflect the changing face of WIC participants. The USDA needs to take the advice of members of Congress, professional dietitians, and committees of its own employees and update the regulations. The regulations must be relaxed to accommodate the food preferences and requirements of the different cultures that comprise the WIC population. In addition, the states must be given the flexibility to decide what is best for its residents. The USDA must step up and start helping *all* the people who require its services, not just the ones that seem to be easiest to help because of their cultural similarities to administrators of the USDA. It must recognize that when it comes to food, one size does *not* fit all: "Nutrition is ultimately unequal. The needs of one client are not necessarily those of another and may be affected by ethnicity, religious affiliation, or socioeconomic status."<sup>139</sup>

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136. See Sucher & Kittler, *supra* note 103, at 297.

137. See Neil J. Murphy, et al., *Dietary Change and Obesity Associated with Glucose Intolerance in Alaska Natives*, 95 J. AM. DIETETIC ASS'N 676, 679-80 (1995).

138. See Stowers, *supra* note 102, at 331.

139. Sucher & Kittler, *supra* note 103, at 298.

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