

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 22, 2002

Honorable Robert Zimmerman, Jr., Secretary
Department of Health
802 Health and Welfare Building
Harrisburg, PA 17108

Re: Regulation #10-169 (IRRC #2289)
Department of Health
Supplemental Nutrition Program for Women, Infants & Children

Dear Secretary Zimmerman:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: Honorable George T. Kenney, Jr., Majority Chairman, House Health and Human Services Committee

Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee

Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee

Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee

Nia Wilson, Legal Counsel, House Health and Human Services Committee

Stanley Mitchell, Chief Counsel, House Health and Human Services Committee

Comments of the Independent Regulatory Review Commission

on

Department of Health Regulation No. 10-169

Supplemental Nutrition Program for Women, Infants and Children

November 22, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Health (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 1103.4. Selection criteria for authorization and reauthorization. - Clarity.

Subsection (5) states "the maximum allowable prices for allowable foods" will be published in the *Pennsylvania Bulletin* each quarter. Some stores, such as smaller independent stores, may not have ready access to the *Pennsylvania Bulletin*, or would have to monitor the *Pennsylvania Bulletin* for this information to maintain compliance. This notice could be provided more directly. In addition to the *Pennsylvania Bulletin* publication, the Department could state this information will also be available on the Department's website along with its website address. Alternatively, notice along with prices could be sent directly to authorized stores.

2. Section 1107.1a. Disqualification. - Reasonableness; Clarity.

This section contains provisions for store disqualification. The United States Department of Agriculture recommends that the phrase, "two or more instances of" be included in Sections 1107.1a(d)(2), (5), (6), (11) and (12). The Department should add this phrase or explain why it is not necessary.

3. General - Fiscal Impact; Reasonableness.

A commentator believes the cost and savings projected for this regulation do not properly reflect a hardship on Nutritional Services and Administration funds. In the Preamble to the final-form regulation, the Department should further explain the fiscal impact of the new regulation.

INDEPENDENT REGULATORY REVIEW COMMISSION

To: Kenneth E. Brody, Regulatory Coordinator
Agency: Department of Health
Phone: 3-2500
Fax: 5-6042, 3-3794 or 2-6959

From: Kristine M. Shomper
Administrative Officer
Company: Independent Regulatory Review
Commission
Phone: 3-5419 or 3-5417
Fax: 3-2664

Date: November 22, 2002
of Pages: 3

NOV 22 2002
K. M. SHOMPER
ADMINISTRATIVE OFFICER
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Health Department's regulation #10-169 (IRRC #2289). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Kenneth E. Brody Date: 11/22/02