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PHONE: (717) 783-5
FAX: (717) 783-2
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 29, 2008

Honorable Calvin B. Johnson, M.D., M.P.H., Secretary
Department of Health
802 Health and Welfare Building
Harrisburg, PA 17108

Re: Regulation #10-180 (IRRC #2718)
Department of Health
Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

Dear Secretary Johnson:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Ted B. Erickson, Chairman, Senate Public Health and Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee
Honorable Frank L. Oliver, Majority Chairman, House Health and Human Services Committee
Honorable George T. Kenney, Jr., Minority Chairman, House Health and Human Services Committee

Comments of the Independent Regulatory Review Commission



Department of Health Regulation #10-180 (IRRC #2718)

Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

October 29, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the August 30, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Health (Department) to respond to all comments received from us or any other source.

1. Section 1101.2. Definitions. - Implementation procedures; Clarity.

Peer group and Store peer group system

According to the Preamble, the inclusion of these definitions will allow the Department to implement “Federally-mandated cost containment measures,” yet the regulation does not explain what these measures entail. The final-form regulation should explain this phrase.

Also, the definition for “peer group” refers to “criteria selected by the Department,” and the definition for “store peer group system” refers to “common characteristics” or “criteria that affect food prices.” For both terms, the final-form regulation should provide examples of such criteria and characteristics.

2. Section 1103.1. Authorization and reauthorization process and requirements. - Reasonableness; Implementation procedures; Clarity.

Subsections (b)(5) and (c)(2) refer to “any information necessary” for the Department to determine whether the store qualifies as an above-50-percent-store. The same phrase is used in Subsection 1105.6(h). This phrase is vague and the final-form regulation should provide examples of the relevant “information” needed.

Subsection (d)(7) states that if the Department does not receive from the store the information requested to determine if the store qualifies as an above-50-percent-store within 20 calendar days, then the Department will terminate a store's authorization or reauthorization. How did the Department determine this was an appropriate timeframe?

3. Section 1103.4. Selection criteria for authorization and reauthorization. - Reasonableness.

Under Paragraph (15), the Department will provide notice by September 15 of minimum technology requirements for the following calendar year. Given that the magnitude of the technology change is not known, does notice by September 15 allow a store sufficient time to purchase, test and implement the new technology in all circumstances?

4. Section 1103.8. Store peer group system. - Clarity.

Subsection (b) states that the Department will create peer groups "based upon at least two criteria selected by the Department...." This subsection lists a measure of geography as one criterion, but it does not explain the second. The final-form regulation should explain both criteria.

5. Section 1107.1a. Disqualifications. - Implementation procedures.

For how long must a store violate this section before it will be subject to a one year disqualification? Will the store receive notice of the violation and be given an opportunity to cure it before it is disqualified? What happens after the one year period ends? How does the store become "re-authorized"? The final-form regulation should address these issues.

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Facsimile Cover Sheet

Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

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

To: Jalene Kolb
Regulatory Coordinator
Agency: Department of Health
Phone: 3-2500
Fax: 5-6042, 3-3794 or 2-6959
Date: October 29, 2008
Pages: 4

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REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Health Department's regulation #10-180 (IRRC #2718). 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:

Date:

10/29/08