The Honorable Thomas Vilsack  
Secretary of Agriculture  
U.S. Department of Agriculture  
Jamie L. Whitten Federal Building  
1400 Independence Avenue S.W.  
Washington D.C. 20250

Re: Request for Waiver to Permit New York to Exclude Sweetened Beverages from the List of Foods that May be Purchased with SNAP Benefits

Dear Secretary Vilsack:

The Center for Science in the Public Interest urges you to approve New York State’s proposal to conduct a two-year demonstration project in New York City that would remove sugar-sweetened beverages from the list of products eligible for purchase with Supplemental Nutrition Assistance Program (SNAP) benefits.

There is no question that the empty calories in soft drinks pose a major public health problem by promoting tooth decay, obesity, diabetes, and other problems that have a disproportionate impact on low-income Americans. The proposed demonstration project would examine the extent to which purchases of soft drinks by SNAP recipients are contributing to poor diets and obesity. Permitting New York to exclude sugar-sweetened beverages from the list of products eligible for SNAP benefits in New York City would provide USDA and Congress with data needed to make an informed decision concerning the advisability of restricting funding for foods of “minimal nutritional value,” such as sweetened beverages. Such a real-life experiment would also provide information on the reaction of SNAP recipients to the restriction.

Approving New York’s waiver request would be consistent with the recommendations of the Dietary Guidelines for Americans 2005, the Report of the Advisory Committee on the Dietary Guidelines for 2010 and restrictions in nutrition programs administered by USDA. For example, the Dietary Guidelines, co-authored by USDA, repeatedly emphasizes the value of limiting the consumption of soft drinks. The Guidelines state: “Choose and prepare foods and beverages with little added sugars or caloric sweeteners, such as amounts suggested by the USDA Food Guide and the DASH Eating Plan.”

most added sugar per serving of any food or beverage.\textsuperscript{2} And Appendix A3 suggests the very limited amounts of added sugars that fit into a nutritious diet.\textsuperscript{3} Moreover, the 2010 Report of the Dietary Advisory Committee discourages the use of sugar-sweetened beverages by children “because of the positive association with increased adiposity; and . . . the need to replace empty calories with nutrient-rich energy for optimal growth and development.”\textsuperscript{4}

The WIC program specifically excludes from the list of eligible foods fruit drinks, flavored ades, sodas, and other beverages that are not 100 percent juice.\textsuperscript{5} Similarly, the National School Lunch Program prohibits schools from offering foods of “minimal nutritional value,” such as carbonated beverages, during a meal service period in the areas where reimbursable meals are served or eaten.\textsuperscript{6}

USDA has previously recognized the need for data of this nature. In 2007, USDA issued a paper entitled “Implications of Restricting the Use of Food Stamp Benefits.”\textsuperscript{7} Significantly, in that discussion USDA concluded that: “There is no way to know – other than through carefully designed and evaluated pilot tests – to what extent the proposed restriction would have the desired effect of reducing purchases of foods with limited nutritional value.”\textsuperscript{8} New York should be given the opportunity to test and evaluate such an approach and generate real data.

New York’s request for a temporary waiver varies significantly from a prior request. On March 8, 2004, the state of Minnesota submitted a request for a permanent waiver of the definition of “food” set forth at 7 C.F.R. § 771.2 of the Food Stamp Regulations to enable it to prohibit the use of food stamps to purchase candy and soft drinks that are taxed under State law. USDA denied the waiver on May 4, 2004, on the grounds, \textit{inter alia}, that the waiver is inconsistent with § 272.3 of its regulations that sets forth Requirements for Participating State Agencies. That section, which prohibits waivers that are inconsistent with the provisions of the Act, is not applicable here.

\textsuperscript{2} \textit{Id.} at 38.

\textsuperscript{3} \textit{Id.} at 55.


\textsuperscript{5} USDA, Food and Nutrition Service, \textit{WIC Food Packages-Regulatory Requirements for WIC-Eligible Foods}, available at \url{www.fns.usda.gov/wic/benefitsandservices/foodpkgregs.HTM}.


\textsuperscript{7} USDA, Food and Nutrition Service (Mar. 1, 2007), available at \url{http://www.fns.usda.gov/ora/menu/Published/snapFILES/ProgramOperations/FSPFoodRestrictions.pdf}.

\textsuperscript{8} \textit{Id.} at 5.
New York's proposal is made pursuant to an entirely different section of the law and regulations, Part 282, which governs Demonstration, Research and Evaluation Projects. That section, which parallels § 2026(B) (1) (A) of the statute, provides that the USDA “may waive all or part of the requirements of the Act and implementing regulations necessary to conduct such projects.” Thus, the logic that led USDA to deny Minnesota’s request is inapplicable – indeed, the differences between the two requests militate in favor of approving the New York request.

Therefore, USDA should grant a temporary exception to the definition of “food” so that New York can determine whether restrictions on the use of SNAP benefits impact the purchase and consumption of sweetened beverages among low-income populations. Granting the waiver will provide USDA with data it has long needed and help resolve the controversy over whether additional purchase restrictions should apply to SNAP benefits.

Sincerely,

Michael F. Jacobson, Ph.D.
Executive Director

Ilene Ringel Heller
Associate Director of Legal Affairs

cc: The Honorable Kevin Concannon
Undersecretary of Agriculture for
Food, Nutrition and Consumer Services