

**Significant Legislative Rule Analysis**  
**WAC 246-790,**  
**a Rule Concerning**  
**Special Supplemental Nutrition Program for**  
**Women, Infants, and Children (WIC)**  
**June 6, 2014**

**Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.**

This proposed rule amends chapter 246-790 WAC requirements that regulate the department's food delivery system within the WIC program. The proposal will assure support for the operation of the WIC Nutrition Program, assist in re-contracting with our retail partners, and maximize agency options for determining participant access and applying sanctions. Proposed changes will allow for necessary clarifications and consistency with CFR and FNS rules and directives, including expanding the proposed definition of "full line grocery store", updating definitions, and including a sanction table. Although the Code of Regulations 7 CFR 246 describes the WIC program's purpose and scope in great detail, there are operational areas where the state has discretion. This will also provide a solid foundation for WIC modernization, including fulfilling federal directives to implement an Electronic Benefit Transfer system for WIC.

**Is a Significant Analysis required for this rule?**

Significant Analysis is required for this rule. The department is completing this analysis in an effort to examine the impact the rule change could have on government contractors.

**Clearly state in detail the general goals and specific objectives of the statute that the rule implements.**

RCW 43.70.120 Federal programs authorizes that the department shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. The objective of the statute is to clarify baseline expectations of food vendors that choose to apply for WIC authorization. Because not every food vendor is qualified for WIC authorization, it is critical that the statute have enforceable metrics and clarity when determining whether or not applicant vendors meet the minimum qualifications upon application. The Vendor Selection Criteria has been updated to provide specific metrics to the minimum quantities of non-WIC approved foods to fulfill the definition of a "full line grocer." The United States Department of Agriculture mandated in 2013 that the definition of "full line grocer" must include enforceable metrics and more clearly explain the parameters between a "full line grocer" and a non-"full line grocer."

**Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.**

The department determined that the rule is needed to achieve the goals and objectives following a federal mandate that the definition of a “full line grocer” be expanded and clarified to more clearly communicate to all applicants and contractors the specific metrics upon which they will be assessed during both the application and contract periods. Consequences of not adopting the rule include violating a federal mandate, confusion regarding what types of stores WIC will authorize in Washington State, and increased legal costs related to appeals. Additionally, the added benefit of updating definitions and clarifying statements continue to improve the consistent experience of a WIC client being provided goods by a WIC authorized grocery store.

**Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.**

The department facilitates a WIC retailer advisory committee. The committee has representatives from the Washington Food Industry Association, and retailers representing a wide range of both size and types of retailers (see Appendix 1 – Full list of Peer Groups). The department created a draft rule and forwarded the draft to the retailer advisory committee in March for review and comment. The committee submitted comments and met with program staff to recommend changes to the draft rules. The department incorporated many of the committees’ recommendations. To further gauge the potential impact of the proposed rules on WIC authorized vendors, the department elected to survey existing WIC contractors.

The WIC program consists of the 225 contractors representing approximately 800 individual grocery stores and supermarket chains. Contractors range in size from 1-4 cash registers, which are designated as “Peer Group 1” stores, to stores with more than 25 cash registers, designated as “Peer Group 5” stores. In May 2014, the department sent all 225 contractors an Opinion survey request via email with a response window of 10 days. Eighty-seven respondents submitted responses, representing a (87/225, which represents a) 38.6% response rate. This included 51 respondents from Peer Group 1, which are retailers with 1-4 cash registers. The table 1 below represents a high level summary of the results of the survey.

The department used the survey to get input from retailers on the potential impact of proposed changes to what constitutes a “full line grocery store.” This includes four main components. The first is the minimum number of items (e.g., cans, packages, gallons of milk) for the existing required food categories. The second component is a minimum number of fresh or perishable items. The third component is having at least five linear feet of refrigerated shelf space for produce. The fourth component is having a cash register on premises that is capable of printing receipts.

An overwhelming percentage of respondents indicated that the proposed criteria would have no economic impact on their business operations. There was, however, a small percentage that did indicate that they would incur at least some cost to comply with the rule. The survey also asks

respondents to include cost estimates if they determine that they will incur additional costs. The responders did not provide many cost estimates. The table below includes a summary of the survey results. The complete survey results are attached as Appendix 2.

**Table 1 – Summary of Survey Responses**

#	Potential cost category	Will impact operations?	Estimated impact <sup>1</sup>
1	20 varieties <sup>2</sup> of canned food	Yes: 3/77 (3.9%) No: 74/77 (96.1%)	Did not receive cost estimates from survey takers
2	10 varieties of frozen food	Yes: 2/77 (2.6%) No: 75/77 (97.4 %)	One cost estimate: \$500.00
3	10 varieties of dairy products	Yes: 2/77 (2.6%) No: 75/77 (97.4%)	Did not receive cost estimates from survey takers
4	6 varieties of meat	Yes: 4/77 (5.19%) No: 73/77 (94.81%)	Two cost estimates: \$60.00 \$100.00
5	20 varieties of fresh fruit and vegetables	Yes: 2/76 (2.63%) No: 74/76 (97.37%)	Did not receive cost estimates from survey takers
6	10 varieties of bread and tortilla products	Yes: 6/76 (7.89%) No: 70/76 (92.11%)	Did not receive cost estimates from survey takers
7	10 varieties of whole grains	Yes: 1/76 (1.32%) No: 75/76 (98.68%)	One cost estimate: \$200.00
8	10 varieties of baby products	Yes: 3/76 (3.95%)	Did not receive cost estimates from survey

<sup>1</sup> The department assumption is that these are up-front costs to be recouped by the retailer upon the sale of the item(s).

<sup>2</sup> The department defines variety as a collection of similar, but not identical, foods and products. This may include different brands, sizes and flavors of similar foods and products.

		No: 73/76 (96.05%)	takers
9	10 varieties of household cleaners	Yes: 2/76 (2.63%) No: 74/76 (97.37%)	Did not receive cost estimates from survey takers
10	20 varieties of health care products	Yes: 6/76 (7.89%) No: 70/76 (92.11%)	Did not receive cost estimates from survey takers
11	Incur additional spoilage of perishable items per week	Yes: 6/73 (8.22%) No: 52/73 (71.23%) Don't know: 15/73 (20.55%)	Four cost estimates: \$ 90.00 \$120.00-180.00 \$90.00 \$ 50.00-100.00
12	Five linear feet of refrigerated display for produce	Yes: 4/73 (5.48%) No: 69/73 (94.52%)	Did not receive cost estimates from survey takers.  Department obtained costs for five linear feet of refrigerated unit, the price ranged from \$1,806 - \$3,124
13	At least one cash register capable of printing receipts	Yes: 9/73 (12.33%) No: 64/73 (87.67%)	Nine respondents indicated that they will need to purchase at least one cash machine to be in compliance. Of these nine respondents, some indicated that they would elect to purchase more than the one register required by the department.  Department obtained costs for one cash register, the price ranged from \$169 -

			\$372.79
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Based on stakeholder responses captured in the table above, the department’s assumption is that the rule will not impact a large majority of authorized vendors. A small percentage of vendors indicated that they would have costs associated with compliance with this rule (including the cost of losing perishable items and purchasing additional equipment). If an applicant vendor cannot comply with the rule, but fulfill a participant access need as determined by the department, they may apply for an exception to the selection criteria as outlined in chapter 246-790 WAC. Based on the results of the survey as a whole, the benefits of vendors clearly understanding expectations of stock levels and equipment, coupled with the assurance that WIC clients have a consistent shopping opportunity to select healthy foods and products from an authorized vendor, outweigh the cost of compliance captured in the table above. Therefore, the total probable benefits exceed the total probable cost.

**Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.**

Alternative versions of the rule were considered, including possibly adopting other states’ metrics concerning full line grocers. (Georgia, for example, requires a minimum of 100 varieties of certain items while Washington elected to propose only having 10 varieties.) Because this kind of metric had not been used previously in Washington, the department has decided to begin with very low-level requirements that Retail Management program staff have anecdotally determined would be easily achieved, if not already in place. The department expects that continued stakeholdering efforts and vendor observation will confirm that the proposed metrics are reasonable.

**Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.**

The rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

**Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.**

The rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law. This rule applies only to applicant vendors and contractors who elect to apply and contract with the WIC program.

**Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.**

The rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

**Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.**

The rule is consistent with the Code of Federal Regulations and was coordinated using federal law as a guideline. Additionally, the changes proposed are the result of a federal mandate to make clear the program expectations of applicant vendors in Washington State.

# Appendix 1

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## Special Supplemental Nutrition Program for Women, Infant and Children (WIC)

### WIC Authorized Vendor Peer Groups in Washington State

<b>Peer Group 1</b>	<b>1-4 Cash Registers</b>
<b>Peer Group 2</b>	<b>5-10 Cash Registers</b>
<b>Peer Group 3</b>	<b>11-16 Cash Registers</b>
<b>Peer Group 4</b>	<b>17-24 Cash Registers</b>
<b>Peer Group 5</b>	<b>25 or more Cash Registers</b>
<b>Peer Group 6</b>	<b>Tribal Owned Stores</b>
<b>Peer Group 7</b>	<b>Military Stores</b>
<b>Peer Group 8</b>	<b>(No Peer Group 8)</b>
<b>Peer Group 9</b>	<b>Island Stores</b>

## Comment report

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*Lists all the questions in the survey and displays all the comments made to these questions, if applicable.*

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## Report info

**Report date:**

Tuesday, June 10, 2014 1:39:26 PM PDT

**Start date:**

Wednesday, May 7, 2014 10:43:00 AM PDT

**Stop date:**

Sunday, June 8, 2014 11:59:00 PM PDT

**Stored responses:**

94

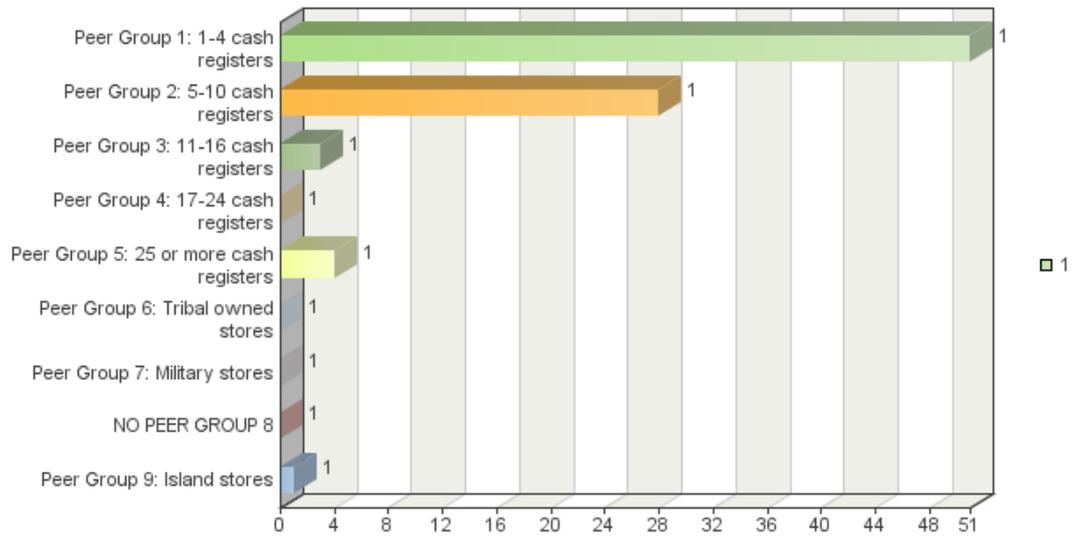
**Number of completed responses:**

73

# Question 1

Please indicate your peer group or the number of cash registers in your store. My store is in (check the appropriate row below):

## Levels



	1	Sum
<b>Peer Group 1: 1-4 cash registers</b>	51 100% 58.62%	51 100% 58.62%
<b>Peer Group 2: 5-10 cash registers</b>	28 100% 32.18%	28 100% 32.18%
<b>Peer Group 3: 11-16 cash registers</b>	3 100% 3.45%	3 100% 3.45%
<b>Peer Group 4: 17-24 cash registers</b>	0 0% 0%	0 0% 0%
<b>Peer Group 5: 25 or more cash registers</b>	4 100% 4.6%	4 100% 4.6%
<b>Peer Group 6: Tribal owned stores</b>	0 0% 0%	0 0% 0%
<b>Peer Group 7: Military stores</b>	0 0% 0%	0 0% 0%
<b>NO PEER GROUP 8</b>		0 0% 0%
<b>Peer Group 9: Island stores</b>	1 100% 1.15%	1 100% 1.15%
<b>Sum</b>	87 -	87 -

\*Sequence of numbers in a cell

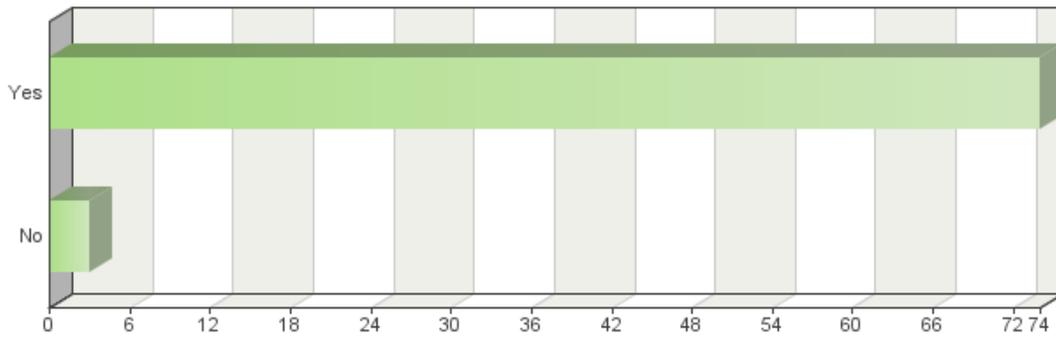
Absolute frequency

Relative frequency row

Relative frequency

## Question 2

My store stocks at least 20 varieties of canned foods.



**Frequency table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	74	78.72%	96.1%
No	3	3.19%	3.9%
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-
<b>Total answered: 77</b>			

Text input

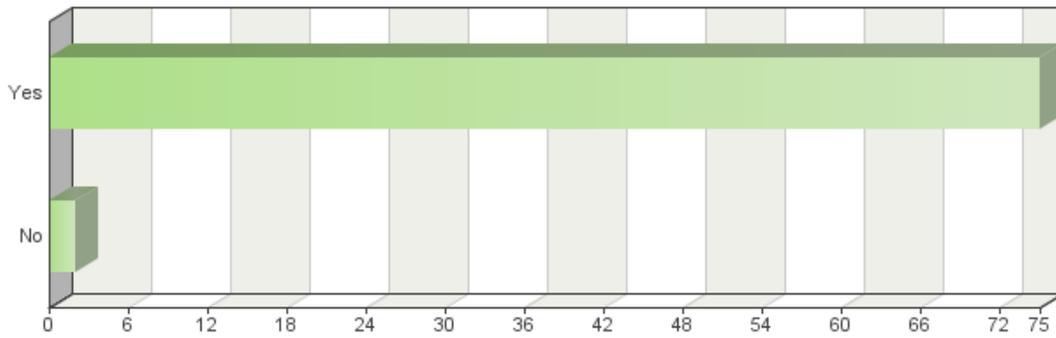
canned beans,vegetable, chili,sauce, dates.

7

We do not stock 20 varieties of canned. We have less than ten varieties of canned foods and drinks altogether.

### Question 3

My store stocks at least 10 varieties of frozen foods.



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	75	79.79%	97.4%
No	2	2.13%	2.6%
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

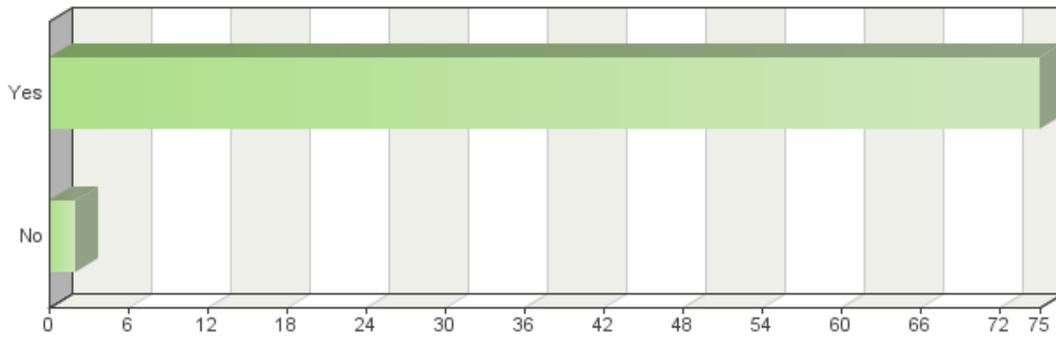
500.00

hot dog, chicken parties, gyro bread and green vegetable.

only Frozen fruits and vegetables.

## Question 4

My store stocks at least 10 varieties of dairy products.



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	75	79.79%	97.4%
No	2	2.13%	2.6%
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

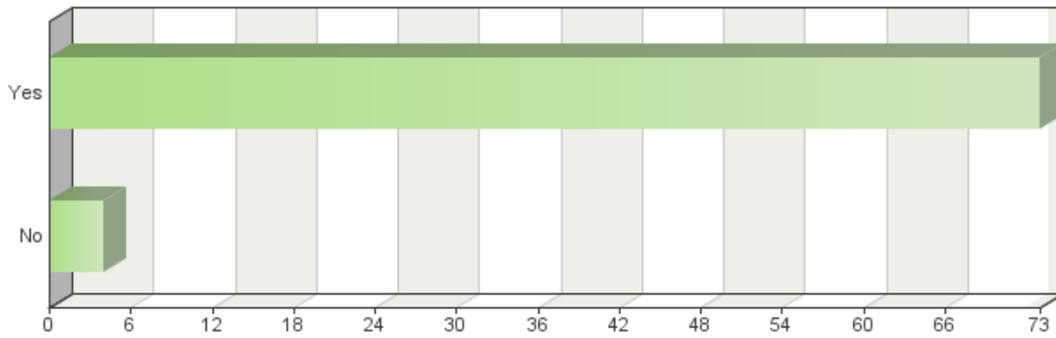
yogurt, cream cheese

6

we stock at least one case of yogurt or whipped cream or sour cream.

## Question 5

My store stocks at least 6 varieties of fresh and frozen meats.



**Frequency table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	73	77.66%	94.81%
No	4	4.26%	5.19%
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

hot dog, chicken parties, gyro bread, goat meat, chicken legs, chicken breast.

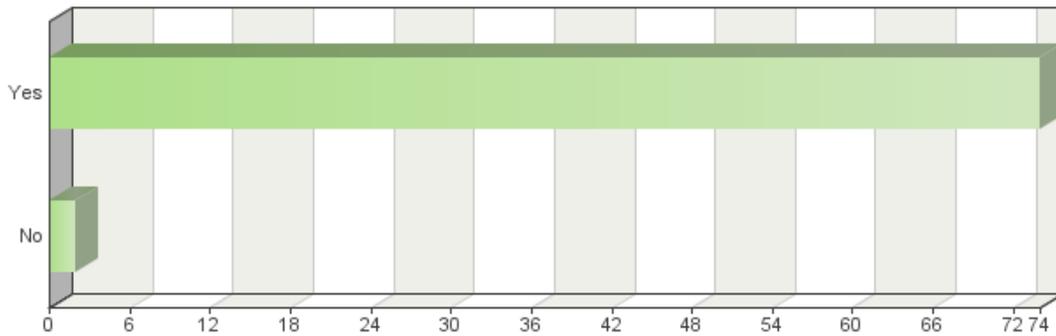
2 varieties cost \$60

Goat, lamb, beef, tigh and breast chicken, chicken drums, tilapia and salmon fishes

Stock 3 Cost \$100.00 +/-

## Question 6

My store stocks at least 20 varieties of fresh fruits and vegetables.



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	74	78.72%	97.37%
No	2	2.13%	2.63%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

Text input

banana, apple, tomato, onion, cabbage, green peper, orange,mango, lettuce,lemon.

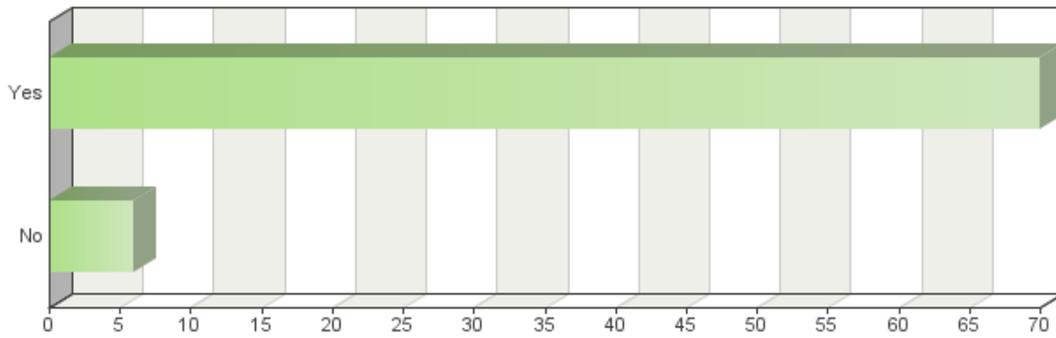
10 total varieties based on seasonal availability

We stock fresh fruits include: banana,mango, lemons, limes, strawberries etc.

Vegetables: Lettuce, onions, tomatoes, garlic, cucumber, green peppers, hot peppers etc

## Question 7

My store stocks at least 10 varieties of breads and tortillas.



**Frequency table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	70	74.47%	92.11%
No	6	6.38%	7.89%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

Text input

100% wheat sliced bread, flour bread.

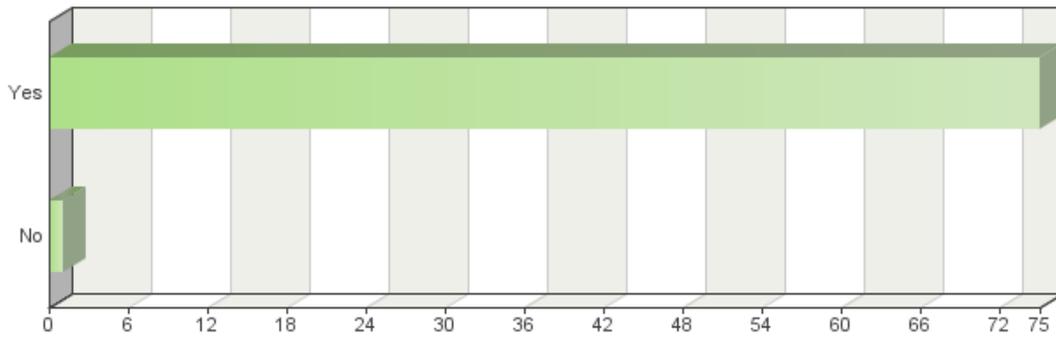
only 1 brand of whole wheat bread. and some tortillas.

6

We carry at least three types sliced bread and three types of tortillas.

## Question 8

My store stocks at least 10 varieties of grains, pasta and dried beans.



**Frequency table**

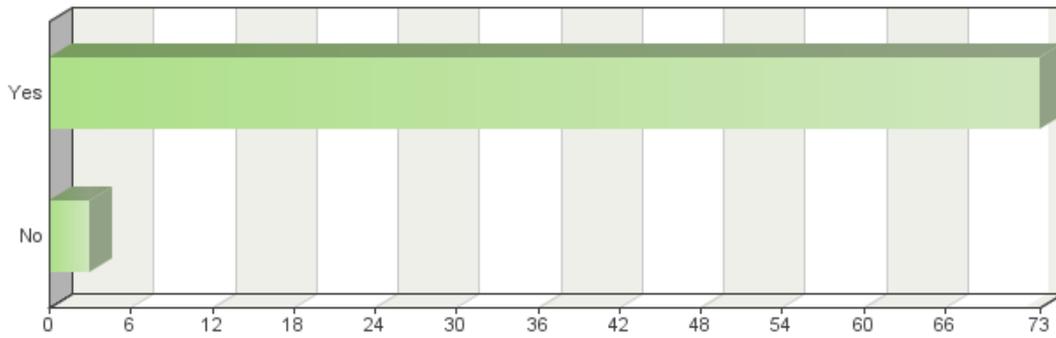
Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	75	79.79%	98.68%
No	1	1.06%	1.32%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-
<b>Total answered: 76</b>			

Text input

200.00

## Question 9

My store stocks at least 10 varieties of baby products.



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	73	77.66%	96.05%
No	3	3.19%	3.95%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

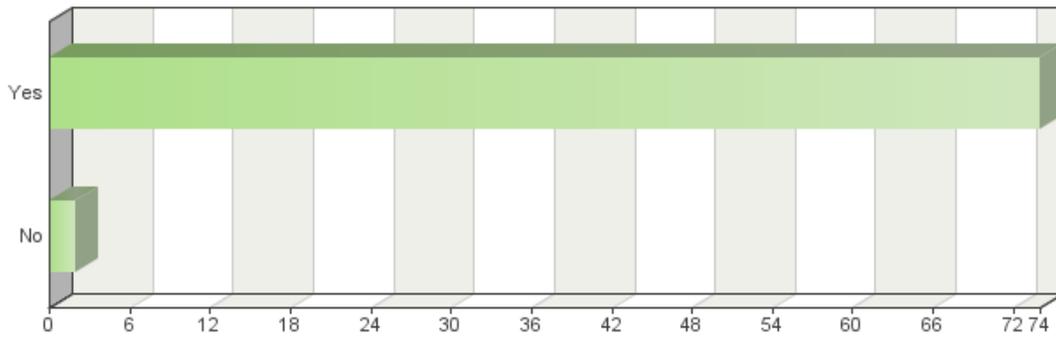
Text input

diapers, baby wipes, baby shampoo, baby lotion

6

## Question 10

My store stocks at least 10 varieties of household cleaners.



**Frequency table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	74	78.72%	97.37%
No	2	2.13%	2.63%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

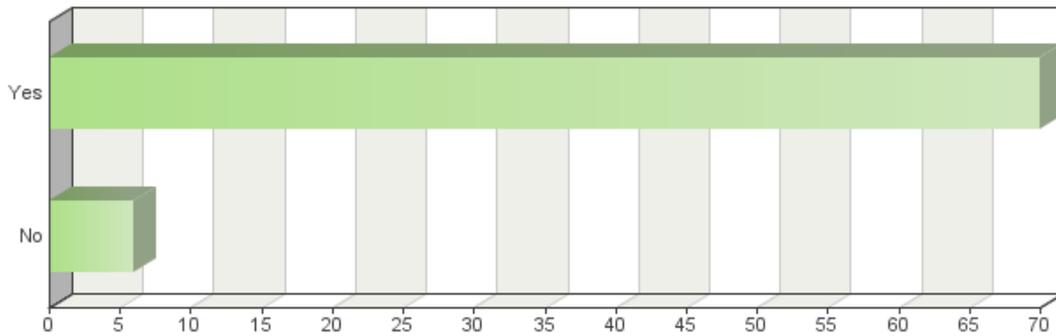
Text input

dish detergent, bleach, window cleaner, laundry product

3

## Question 11

My store stocks at least 20 varieties of healthcare products.



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	70	74.47%	92.11%
No	6	6.38%	7.89%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

Text input

no medications, several varieties of toilet paper, tissues. Not sure if each sku of toilet paper counts toward the 20 if so we have 20.

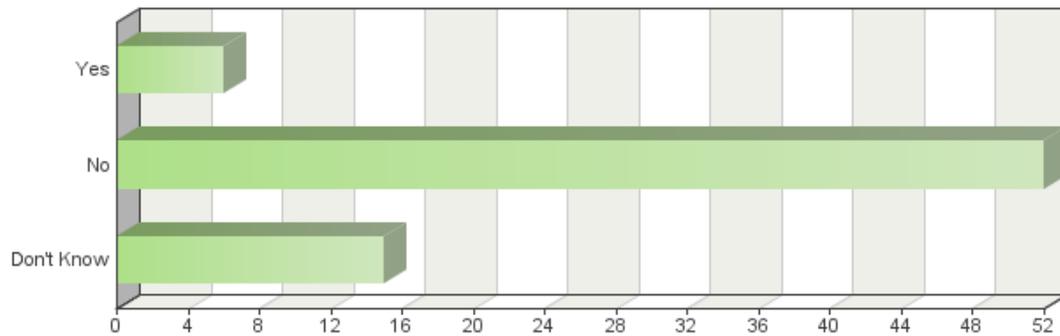
toothbase, and toilet paper

5

n/a

## Question 12

With the proposed minimum varieties for perishable items (Dairy Products, Fresh Fruits and Vegetables), do you anticipate this will increase the total weekly spoilage for your store?



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	6	6.38%	8.22%
No	52	55.32%	71.23%
Don't Know	15	15.96%	20.55%
Sum:	73	77.66%	100%
Not answered:	21	22.34%	-

**Total answered: 73**

Text input

90.00

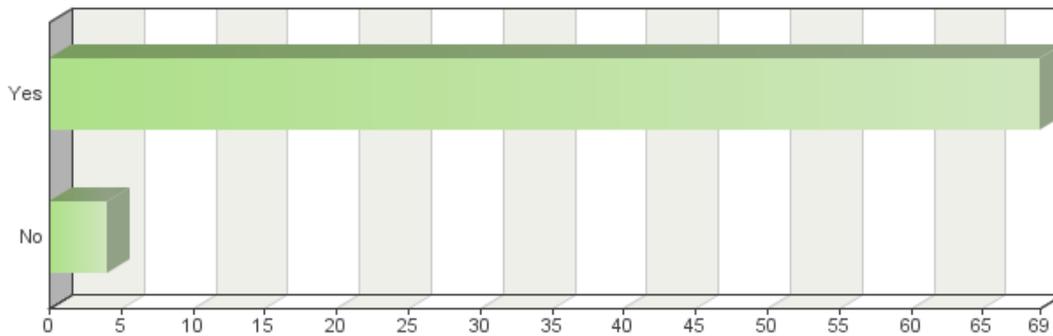
\$120-\$180 preweek

\$90/week

\$50-\$100

### Question 13

Does your store currently have a minimum of 5 linear feet of refrigerated display space that may be used for fresh fruits and vegetables?



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	69	73.4%	94.52%
No	4	4.26%	5.48%
Sum:	73	77.66%	100%
Not answered:	21	22.34%	-

**Total answered: 73**

Text input

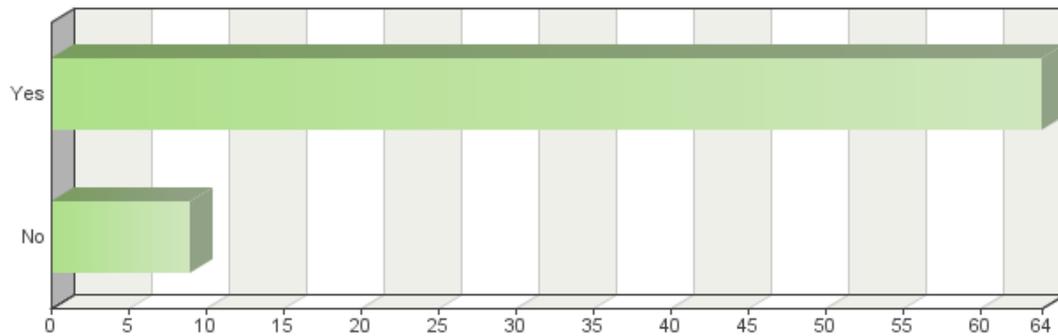
4 linear feet. 3 shelves available

approx 3 ft for 1 location

3 feet. yes i do have fresh fruits and vegetables

## Question 14

Are your electronic case registers capable of producing receipts that include a description of the food product, and the total actual purchase price in addition to the already required information?



Frequency table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	64	68.09%	87.67%
No	9	9.57%	12.33%
Sum:	73	77.66%	100%
Not answered:	21	22.34%	-

**Total answered: 73**

Text input

- 2
- not programmed for that
- 1
- 7
- 3
- i may need one
- 2
- Main till does backup does not
- 2