



Food and  
Nutrition  
Service

March 26, 2020

**SUBJECT:** Request for WIC Food Package Flexibilities In Response to COVID-19

1320  
Braddock  
Place  
Alexandria,  
VA  
22314

**TO:** Cheryl Kennedy  
Regional Administrator  
Mountain Plains Regional Office

This letter is in response to the March 22, 2020 correspondence from North Dakota WIC requesting flexibility in the food package requirements in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) as a result of significant impacts to providing WIC program services to participants due to COVID-19.

North Dakota WIC cited significant impacts on vendors' abilities to maintain inventory of certain WIC-eligible products and requests a waiver of select minimum requirements and specifications and/or the maximum monthly allowances as outlined in 7 CFR 246.10(e)(9)-(12) for specific supplemental foods. Pursuant to the authority granted in section 2204(a)(1) of the Families First Coronavirus Response Act (P.L. 116-127), USDA's Food and Nutrition Service (FNS) approves the waiver request through **May 31, 2020** in the following manner:

- **Fluid Milk.** Participants will be able to substitute milk of any available fat content despite the designation of their food package.
- **Eggs.** Participants will be allowed to substitute peanut butter or mature legumes for eggs despite the designation of their food package.
- **Whole Wheat/Whole Grain Bread.** Participants will be allowed to substitute authorized whole grains in package sizes up to 24 oz. when 16 oz. packages are unavailable.

Given the issue of low stock as a result of increased customer demand during the COVID-19 epidemic, USDA FNS understands that holding vendors to normal minimum requirements and specifications and maximum monthly allowances for supplemental foods is not possible at this time. A waiver to provide administrative flexibility to allow the food substitutions and flexibilities described above removes a requirement that under current circumstances could prevent or impede the provision of essential Program services to participants.

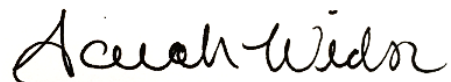
**USDA FNS does not approve North Dakota WIC to reissue returned infant formula.** The issuance of returned infant formula from the clinic constitutes operating a direct distribution food delivery system pursuant to regulations at 7CFR 246.12(n). A State agency may not set up a direct distribution system that reissues returned infant formula as the WIC agency cannot ensure that the formula remained safe for consumption while it was outside of the clinic's control (246.12(n)(1)).

Following receipt of a food package waiver, North Dakota WIC will need to advise vendors and participants that substitutions should be made when the prescribed benefit is unavailable for purchase and these flexibilities are available until May 31, 2020. For participants prescribed whole milk, the State agency will inform participants to select the highest fat milk available. For participants prescribed fat free or 1% milk, the State agency will inform participants to select the lowest fat milk available. The State agency will inform participants to come as close to the maximum benefit amount prescribed when they are selecting package sizes.

The waiver authority at section 2204(b)(1) of P.L. 116-127 requires the State agency to submit a report which includes a summary of the use of this waiver and a description of whether this waiver resulted in improved services to women, infants and children. The State agency shall provide the Regional Office with this report no later than 1 year after the date of approval.

USDA FNS appreciates North Dakota WIC's commitment to addressing the operational challenges impeding the delivery of WIC benefits to needy women, infants and children.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Widor".

SARAH WIDOR  
Director  
Supplemental Food Programs Division