



Food and
Nutrition
Service

August 31, 2021

1320
Braddock
Place
Alexandria,
VA
22314

SUBJECT: Request for WIC Flexibility in Response to COVID-19

TO: William Ludwig
Regional Administrator
Southwest Regional Office

This letter is in response to the August 26, 2021 correspondence from Texas WIC requesting a regulatory waiver from a requirement of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) that the State agency cannot meet due to COVID-19.

Texas WIC requests a waiver of the federal requirement that the State agency must conduct compliance investigations of a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year, as outlined in 7 CFR 246.12(j)(4)(i). Pursuant to the authority granted in section 2204(a)(1) of the Families First Coronavirus Response Act (P.L. 116-127), as amended, USDA's Food and Nutrition Service (FNS) waives this annual requirement for the current federal fiscal year.

Given the recommendations by the Centers for Disease Control and Prevention to control the impact of the COVID-19 epidemic through means of social distancing, USDA FNS understands that on-site investigations of vendors requiring WIC and vendor employees to interact creates an undesirable risk. Additionally, USDA FNS recognizes that State and local travel restrictions may also affect the State agency's ability to complete compliance investigations. A waiver of the annual minimum requirement for vendor investigations removes a requirement that the State agency cannot currently meet due to COVID-19, and is necessary to ensure participant access to supplemental foods.

This waiver is only applicable to regulations at:

- 246.12(j)(4) which requires that WIC State agencies conduct compliance investigations of a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year.

Please note, while the five percent minimum requirement is being waived, the State agency is still required to identify high risk vendors and complete at least one compliance investigation on a high risk vendor each fiscal year to meet the statutory requirement at 42 U.S.C. 1786(f)(24).

Moving forward, the State agency is expected to ensure continued quality oversight of its authorized vendors, and to continue to develop and/or implement alternative methods to investigate vendors for compliance with program requirements, if needed to meet the requirement in FY 2022. The State agency must resume compliance investigations when conditions permit.

The waiver authority of P.L. 116-127 requires, at section 2204(b), that the State agency 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 Texas WIC's commitment to addressing the operational challenges impeding the delivery of WIC benefits to women, infants, and children in need.

Sincerely,

Dana Rasmussen (Signed)

DANA RASMUSSEN
Acting Director
Supplemental Food Programs Division