



Food and
Nutrition
Service

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March 3, 2022

SUBJECT: Request for Additional WIC Flexibility in Response to the Impact of the Ongoing Coronavirus Disease 2019 (COVID-19) Pandemic on Nationwide Infant Formula Supply Chain Issues and 2022 Abbott Recall – WIC Vendor Formula Substitutions During a Transaction

TO: All FNS Regional Offices
All WIC State agencies

This letter is in response to correspondence from WIC State agencies using offline Electronic Benefit Transfer (EBT) technology or paper food instruments, and requesting program flexibility from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) federal requirements as a result of the impact of the ongoing Coronavirus Disease 2019 (COVID-19) pandemic and the 2022 Abbott recall of certain powder infant formula, exempt infant formula, and WIC-eligible nutritionals on the nationwide supply chain leading to both periodic location- and product-based WIC infant formula and exempt infant formula shortages.

The applicable WIC State agencies individually requested waiver(s) of the federal requirement that WIC authorized vendors may provide only the authorized supplemental foods listed on the food instrument and cash-value voucher. These State agencies, which use offline EBT technology or paper food instruments, need the flexibility to develop solutions to ensure that WIC authorized vendors can provide acceptable substitutes to WIC participants when no technological options are available. Offline and paper-based food delivery systems do not provide the same flexibility to change prescriptions quickly in response to stock shortages, and changes usually require participants to come into the clinic. Under current circumstances, this presents as an undue burden that could prevent or impede the provision of essential Program services to participants.

Pursuant to the authority granted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207), USDA's Food and Nutrition Service (FNS) approves this waiver request for State agencies listed in the attachment through the earlier of either September 30, 2022 or the expiration date of the major disaster declaration in the affected area.

This waiver is only applicable to:

- 7 CFR 246.12(h)(3)(ii) which states that the vendor may provide only the authorized supplemental foods listed on the food instrument and cash-value voucher.

As this requirement must be included in the State agency's vendor agreements per 7 CFR 246.12(h)(3), WIC State agencies should work with their legal counsel to determine whether additional action is needed at the State level to waive this requirement. WIC State agencies exercising this option must develop and communicate clear policies and procedures for vendors to follow to substitute products manually during checkout and must ensure that appropriate

documentation of these manual substitutions is obtained from vendors to monitor any manual substitutions and ensure that vendors are paid correctly.

This waiver only applies to WIC formulas being provided to participants as substitutes when the prescribed product is not available due to the 2022 Abbott recall of certain powder infant formula, exempt infant formula, and WIC-eligible nutritionals during COVID-19 supply chain disruptions. Unless a State agency has additional active FNS waivers, all other federal WIC requirements must be met. As soon as practicable, FNS encourages the State agency to resume normal operations for product substitutions.

USDA FNS appreciates WIC State agencies' commitment to quickly responding to the COVID-19 related nationwide supply chain issues that have been exacerbated by this recall.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Kriviski", written in a cursive style.

DIANE KRIVISKI
Associate Administrator
Supplemental Nutrition and Safety Programs

Attachment:

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List of WIC State agencies that have been granted an FNS waiver for:

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Granted March 3, 2022:

Texas WIC