



United States Department of Agriculture

Office of the Under
Secretary

Food, Nutrition, and
Consumer Services

1400 Independence
Avenue, SW

Washington, DC
20250-9600

June 6, 2022

Dear State Health Commissioner:

I am writing in follow up to my [letter](#) dated May 24, 2022 and recent listening sessions with State Health Commissioners and WIC State agencies. Again, I appreciate your efforts, and those of your dedicated WIC staff, to identify needs and implement flexibilities to ensure that WIC families can get the formula they need. I am pleased that many State agencies holding contracts with Mead Johnson-Reckitt or Nestle Gerber have already come to an agreement with their manufacturers to allow for a wider variety of formulas to be issued. I've also heard that many more are working toward this goal. Working in partnership, I believe we are on the path to ensuring that during this shortage, across the country, whenever a WIC participant walks into a store, they are able to purchase whatever formula is available.

If your State agency has not yet implemented the flexibilities that I wrote to you about, I encourage you to work quickly with your legal and procurement offices, along with your manufacturer, to implement any flexibilities that are possible under your current contract, modification to that contract, or separate agreement. To assist you in this process, I am providing some recommendations that may be included in modifications or agreements, below.

FNS recommends that modifications or agreements address:

- The date the modification or agreement goes into effect, as well as the end date of the modification/agreement (e.g., the provision of the flexibility for two months, the duration language contained in the recently passed Access to Baby Formula Act of 2022 (the Act; P.L. 117-129) is a strong model);
- The additional products that may be issued (i.e., contract brand and/or non-contract brand products);
- A statement that contract brand products will be eligible for a rebate in line with rebates being provided on other contract brand products under the current contract; and
- A statement that non-contract brand products will not be eligible for a rebate.

Issuing non-contract formula could result in additional costs to the WIC Program, which your State agency may cover using WIC food funds, as long as the State agency and manufacturer have an appropriate agreement in place.

Finally, I am pleased to report that, on May 21, 2022, President Biden signed into law the Access to Baby Formula Act of 2022 (the Act; P.L. 117-129). This law provides

Commissioner

Page 2

USDA with additional tools to help WIC during this time; therefore, we will issue guidance to all WIC State agencies very soon.

Again, I want to thank you for partnering on a swift response to my calls to action and to reiterate that USDA is committed to continuing to provide technical assistance to WIC State agencies on issues as they arise. Together, we are making a difference in the lives of WIC families.

Best Wishes,

A handwritten signature in black ink, appearing to read "Stacy Dean", with a stylized flourish at the end.

Stacy Dean
Deputy Under Secretary
Food, Nutrition, and Consumer Services
U.S. Department of Agriculture