



Food and
Nutrition
Service

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July 20, 2022

SUBJECT: Request for Additional WIC Flexibility in Response to the Impact of the Ongoing Coronavirus Disease 2019 (COVID-19) Pandemic and 2022 Abbott Recall on Nationwide Infant Formula Supply Chain Issues for Infants in Food Packages I and II – Maximum Monthly Allowance

TO: All FNS Regional Offices
All WIC State agencies

This letter is in response to correspondence from WIC State agencies requesting program flexibility with regard to the maximum monthly allowance (MMA) requirements in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) 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 on the nationwide supply chain leading to both periodic location- and product-based WIC infant formula shortages.

Applicable WIC State agencies individually requested waivers to WIC regulations at 7 CFR 246.10(e)(9), Table 1, which set forth MMA requirements for issuance of WIC infant formula. These WIC State agencies cited significant impacts on the ability of participants to obtain contract brand infant formula due to low stock during the 2022 Abbott recall of certain powder infant formula which compounds supply chain disruptions resulting from COVID-19 supply chain disruptions. USDA Food and Nutrition Service (FNS) understands that replacing a recalled product within existing regulatory flexibilities (e.g., an identical product that has not been recalled or a different physical form or container size of the same product, a different contract brand product, or a noncontract brand product with medical documentation) in amounts consistent with WIC regulations is not feasible as State agencies quickly respond to the COVID-19 related nationwide infant formula supply chain issues that have been exacerbated by this recall. A waiver to provide administrative flexibility for infants in Food Packages I and II to exceed the MMA removes a requirement that under current circumstances 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), FNS approves this waiver request for WIC 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 regulations at:

- 7 CFR 246.10(e)(9), which require a maximum monthly allowance (MMA) for infant formula. This includes 7 CFR 246.10(e)(9) Table 1 footnote 7, which requires State agencies to issue containers that are all the same size of the same physical form.

Approval is granted to waive the MMA for infant formula provided to healthy infant participants receiving **Food Package I and II only**. As applicable, the WIC Competent Professional Authority (CPA) should still perform a nutrition assessment to ensure the correct formula and amounts are issued to the participant and documented.

Under this waiver, applicable WIC State agencies must authorize and issue infant formula containers in sizes that most closely provide the maximum monthly allowance.

Approval is not granted to waive the maximum monthly allowance for the following supplemental foods and regulatory requirements:

- Any infant formula issued to infant participants in Food Package III (246.10(e)(9));
- Any exempt infant formula or WIC-eligible nutritional issued to infant participants in Food Package III (246.10(e)(9)); and
- Any supplemental foods (other than infant formula) issued to infant participants in Food Package I, II, and III (246.10)(e)(9)).

This waiver only applies to the State agencies' response to the 2022 Abbott recall of certain powder infant formula during COVID-19 supply chain disruptions. Unless a State agency has additional active FNS waivers, all other federal WIC requirements must be met. WIC State agencies should work with their legal counsel, procurement offices, and infant formula rebate contractors, as appropriate.

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,



DIANE KRIVISKI
Associate Administrator
Supplemental Nutrition and Safety Programs

Attachment:

List of WIC State agencies that have been granted an FNS waiver for:
Additional WIC Flexibility in Response to Impact of the Ongoing Coronavirus Disease 2019 (COVID-19) Pandemic on Nationwide Infant Formula Supply Chain Issues – Maximum Monthly Allowance