

Food and
Nutrition
Service

DATE: December 19, 2022

SUBJECT: Letter to WIC State Agencies on Unwinding and Impacts of Infant Formula Shortage

1320
Braddock
Place
Alexandria,
VA
22314

TO: Regional Directors
Special Nutrition Programs
All Regional Offices

WIC State Agency Directors
All WIC State Agencies

Dear State WIC Director:

I am writing to thank you for your work in supporting WIC participants during the infant formula shortage and to share our planned approach for transitioning back to regular program operations as the nationwide supply continues to recover. As always, we remain committed to working as partners on this important issue and plan to continue to monitor data in order to assess any impact on Program operations during this transition period. While it is a positive development that we can anticipate returning to regular program operations, we recognize that this transition will require even more coordination and communication between stakeholders to ensure uninterrupted access to infant formula for WIC families.

The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) has determined WIC State agencies may need the flexibility of providing non-contract formula through the end of February. Abbott recently announced they will pay a rebate on competitive infant formulas redeemed prior to February 28, 2023. Additionally, WIC State agencies with a Mead Johnson-Reckitt or Nestle Gerber contract may use their food funds for non-contract formula redeemed prior to February 28, 2023, as long as State agencies and their infant formula contract manufacturers have an appropriate agreement in place.

It is USDA's expectation that these extensions of flexibilities for non-contract formulas will be the final extensions, barring a significant change in the status of formula supply and availability. This expectation is based on Abbott's recent production levels and its ability to supply sufficient stock of Similac product for the WIC market. USDA will continue to work with Abbott, the Food and Drug Administration (FDA), and other stakeholders to monitor Similac product availability for WIC participants. If significant changes in Similac production or availability occur, USDA will engage Abbott and share any updates to this timeline with WIC State agencies.

While the need for non-contract formula is expected to lessen over the next few months, manufacturers and WIC State agencies have informed FNS that the transition back to WIC products in container sizes produced by the State's contract manufacturer will take longer. Considering this, FNS will be extending the waiver to continue availability for a wider variety of products and container sizes **that are produced by the State's contract manufacturer**. This waiver provides flexibility in container size for contract formula that may be needed as supply challenges continue, provided State agencies have agreements with their infant formula manufacturers to allow such flexibility. Additionally, FNS will extend waivers for infant formula products that have come in under FDA's Enforcement Discretion (ED), provided that the formula with ED is the respective State's contract brand.

Accordingly, the waivers listed below will be extended through **February 28, 2023**.

- **Medical Documentation for Food Packages I & II - Infant Formula**
- **Imported Infant Formula under FDA's Infant Formula Enforcement Discretion**
 - Non-contract standard formulas

Additionally, the following waivers have been extended through **April 30, 2023**, or 60 days after the expiration of the COVID-19 major disaster declaration in the affected area, whichever is earlier.

- **Maximum Monthly Allowance (MMA) for Food Packages I & II - Infant Formula**
- **Imported Infant Formula under FDA's Infant Formula Enforcement Discretion**
 - Produced by the respective State's contract manufacturer

Lastly, specialty infant formula remains a concern as the timeline for sustained improvements in the availability of these products is difficult to predict. USDA FNS continues to support maximum flexibility to assist WIC participants in obtaining specialty formula and is extending the following waivers through **June 30, 2023**, or 60 days after the expiration of the COVID-19 major disaster declaration in the affected area, whichever is earlier:

- **Imported Infant Formula under FDA's Infant Formula Enforcement Discretion**
 - Issuance of certain imported *specialty* formulas only
- **Maximum Monthly Allowance (MMA) for Food Package III – Infant Formula**

A formal policy memorandum conveying these waiver extensions is forthcoming. FNS remains committed to providing flexibility, as necessary, and technical assistance on issues as they arise. If assistance is needed, please contact your respective USDA FNS Regional Office. As the retail formula market continues to change, we will continue to share information as our plan evolves concerning these waiver flexibilities. Again, thank you for the work you and your staff do every day to meet the needs of your participants. I appreciate your commitment and ongoing partnership.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane M. Kriviski". The signature is fluid and cursive, with the first name "Diane" being more prominent.

Diane M. Kriviski
Associate Administrator
Supplemental Nutrition and Safety Programs