



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Office of the Secretary
PO Box 47890
Olympia, WA 98504-7890

February 12th, 2024

United States Department of Agriculture
Attention: Allison Post
Food and Nutrition Services
P.O. Box 2885
Fairfax, Virginia 22031-0885

**Re: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC):
Implementation of the Access to Baby Formula Act of 2022 and Related Provisions**

The Washington State Department of Health (DOH) appreciates the opportunity to comment on the “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions,” printed in the Federal Register on December 14, 2023 (FNS-2023-0027).

DOH operates the WIC program in Washington state and serves 131,000 participants each month. WIC provides supplemental foods, health care and social services referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, infants, and children up to age five. WIC provides evidence-based nutrition education targeted towards the individual’s need. Parents trust and turn to WIC based on its long record of improving health outcomes for babies and young children.

DOH supports the following:

- Proposed requirements in the formula contract for remedies, though DOH also acknowledges these could make bidding on formula contracts less attractive.
- Waiver authority and allowing issuance of non-contract brand formula without medical documentation (except in Food Package III).
- Allowing infant formula to be issued in all unit sizes, including those that may exceed the maximum monthly allowance.

Infants make up DOH’s largest group of participants with nearly 55,000 enrolled in the program

in 2023. WIC plays a critical role in assuring the health and wellbeing of approximately 40% of Washington's infants by providing a safe alternative to breastmilk. On February 17, 2022, a voluntary infant formula recall was announced for certain Abbott infant formula products. After the recall announcement, stores inspected formula and removed recalled product. More than 18,000 Washington WIC infants were using recalled formula, with at least as many non-WIC infants likely using recalled formulas in Washington. Supply chain disruptions grew throughout the industry as families looked for alternatives. While this formula recall was extremely disruptive, DOH continues to see recalls of other formulas which impact WIC participants.

During this emergency, DOH learned that more flexibility is needed to ensure infants on the WIC program receive the infant formula they need. Federal support is crucial to keeping infant formula supplies steady, and flexibility in the WIC program helps make more options available when needed.

DOH recommends amending the proposed rule to include a Plan of Alternate Operating Procedures in the Fiscal Year 2026 State Plan.

WIC disaster planning is an important piece of being prepared for situations that can disrupt WIC services, WIC foods and infant formula. DOH agrees with the proposed rule that this is vital to include in future state plans. The proposed timeline to include a Plan of Alternate Operating Procedures in the Fiscal Year 2025 State Plan is unrealistic. DOH must give due consideration to distribution, supply chains, and equity while also consulting with tribes, local agencies, and vendors. Washington state's tribal relations consultation rules and process alone would not allow this plan to be developed in 2024. DOH estimates it will take a minimum of 1.5 years to develop a comprehensive plan that includes the critical input of our key program partners and tribes.

DOH strongly recommends liquid concentrate formula should continue to be required in formula contracts.

This proposal also specifically requests comment on if the requirement for liquid concentrate infant formula could be impacting some manufacturers' ability to competitively bid and meet WIC contractual requirements. This is because not all infant formula manufacturers produce liquid concentrate. Participants use a variety of formula types, and powder is not suitable for all infants or caregivers. WIC services almost half of the infants born nationally, removal of this requirement may decrease national production of concentrate infant formula and put infants at risk for a host of medical and environmental reasons. This could further limit options for all infant formula choices, which could exacerbate difficulties accessing formula in cases of recalls and emergencies.

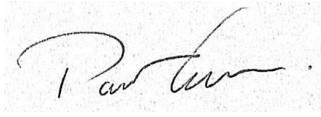
Thank you for this opportunity to share our comments on the proposed rules.

Sincerely,

FNS

February 12th, 2024

3

A handwritten signature in black ink, appearing to read "Paul Throne", on a light-colored, textured background.

Paul Throne, DrPH, MPH, MSW
Washington WIC Director