Regulatory Citations for Recommended State Agency Waivers

The Families First Coronavirus Response Act, signed into law on March 18, permits USDA to grant waivers to state WIC agencies of regulatory requirements that inhibit the delivery of WIC services throughout the COVID-19 public health emergency. In order to facilitate state applications for waivers, the National WIC Association highlights the following regulatory provisions:

Certifications

Physical Presence – 7 CFR 246.7(o)

**Proposed Action:** FNS should waive physical presence requirements to empower remote certification procedures.

**Current Regulation:** (o) Are applicants required to be physically present at certification?—(1) In general. The State or local agency must require all applicants to be physically present at each WIC certification.

Certification Periods – 7 CFR 246.7(g)(3)

**Proposed Action:** FNS should permit local agencies to extend existing certification periods for 180 days. Current regulations permit only breastfeeding women, infants, and children to have their certification periods extended for 30 days.

**Current Regulation:** (3) In cases where there is difficulty in appointment scheduling for persons referenced in paragraphs (g)(1) (iii), (iv) and (v) of this section, the certification period may be shortened or extended by a period not to exceed 30 days.

Income Proofs – 7 CFR 246.7(d)(2)(v)

**Proposed Action:** FNS should minimize the burden on participants to provide documentary proof of income. Local agency staff should be able to accept documentary proof through email, phone, or text message. Prior documentation of proof should carry over to a recertification appointment.

**Current Regulation:** (A) Adjunctively/automatically income eligible applicants. The State or local agency must require applicants determined to be adjunctively or automatically income eligible to document their eligibility for the program that makes them income eligible as set forth in paragraph (d)(2)(vi) of this section.

(B) Other applicants. The State or local agency must require all other applicants to provide documentation of family income at certification.

Nutrition Risk Assessment – 7 CFR 246.7(e)

**Proposed Action:** FNS should permit agencies to defer the complete nutrition risk assessment. When a specific risk cannot be determined through a remote certification, clinic staff should presume dietary risk. A complete nutrition risk assessment should be conducted when in-person appointments resume.
**Current Regulation:** (e) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program’s eligibility standards specified in paragraph (c) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency. Nutritional risk data shall be documented in the participant’s file and shall be used to assess an applicant’s nutritional status and risk; tailor the food package to address nutritional needs; design appropriate nutrition education, including breastfeeding promotion and support; and make referrals to health and social services for follow-up, as necessary and appropriate.

Except as stated in paragraph (e)(1)(v) of this section, at least one determination of nutritional risk must be documented at the time of certification in order for an income eligible applicant to receive WIC benefits.

**Nutrition Risk, Regression – 7 CFR 246.7(e)(1)(vi)**

**Proposed Action:** FNS should waive the limit on consecutive findings of regression to satisfy nutritional risk to ensure continued access to WIC services, particularly for young children.

**Current Regulation:** (vi) *Regression.* A WIC participant who is reapplying for WIC benefits may be considered to be at nutritional risk in the next certification period if the competent professional authority determines that the applicant’s nutritional status may regress to the nutritional risk condition(s) certified for in the previous certification period without supplemental foods and/or WIC nutrition services, and if the nutritional risk condition(s) certified for in the previous certification period is/are appropriate to the category of the participant in the subsequent certification based on regression. However, such applicants shall not be considered at nutritional risk based on the possibility of regression for consecutive certification periods. Applicants who are certified based on the possibility of regression should be placed either in the same priority for which they were certified in the previous certification period; a priority level lower than the priority level assigned in the previous certification period, consistent with §246.7(e)(4); or in Priority VII, if the State agency is using that priority level.

**Processing Standards – 7 CFR 246.7(f)**

**Proposed Action:** FNS should waive the 10- and 20-day processing standards to permit local agency staff adequate time to conduct remote certifications throughout the duration of the COVID-19 public health emergency.

**Current Regulation:** *Processing standards.* The local agencies shall process applicants within the following timeframes: […]

(iii) The local agency shall act on applications within the following timeframes:

(A) Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for Program benefits; except that State agencies may provide an extension of the notification period to a maximum of 15 days for those local agencies which make written request, including a justification of
the need for an extension. The State agency shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as Priority I participants, and migrant farmworkers and their family members who soon plan to leave the jurisdiction of the local agency.

(B) All other applicants shall be notified of their eligibility or ineligibility within 20 days of the date of the first request for Program benefits.

Separation of Duties – 7 CFR 246.4(a)(27)

**Proposed Action:** FNS should relax the separation-of-duties provision to ensure continued remote benefits issuance when clinic staff is required to work from home.

**Current Regulation:** (27) The State agency's policies and procedures for preventing conflicts of interest at the local agency or clinic level in a reasonable manner. At a minimum, this plan must prohibit the following WIC certification practices by local agency or clinic employees, or provide effective alternative policies and procedures when such prohibition is not possible:

(i) Certifying oneself;

(ii) Certifying relatives or close friends; or,

(iii) One employee determining eligibility for all certification criteria and issuing food instruments, cash-value vouchers or supplemental food for the same participant.

Rights and Responsibilities – 7 CFR 246.7(j)(2)

**Proposed Action:** FNS should waive the verbal requirement of rights and responsibilities and allow written notice to suffice for a remote certification.

**Current Regulation:** (j) Notification of participant rights and responsibilities. In order to inform applicants and participants or their parents or caretakers of Program rights and responsibilities, the following information shall be provided. Where a significant number or proportion of the population eligible to be served needs the information in a language other than English, reasonable steps shall be taken to provide the information in appropriate languages to such persons, considering the scope of the Program and the size and concentration of such population.

(1) During the certification procedure, every Program applicant, parent or caretaker shall be informed of the illegality of dual participation.

(2) At the time of certification, each Program participant, parent or caretaker must read, or have read to him or her, the statement provided in paragraph (i)(10) of this section (or an alternate statement as approved by FNS). In addition, the following sentences (or alternate sentences as approved by FNS) must be read: [ . . . . ]

Benefits Issuance

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Three Month Issuance – 7 CFR 246.12(r)(5)

**Proposed Action:** FNS should waive the three-month limit for benefit issuance to permit agencies to remotely issue benefits for the remainder of the participant’s certification period.

**Current Regulation:** (5) *Maximum issuance of food instruments and cash-value voucher.* Ensure that no more than a three-month supply of food instruments and cash-value vouchers or a one-month supply of authorized supplemental foods is issued at any one time to any participant, parent or caretaker of an infant or child participant, or proxy.

Food Instrument Signature – 7 CFR 246.12(r)(2)

**Proposed Action:** FNS should waive the signature requirement to receive food instruments, in order to streamline remote benefit issuance.

**Current Regulation:** (2) *Signature requirement.* Ensure that the participant, parent or caretaker of an infant or child participant, or proxy signs for receipt of food instruments, cash-value vouchers or authorized supplemental foods, except as provided in paragraph (r)(4) of this section;

Rollover of Benefits, Paper – 7 CFR 246.12(f)(iii)

**Proposed Action:** FNS should extend the “last date of use” to permit a rollover of benefits for one month, allowing participants additional time to redeem their benefits in retail grocery settings, given the prevalence of stocking shortages.

**Current Regulation:** (iii) *Last date of use.* The last date on which the food instrument or cash-value vouchers may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used or in the month of February, 28 or 29 days, except for the participant’s first month of issuance, when it may be the end of the month or cycle for which the food instrument or cash-value voucher is valid. Rather than entering a specific last date of use on each instrument or cash-value voucher, all instruments or cash-value vouchers may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the food instrument or cash-value voucher may be used;

Rollover of Benefits, EBT – 7 CFR 246.12(x)(2)(iii)

**Proposed Action:** FNS should extend the “last date of use” to permit a rollover of benefits for one month, allowing participants additional time to redeem their benefits in retail grocery settings, given the prevalence of stocking shortages.

**Current Regulation:** (iii) *Last date of use.* The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days, or in the month of February 28 or 29 days, from the first date on which it may be used to obtain authorized supplemental foods except for the participant’s first month
of issuance when it may be the end of the month or cycle for which the electronic benefit is valid; and

**Food Package**

**Medical Documentation** – 7 CFR 246.10(d)(1)

**Proposed Action:** FNS should waive the medical documentation requirement, particularly for infant formulas, to provide maximum flexibility for WIC clinic staff to ensure that participants have access to the necessary formula.

**Current Regulation:** (d) Medical documentation—(1) Supplemental foods requiring medical documentation. Medical documentation is required for the issuance of the following supplemental foods:

(i) Any non-contract brand infant formula;

(ii) Any infant formula prescribed to an infant, child, or adult who receives Food Package III;

(iii) Any exempt infant formula;

(iv) Any WIC-eligible nutritional;

(v) Any authorized supplemental food issued to participants who receive Food Package III;

(vi) Any contract brand infant formula that does not meet the requirements in Table 4 of paragraph (e)(12) of this section.

**Fruits & Vegetables for Infants** – 7 CFR 246.10(e)(9)

**Proposed Action:** As a food substitution, FNS should permit the cash value benefit for infants to be redeemed for alternative types of vegetables (canned, frozen, etc.).

**Current Regulation:** 12 At State agency option, infants 9 months through 11 months in Food Packages II and III may receive a cash-value voucher to purchase fresh (only) fruits and vegetables in lieu of a portion of the infant food fruits and vegetables. Partially (mostly) breastfed infants and fully formula fed infants may receive a $4 cash-value voucher plus 64 ounces of infant food fruits and vegetables; fully breastfeeding infants may receive a $8 cash-value voucher plus 128 ounces of infant food fruit and vegetables.

**Cash Value Benefit** – 7 CFR 246.10(e)(10)

**Proposed Action:** The cash value benefit should be increased – at least doubled – for all categories to permit increased access to vegetables and fruits.
Current Regulation: 15The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in §246.16(j).

Vendor Management

Signature in Presence of Cashier – 7 CFR 246.12(h)(3)(vi)

Proposed Action: FNS should waive the cashier-signature requirement to enable alternative forms of food delivery, including online purchasing platforms that can be paired with online ordering or home delivery models.

Current Regulation: (vi) Signature on food instruments and cash-value vouchers. For printed food instruments and cash-value vouchers, the vendor must ensure the participant, parent or caretaker of an infant or child participant, or proxy signs the food instrument or cash-value voucher in the presence of the cashier. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

Routine Vendor Monitoring – 7 CFR 246.12(j)(2)

Proposed Action: State WIC Agencies should suspend vendor monitoring for the duration of the public health emergency. If a state WIC Agency has not yet reached its 5% threshold for annual reporting, FNS should grant a waiver to exempt the state from that requirement.

Current Regulation: (2) Routine monitoring. The State agency must conduct routine monitoring visits on a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year in order to survey the types and levels of abuse and errors among authorized vendors and to take corrective actions, as appropriate. The State agency must develop criteria to determine which vendors will receive routine monitoring visits and must include such criteria in its State Plan in accordance with §246.4(a)(14)(iv).

Compliance Investigations – 7 CFR 246.12(j)(4)

Proposed Action: State WIC Agencies should suspend vendor monitoring for the duration of the public health emergency. If a state WIC Agency has not yet reached its 5% threshold for annual reporting, FNS should grant a waiver to exempt the state from that requirement.
**Current Regulation:** (4) **Compliance investigations.** (i) **High-risk vendors.** The State agency must conduct compliance investigations of a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The State agency must conduct compliance investigations on all high-risk vendors up to the five percent minimum. The State agency may count toward this requirement a compliance investigation of a high-risk vendor conducted by a Federal, State, or local law enforcement agency. The State agency also may count toward this requirement a compliance investigation conducted by another WIC State agency provided that the State agency implements the option to establish State agency sanctions based on mandatory sanctions imposed by the other WIC State agency, as specified in paragraph (l)(2)(iii) of this section. A compliance investigation of a high-risk vendor may be considered complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance, when two compliance buys have been conducted in which no program violations are found, or when an inventory audit has been completed.

**Agency Operations**

**Spend-Forward Authority - 7 CFR 246.16(b)(3)(ii)**

**Proposed Action:** FNS should raise the cap on spend-forward authority to allow state WIC agencies additional flexibility in adjusting Nutrition Services & Administration funding to meet additional demands of remote services and fluctuating participation.

**Current Regulation:** (ii) **Spend forward authority.** (A) The State agency may spend forward NSA funds up to an amount equal to three (3) percent of its total grant (NSA plus food grants) in any fiscal year. These NSA funds spent forward may be used only for NSA costs incurred in the next fiscal year. Any food funds that the State agency converts to NSA funds pursuant to paragraph (f) of this section (based on projected or actual participation increases during a fiscal year) may not be spent forward into the next fiscal year. With prior FNS approval, the State agency may spend forward additional NSA funds up to an amount equal to one-half of one percent of its total grant. These funds are to be used in the next fiscal year for the development of a management information system, including an electronic benefit transfer system.

**Routine Local Agency Monitoring – 7 CFR 246.19(b)(3)**

**Proposed Action:** State WIC Agencies should suspend local agency monitoring for the duration of the public health emergency. If a state WIC Agency has not yet reached its threshold for annual reporting, FNS should grant a waiver to exempt the state from that requirement or defer visits into the next fiscal year.

**Current Regulation:** (3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.