



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS-2022-0007]

RIN 0584-AE82

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC):

Revisions in the WIC Food Packages

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule considers public comments submitted in response to the proposed rule revising the WIC food packages published on November 21, 2022. It revises regulations to align the WIC food packages with the current *Dietary Guidelines for Americans* and to reflect recommendations from the National Academies of Science, Engineering, and Medicine while promoting nutrition security and equity and considering program administration. The changes are intended to provide WIC participants with a wider variety of foods that align with the latest nutritional science; provide WIC State agencies with greater flexibility to prescribe and tailor food packages that accommodate participants' special dietary needs and personal and cultural food preferences; and address key nutritional needs to support healthy dietary patterns. This rule provides foods in amounts that are more consistent with the supplemental nature of the Program; encourages fruit and vegetable consumption; and strengthens support for individual breastfeeding goals to help establish long-term breastfeeding.

DATES: *Effective date:* This rule is effective [insert date 60 days after date of publication in the Federal Register].

Implementation dates: See section V of the **SUPPLEMENTARY INFORMATION**.

Compliance dates: This rulemaking consists of multiple provisions. Compliance for each provision is referenced in the **SUPPLEMENTARY INFORMATION** section of this final rule and detailed in the section-by-section analysis.

- Severability. If any provision of such section promulgated through this final rule, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages” (FNS-2022-0007; RIN 0854-AE82), is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable and not affect the remainder thereof.

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SUPPLEMENTARY INFORMATION:

Table of Abbreviations

APA—Administrative Procedure Act

APL—Authorized Products List

AAP—American Academy of Pediatrics

CVV—Cash-Value Voucher

DGA—Dietary Guidelines for Americans

EBT — Electronic Benefit Transfer

FDA—U.S. Food and Drug Administration

FNB—Full Nutrition Benefit

FNS—Food and Nutrition Service

kcal—Kilocalorie

MIS—Management Information Systems

MMA—Maximum Monthly Allowance

NASEM—National Academies of Sciences, Engineering, and Medicine

USDA—United States Department of Agriculture (also referred to as “the Department”)

WIC – Special Supplemental Nutrition Program for Women, Infants, and Children

I. Background

WIC is a powerful, evidence-based public health program, with a long history of improving health and developmental outcomes for children. Through the WIC food packages, nutrition and breastfeeding education, and referrals, WIC is uniquely positioned as an effective tool to help reduce disparities in maternal and child health outcomes.¹ This final rule revises the WIC food packages to reflect the latest nutritional guidance in the 2020-2025 DGA and recommendations from NASEM while considering public comments to the proposed rule “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages” published on November 21, 2022 (87 FR 71090), hereafter referred to as “the 2022 proposed rule.”² Informed by science-based recommendations, the updated food packages continue to strengthen WIC and build on its long history of improving participant health outcomes. The changes made in this rule promote nutrition security and equitable access to nutritious foods by:

- Encouraging fruit and vegetable consumption.
- Addressing key nutritional needs to support healthy dietary patterns.
- Providing greater flexibility, variety, and choice to accommodate personal and cultural food preferences and special dietary needs.
- Strengthening support for individual breastfeeding goals to help establish long-term breastfeeding.

¹ Caulfield LE, Bennett WL, Gross SM, Hurley KM, Ogunwole SM, Venkataramani M, Lerman JL, Zhang A, Sharma R, Bass EB. Maternal and Child Outcomes Associated With the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Comparative Effectiveness Review No. 253. (Prepared by the Johns Hopkins University Evidence-based Practice Center under Contract No. 75Q80120D00003.) AHRQ Publication No. 22-EHC019. Rockville, MD: Agency for Healthcare Research and Quality; April 2022. DOI: <https://doi.org/10.23970/AHRQEPCCER253>.

² The authorizing legislation for WIC uses the word “women” in the Program title and thus it is used in the title for this rule. However, gender neutral language is used when possible throughout this final rule.

The Department is committed to advancing nutrition security and health equity through this final rule, ensuring mothers, babies, and young children have equitable access to the key nutrition they need during crucial stages of growth and development.

A. Purpose of the WIC Food Packages

The WIC food packages provide supplemental foods designed to address the specific nutritional needs of low-income pregnant, breastfeeding, and non-breastfeeding postpartum individuals, infants, and children up to five years of age who are at nutritional risk. Every WIC participant receives a monthly food benefit from one of seven science-based food packages, according to their participant category and nutritional needs.

Participant Categories

The seven food packages available in the following participant categories are:

- 1) Food Package I: Infants birth through 5 months (Fully Breastfed, Partially Breastfed, and Fully Formula Fed)
- 2) Food Package II: Infants ages 6 through 11 months (Fully Breastfed, Partially Breastfed, and Fully Formula Fed)
- 3) Food Package III: Medically Fragile Women, Infants, and Children
- 4) Food Package IV: Children ages 1 through 4 years
- 5) Food Package V: Pregnant and Partially (Mostly) Breastfeeding Women up to 1 year postpartum
- 6) Food Package VI: Postpartum Women (minimally or non-breastfeeding) up to 6 months postpartum
- 7) Food Package VII: Fully Breastfeeding Women up to 1 year postpartum

Individual Nutrition Tailoring and Food Substitutions

As part of the WIC certification process, a comprehensive nutrition (and breastfeeding, as applicable) assessment is conducted for each WIC participant. Through this process, food packages can be individually tailored – by making substitutions, reductions, and/or eliminations to the food type (e.g., dry beans vs. peanut butter) and physical food forms (e.g., fluid vs. dry milk) – to accommodate the participant’s special dietary needs (e.g., a food allergy or intolerance), cultural and personal preferences, and housing/living conditions (e.g., limited resources to prepare food). During the nutrition assessment, WIC participants also receive instructions on how to redeem their WIC food benefits at retail vendors, including information about substitution options. Through nutrition tailoring and the issuance of Food Package III, WIC conforms with section 504 of the Rehabilitation Act by providing participants with special dietary needs with the supplemental foods that accommodate their medical needs.

Authorized Foods

Food categories and quantities, as well as minimum nutritional requirements, are established at the Federal level and outlined in WIC regulations at 7 CFR 246.10. Depending on the food package, the authorized food categories include infant formula, cereal, and foods; exempt infant formulas; WIC-eligible nutritionals; milk; cheese; breakfast cereal; juice; fruits and vegetables; whole wheat/whole grain bread; eggs; legumes and/or peanut butter; and canned fish.

The WIC Program is administered by 89 WIC State agencies, including the 50 states, 33 Indian Tribal Organizations (ITOs), the District of Columbia, and five U.S. Territories (the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands). In accordance with Federal WIC regulations, each WIC State agency determines which eligible foods, including brands and package sizes, will be made available to their participants. When creating their APL, WIC State agencies consider a variety of factors including participant acceptance and choice, product availability, and price. WIC State agencies

may establish criteria in addition to the Federal minimum requirements (e.g., allow only low-sodium canned vegetables), authorize substitution options specified in regulations (e.g., yogurt as a substitute for milk), and/or implement administrative adjustments to manage food costs (e.g., limiting brand types, specifying packaging methods) based on these factors.

Redeeming WIC Foods

Participants redeem their food benefits (i.e., the foods included in their prescribed food package) at retail vendors the WIC State agency authorizes, and in some instances, through home delivery or direct distribution systems the WIC State agency operates. Nationwide there are approximately 40,000 WIC-authorized vendors.

B. Multi-Stage Scientific Approach to Revise the WIC Food Packages

This final rulemaking represents the third³ comprehensive revision to the WIC food packages since Congress established WIC as a permanent program in 1975. Consistent with this current rulemaking, prior revisions were based in nutritional science.

The most recent comprehensive revision to the WIC food packages was based on the Institute of Medicine's (now NASEM) 2006 report "WIC Food Packages: Time for a Change," which cited the health and nutrition risks WIC's target population faced, including overweight and obesity; diets lacking in whole grains, fruits, and vegetables; and short duration of breastfeeding. USDA contracted with the Institute of Medicine to complete this review and recommend cost-neutral changes to the WIC food packages based on the nutritional needs of the WIC population. The report provided the scientific basis for the proposed rule to revise the WIC food packages

³ In 1980, USDA reorganized the WIC food packages from three to six standardized packages marking the first comprehensive revision. In 2007, the USDA published an interim rule revising the WIC food packages marking the second comprehensive revision.

published in August 2006 (71 FR 44784), which garnered broad support from public commenters, the majority of whom were Program participants.

Reflecting the comments received, USDA published an interim rule in December 2007 (72 FR 68966) that implemented revised WIC food packages. Due to the extent and comprehensive nature of the revisions, the Department provided an extended public comment period on the interim rule to obtain comments on the impacts of implementing the new WIC food packages.

On March 4, 2014, USDA published the final rule “Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages” (79 FR 12274), hereafter referred to as “the 2014 final rule.” The revisions in the 2014 final rule aligned the WIC food packages with nutritional science current at the time, aimed to promote and support the establishment of successful long-term breastfeeding, provided participants with a wider variety of foods, and provided WIC State agencies with greater flexibility in prescribing WIC food packages to accommodate participants’ cultural food preferences. Key changes implemented through the 2014 final rule and preceding interim final rule included:

Introduction of the CVV for the purchase of fruits and vegetables.

- Addition of whole grains (e.g., bread, tortillas, brown rice, etc.).
- Addition of soy-based beverage, yogurt, and tofu as milk alternatives.
- Reductions in some foods (e.g., milk, egg, and juice) to better align with the supplemental nature of WIC.
- Allowance for participants in Food Package III to receive all authorized WIC foods.

In 2014, USDA contracted with NASEM to conduct a second review of the WIC food packages, in accordance with the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111-296, HHFKA), which requires USDA to conduct a scientific review of the WIC food packages at least every ten

years. The Department charged NASEM with developing recommendations for revising the WIC food packages to be consistent with the DGA and that considered the health and cultural needs of WIC participants while ensuring WIC remained cost-neutral, efficient for nationwide distribution, and straightforward to administer. NASEM’s process included a comprehensive review and analysis of available scientific evidence, including relevant published literature, National Health and Nutrition Examination Survey (NHANES) 2005–2012 data, WIC food benefit redemption data, the 2015-2020 DGA, and, for children under age 2 years, recommendations from expert authorities in the health of the WIC population including the AAP, the Academy of Nutrition and Dietetics (AND), and the World Health Organization. In 2017, NASEM published its recommendations in the report, “Review of WIC Food Packages: Improving Balance and Choice: Final Report,” which informed many of the revisions in the 2022 proposed rule.

Using a systematic process, NASEM developed recommendations aimed to ensure the WIC food packages:

- Provide a balanced supplement to the diets of women and children.
- Contribute to reduced prevalence of inadequate and excessive nutrient intake.
- Contribute to a dietary pattern that is consistent with the 2015-2020 DGA for individuals 2 years of age and older.
- Contribute to a diet that is consistent with established recommendations for infants and children less than 2 years of age, including encouragement of and support for breastfeeding.
- Include foods that are available in forms and amounts suitable for low-income persons who may have limited transportation options, storage, and cooking facilities.
- Include foods that are readily acceptable, commonly consumed, widely available, consider cultural eating patterns and food preferences, and provide incentives for families to participate in the WIC Program.

- Include foods that do not create an undue burden on WIC State agencies or vendors.

NASEM's review emphasized the supplemental nature of the food packages – meaning foods are provided as part of a balanced diet that meets but does not exceed recommended amounts of foods and nutrients to prevent overweight/obesity and/or displace other healthy and important food groups and nutrients. Accordingly, NASEM designed food packages that provide moderate proportions of individuals' nutrient requirements and food group amounts recommended as part of a healthy dietary pattern, and that prioritize nutrients that are under consumed and associated with health outcomes relevant to the WIC-eligible population. Finding that the current food packages provide varying proportions of priority nutrients⁴ (between 5 and 400 percent of the Dietary Reference Intake (DRI)) and recommended food group⁵ amounts (between 0 and 177 percent of DGA recommended intake amounts), NASEM recommended reducing foods provided in more-than-supplemental amounts and increasing foods needed to improve intake of priority nutrients and recommended food groups. NASEM provided recommendations for food packages that achieve cost neutrality as requested by the Department. However, also at the request of the Department, NASEM provided clear alternative nutrition-based recommendations for consideration if cost neutrality were not the prevailing principle in rulemaking. Since the goal of this final rule is to follow science-based recommendations that advance nutrition security and improve health equity, the Department has accepted NASEM's alternative recommendations in regard to certain food items such as the higher CVV.

Following the 2017 NASEM report, on December 29, 2020, the USDA and the U.S. Department of Health and Human Services published the 2020-2025 DGA, which provides science-based

⁴ The 2017 NASEM Report discusses priority nutrients in Chapter 05; Table 5.1 (page 217) summarizes the criteria used to determine priority nutrients for the WIC-eligible population.

⁵ Recommended food groups include fruits, vegetables, grains, protein foods, and dairy and alternatives, as established in the *Dietary Guidelines for Americans, 2020-2025* Healthy U.S.-Style Dietary Patterns at various calorie levels for the WIC-eligible population.

recommendations for healthy dietary patterns by life stage and, for the first time since the 1985 edition, recommendations for infants, children up to 2 years of age, and pregnant and breastfeeding individuals. To ensure the changes to the WIC food packages aligned with the current dietary guidelines, USDA conducted a thorough review of the 2020-2025 DGA and incorporated relevant updates into the 2022 proposed rule.

The revisions to the food packages support WIC participants' nutritional needs, achieve a better balance of nutrients, and align with the supplemental nature of the Program. Nutrition security – meaning consistent and equitable access to healthy, safe, and affordable food essential to optimal health and well-being – is prioritized over cost neutrality while the supplemental nature of the WIC food packages remains central to the final revisions. The changes to the WIC food packages are designed to:

- Provide additional flexibility, variety, and choice for individuals with special dietary needs due to medical conditions, limited cooking and/or storage facilities, and cultural and personal preferences (including, but not limited to, vegan and vegetarian diets), while ensuring the delivery of priority nutrients to WIC participants.
- Consider marketplace availability of supplemental foods.
- Increase the actual and perceived value of the WIC food packages to eligible populations.
- Improve equitable access to nutritious foods.
- Promote and support breastfeeding of all durations and intensities.
- Provide foods in amounts that are more consistent with the supplemental nature of the Program.
- Align with DGA guidance to follow a healthy dietary pattern and meet, but not exceed, recommended food group and subgroup amounts and nutrients appropriate for an individual's life stage.

- Build on the 2014 changes to the WIC food packages and the positive impact those had on participant diet quality and reduced prevalence of obesity among children.^{6,7,8}

II. 2022 Proposed Rule Comment Summary

The 2022 proposed rule to revise regulations governing the WIC food packages was published in the **Federal Register** on November 21, 2022 (87 FR 71090), with a 90-day comment period. During this time USDA received 17,731 comments. Sixteen form letter campaigns comprised 15,863 submissions. All comments were considered without regard to whether they were provided by a single commenter or repeated by many. Importance was given to the substance or content of the comment, rather than the number of times a comment was submitted. There were 1,795 unique comments of which 993 were substantive. A total of 73 comments were either duplicates or not relevant or related to the rule. Comments that did not refer to the WIC food packages or changes in the proposed food rule were considered outside of scope for the revisions to the WIC food packages and are not addressed as part of this final rule. The comments came from a variety of sources, including WIC State and local agencies, professional organizations and associations, advocacy groups, health care professionals, universities, members of Congress, the food industry, farmers, participants, and private citizens.

USDA worked in collaboration with a data analysis company to code and analyze the public comments using a commercial web-based software product and obtained data showing support for or opposition to each proposed change. Over 12,000 commenters provided broad general support for revisions to the WIC food packages while approximately 20 commenters provided

⁶ Pan L, Blanck HM, Park S, Galuska DA, Freedman DS, Potter A, Petersen R. State-Specific Prevalence of Obesity Among Children Aged 2-4 Years Enrolled in the Special Supplemental Nutrition Program for Women, Infants, and Children - United States, 2010-2016. *MMWR Morb Mortal Wkly Rep.* 2019 Nov 22;68(46):1057-1061. doi: 10.15585/mmwr.mm6846a3. PMID: 31751324; PMCID: PMC6871901.

⁷ Daepf MIG, Gortmaker SL, Wang YC, Long MW, Kenney EL. WIC Food Package Changes: Trends in Childhood Obesity Prevalence. *Pediatrics.* 2019 May;143(5):e20182841. doi: 10.1542/peds.2018-2841. Epub 2019 Apr 1. PMID: 30936251; PMCID: PMC6565338

⁸ Chiasson MA, Findley SE, Sekhobo JP, Scheinmann R, Edmunds LS, Faly AS, McLeod NJ. Changing WIC changes what children eat. *Obesity (Silver Spring).* 2013 Jul;21(7):1423-9. doi: 10.1002/oby.20295. Epub 2013 May 22. PMID: 23703806.

general comments in opposition to the 2022 proposed rule. The remaining comments discuss specific provisions in the proposed food package rule and are further detailed and addressed throughout this final rule. The Final Summary of Public Comments report is available online at www.regulations.gov in docket FNS-2022-0007. The Final Summary of Public Comments includes the specific number of comments in support of or opposition to each provision in the 2022 proposed rule, with a detailed narrative describing the key points made by commenters. USDA used the Final Summary of Public Comments and a supplementary review of individual comments to finalize provisions within this final rule. USDA refers to the Final Summary of Public Comments for numbers of comments received on each provision, with general summaries of comments provided in the preamble of this final rule.

USDA appreciates the many comments expressing support for revisions to the WIC food packages and urging USDA to implement the science-based recommendations included in the 2022 proposed rule. USDA agrees the WIC food packages' benefits have an important role in supporting and improving the health of infants, children, and women who are at nutritional risk and, consequently, improving healthcare costs.

III. Discussion of the Final Rule

The following is a discussion of the provisions set forth in the 2022 proposed rule, a summary of the comments received that addressed these provisions, and the Department's rationale for changes in the final rule that either modify or retain the proposed revisions. Provisions not discussed in this preamble did not receive significant or substantial public comments and are retained in this final rule as proposed.

This preamble communicates the rationale for modifications to the 2022 proposed rule that are codified in this final rulemaking. The reasons for the proposed changes were carefully examined

in consideration of comments received to determine their continued applicability, given the goals for this rulemaking and the foundation of current nutritional science. Unless otherwise stated in the preamble of this final rule, the rationales included in the preamble of the 2022 proposed rule are regarded as a basis for the final regulations. Therefore, a thorough understanding of the rationales for the final regulations may require reference to the preamble of the 2022 proposed rule (87 FR 71090).

The following chart provides a summary comparison of the proposed and final revisions to the WIC food packages.

Section	Summary of Proposed Revisions	Summary of Final Revisions Based on Public Comment
A. Fruits and Vegetables	1. Increase the CVV maximum monthly allowances for child, pregnant, breastfeeding, and postpartum participants.	Finalize as proposed.
	2. Require WIC State agencies to authorize at least one other form of fruits and vegetables in addition to fresh.	Finalize as proposed.
	3. Require vendors to stock at least three varieties of vegetables.	Finalize as proposed.
	4. Expand what can be purchased with the CVV.	Finalize as proposed.
B. Juice	1. Reduce or remove the maximum monthly allowance for juice.	Reduce juice amounts to 64 fluid ounces for child and all adult participants.
	2. Allow CVV as a substitute for juice.	Finalize as proposed.
C. Milk and Milk Substitutions	1. Reduce maximum monthly allowances of milk.	Finalize as proposed.
	2. Require authorization of lactose-free milk.	Finalize as proposed.
	3. (a) Permit only unflavored milk, including lactose-free milk, and (b) reduce total sugars allowed in yogurt and plant-based milk substitutions.	3a. Finalize as proposed. 3b. Establish an added sugars limit for yogurt and plant-based milk alternatives.
	4. Add a (a) calcium specification for tofu [200 milligrams per 100 grams of tofu] and (b) vitamin D specification for yogurt [100 international units (IU) (2.5 micrograms) per 8 ounces of yogurt].	4a. Add a minimum calcium specification of 100 milligrams per 100 grams of tofu. 4b. Add a minimum vitamin D specification of 106 IU (2.67 micrograms) per 8 oz (1 cup) of yogurt and extend the implementation timeline.

	5. Increase yogurt substitution amounts for milk.	Finalize as proposed.
	6. Add soy-based yogurts and soy-based cheeses as substitution options for milk.	Allow plant-based yogurts and plant-based cheeses.
	7. Update the FDA standard of identity citations for yogurt.	Finalize as proposed.
	8. Allow reduced-fat yogurts for 1-year-old children without restrictions.	Finalize as proposed.
	9. Remove cheese as a food category from the fully breastfeeding food package.	Finalize as proposed.
D. Infant Foods	1. Reduce infant cereal, infant fruits and vegetables, and infant meat.	Finalize as proposed.
	2. Increase CVV substitution amounts for infant fruits and vegetables, allow forms other than fresh, and lower the minimum age for infants to receive a CVV.	Finalize as proposed.
	3. Prohibit added fats in infant foods.	No change to current provision.
E. Add Infant Formula Flexibilities and Create a Separate Food Package for Partially (Mostly) Breastfeeding Participants	1. Increase formula amounts in the first month for partially (mostly) breastfed infants.	Finalize as proposed.
	2. Allow all prescribed infant formula quantities to be considered “up to” amounts.	Finalize as proposed.
	3. Create a separate and enhanced food package for partially (mostly) breastfeeding participants.	Finalize as proposed.
F. Breakfast Cereals	1. Change whole grain criteria for breakfast cereals.	Finalize as proposed.
	2. Require all breakfast cereals meet whole grain criteria.	Require 75 percent of breakfast cereals meet whole grain criteria.
		Replace the total sugars limit for breakfast cereal with an added sugars limit of ≤ 21.2 g per 100 grams dry cereal (≤ 6 grams per dry ounce)
G. Whole Wheat Bread, Whole Grain Bread, and Whole Grain Options	1. Revise (reduce for children and increase for pregnant, postpartum, and breastfeeding participants) MMA for whole wheat and whole grain bread and other whole grain options.	Finalize as proposed.
	2. Change criteria for whole grain breads.	Finalize as proposed.
	3. Expand whole grain options.	Add proposed whole grain options and allow for additional whole grain options that meet specifications.
H. Canned Fish	1. Add canned fish to food packages for children (2 through 4 years) and specify varieties.	Add canned fish to food packages for children (1 through 4 years) and allow canned light tuna and chub mackerel for children

	2. Add canned fish to food packages for pregnant, partially (mostly) breastfeeding, and postpartum participants not currently receiving canned fish, revise amounts for fully breastfeeding participants, and revise WIC-eligible varieties.	Finalize as proposed.
I. Legumes and Eggs	1. Require WIC State agencies to authorize both dried and canned legumes.	Finalize as proposed.
	2. Require authorization of legumes and peanut butter as substitutes for eggs and allow WIC State agencies to choose to authorize tofu to substitute for eggs.	Finalize as proposed.
	3. Requested comment on nut and seed butters.	Implement a provision to allow WIC State agencies the option to authorize nut and seed butters as a substitute for peanut butter.
J. Maximum Monthly Allowances	1. Allow WIC State agencies to authorize a greater variety of package sizes to increase variety and choice, while still providing participants with package sizes that ensure they can receive the full benefit amount (i.e., at least one package size, or a combination of sizes, must add up to the full MMA).	Finalize as proposed.

A. Fruits and Vegetables

The final rule increases the CVV amounts for child, pregnant, postpartum, and breastfeeding participants; requires the authorization of an additional form of fruits and vegetables beyond fresh, dependent on participant category; requires vendors to stock at least three varieties of vegetables; and expands what foods can be purchased with the CVV.

1. Increase CVV Maximum Monthly Allowances for Child, Pregnant, Breastfeeding, and Postpartum Participants (§ 246.10(e)(10) and (11), Tables 2 and 3)⁹

⁹ The change in terminology from “CVV” to cash-value benefit, or “CVB,” is not included in this final rule; however, USDA proposed this change in the rule titled: “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program” (88 FR 11516). The proposal would update the definition of cash-value voucher to remove the clause, “cash-value voucher is also known as cash-value benefit, or CVB, in an EBT environment,” and create an independent definition of CVB as a type of electronic benefit that is a fixed-dollar amount used to obtain authorized fruits and vegetables.

This final rule codifies the increase in the CVV amounts for child, pregnant, breastfeeding, and postpartum participants as summarized in the 2022 proposed rule. The increase to the CVV is consistent with the temporary increase in the CVV that has been in place since October 1, 2021, as a result of appropriations legislation (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2022, Pub. L. 117-103; the Consolidated Appropriations Act, 2023, Pub. L. 117-328; and the Consolidated Appropriations Act, 2024, Pub. L. 118-42).

Commenters expressed broad support for the increase to the CVV amounts of \$24 for child participants, \$43 for pregnant and postpartum participants, and \$47 for partially (mostly) and fully breastfeeding participants adjusted annually for inflation. In expressions of support, commenters cited that the increased CVV amounts: (1) allow participants to buy and consume more fruits and vegetables to support improved health; (2) have led to greater participant satisfaction and retention; (3) support retailers in low-income and rural areas stocking more fruits and vegetables because of the increased buying power, improving choice and access; and (4) support the economy, particularly produce farmers.

No comments opposed the increase in CVV amounts. Some commenters requested adjusting the value of the CVV for WIC State agencies administering WIC in high-cost areas, citing reduced purchasing power because of the likelihood of relatively higher food prices. Given that NASEM recommended further study to evaluate the feasibility of making such adjustments to the CVV, the Department is not making this change in the final rule and instead seeks to pursue future cross-program research to obtain data necessary to better understand variations in cost of living to inform potential future changes.

Some commenters suggested increasing CVV amounts beyond those proposed, with several requests for USDA to increase the amount for pregnant participants to match that of breastfeeding participants at \$47. The CVV amounts in the 2022 proposed rule provide approximately half of the recommended daily amounts of fruits and vegetables for adults and children, which aligns with the goal of providing supplemental amounts of foods and nutrients in the WIC food packages. These increased CVV amounts are consistent with the DGA recommendation to increase consumption of fruits and vegetables and afford participants greater choice to select fruits and vegetables that accommodate their cultural and personal food preferences. For these reasons, the Department maintains the amounts as proposed. The following are the CVV amounts (using 2022 as the base year)¹⁰ for the purchase of fruits and vegetables by participant category (monthly CVV amounts will be adjusted annually for inflation):

Children 1 through 4 years:	\$24
Pregnant:	\$43
Postpartum:	\$43
Partially (mostly) breastfeeding:	\$47
Fully breastfeeding:	\$47

¹⁰ The base year used for calculating inflation adjustments will be 2022. Note that the temporary increase in the CVV for fiscal year 2023 was based on the proposed amounts (2022 base year amounts) and adjusted upward for inflation to provide \$25 for child participants, \$44 for pregnant and postpartum participants, and \$49 for partially (mostly) and fully breastfeeding participants. The inflation adjustment made for FY 2023 was consistent with the approach required under 7 CFR 246.16(j)(4). Similarly, the temporary increase in the CVV for fiscal year 2024 is based on the proposed amounts (2022 base year amounts) and adjusted upward for inflation to provide \$26 for child participants, \$47 for pregnant and postpartum participants, and \$52 for partially (mostly) and fully breastfeeding participants. The inflation adjustment made for FY 2024 is consistent with the approach required under 7 CFR 246.16(j)(4). See WIC Policy Memo #2023-2: Consolidated Appropriations Act, 2023, Extending the Temporary Increase in the Cash-Value Voucher/Benefit for Fruit and Vegetable Purchases, www.fns.usda.gov/wic/policy-memorandum-2023-2 and WIC Policy Memorandum #2024-1: FY 2024 Cash-Value Voucher Benefit Amounts. www.fns.usda.gov/wic/2024cash-value-voucher-benefit-amounts.

2. Require One Other Form of Fruits and Vegetables in Addition to Fresh (§ 246.10(e)(3)(v), (e)(4)(ii), (e)(5)(ii), (e)(6)(ii), (e)(7)(ii), and (e)(9) through (11), Tables 1 through 3)

This final rule codifies the requirement that WIC State agencies authorize fresh and at least one other form (frozen, canned, and/or dried) of both fruits and vegetables for the child, pregnant, postpartum, and breastfeeding food packages and requires fresh and at least one other form (frozen or canned) for the CVV substitution for infant (ages 6 through 11 months) food packages. Dried fruits and vegetables pose a choking hazard for infants and are not authorized.

Most commenters expressed support for requiring another form of fruits and vegetables in addition to fresh. Many WIC State agencies commented that they already allow for an additional form so there is no burden to implementing this provision. Commenters also highlighted that the provision would support the purchase of produce with a longer shelf life and expand participant choice, which could lead to increased redemption rates and mitigate food waste. The Department agrees with these comments and adds that in combination with the increase in the CVV, the provision will provide participants with greater flexibility to accommodate various storage or cooking conditions as well as special dietary needs (e.g., allergy/intolerance to certain forms of fruits and vegetables) and cultural and personal preferences.

Some WIC State agencies requested clarification regarding frozen, canned, and dried options as well as pickled or fermented products and sugar in additional forms of fruits and vegetables.

Several commenters expressed support for additional forms of fruits and vegetables with concern about the sodium, sugar, and additives in canned and frozen products. The Department clarifies that with this provision, canned or frozen fruit may not contain added sugars, fats, oils, or salt and, that canned or frozen vegetables may not contain added sugars, fats, or oils (§ 246.10(e)(12), Table 4). Regarding sodium, the Department acknowledges the sodium content of canned vegetables may be higher than other forms (i.e., fresh, frozen, and dried), and that canned

vegetables can be prepared in ways that reduce sodium content. The Department also clarifies that while sodium is not restricted in canned or frozen vegetables in Federal regulations, WIC State agencies may establish criteria in addition to the Federal minimum requirements.

The Department recognizes the potential for confusion among households with infant participants whose benefits are aggregated¹¹ with children and women participants who may receive dried forms of fruits and vegetables and confirms that WIC State agencies should address this topic through nutrition education.

3. Require Vendors to Stock at Least Three Varieties of Vegetables (§ 246.12(g)(3)(i))

This final rule codifies the provision to require vendors to stock at least three varieties of vegetables as summarized in the proposed rule.

Most commenters, including WIC State and local agencies, expressed support for this provision. Several suggested the requirement would not create additional burden as most retailers already stock more than two varieties of vegetables, noting this provision could reduce barriers and increase equitable access to vegetables. The Department agrees with these commenters and adds that increasing the minimum number of vegetables stocked will help reduce disparities in food access in communities where obtaining produce is difficult and provide participants with greater access to support establishing healthy dietary patterns during critical life stages.

Several commenters expressed concern that this provision could result in a potential loss of small vendors, and a few WIC State agencies cited the administrative burden of requiring additional

¹¹ Aggregation of WIC benefits: WIC State agencies may aggregate WIC supplemental food amounts for families or households with multiple participants receiving the same food with the same nutrient specification. This may be useful when benefits are issued via EBT.

varieties of vegetables. The Department recognizes that the requirement for vendors to stock at least three varieties of vegetables could potentially impact some small vendors. The ability to stock shelf stable forms of vegetables will ease this concern, as Federal regulations will not require small vendors to stock three forms of fresh vegetables. As suggested in several comments, the Department will develop resources and technical assistance for WIC State agencies to adapt and use in training WIC-authorized vendors on the new provisions and allowable flexibilities in this final rule.

4. Expand What Can Be Purchased with the CVV (§ 246.10(e)(12), Table 4)

This final rule expands what can be purchased with the CVV, including fresh cut herbs, white potatoes, and larger sizes of packaged fruits and vegetables.

a. Allow Fresh Herbs (§ 246.10(e)(12), Table 4)

This final rule codifies allowing participants to purchase fresh cut herbs with the CVV as summarized in the 2022 proposed rule.

Allowing fresh cut herbs to be purchased with the CVV increases participant choice, helps accommodate cultural eating patterns, and aligns with the DGA, which categorizes fresh herbs (e.g., cilantro and basil) as dark green vegetables.

The few comments received specific to this proposal were supportive, with WIC State agencies noting that herbs can have health benefits by increasing flavor and decreasing the salt and sugar added during cooking. Commenters cited the potential of including fresh herbs to better meet recommended daily food group amounts for fruits and vegetables. The Department agrees with comments acknowledging that herbs can help enhance the flavor of foods as a strategy to reduce added sugars, saturated fat, and sodium in support of healthy dietary patterns.

Several commenters asked for clarification on this provision, specifically what is included as a fresh herb and whether dried herbs could also be considered in this provision. The Department agrees that clarification on the types of allowable herbs is important. The intent of this provision is to allow participants to purchase fresh herbs, cut at the root or with the root intact, that are in a consumable form. For consistency with the WIC Farmers' Market Nutrition Program and the DGA, the Department will not allow dried herbs to be purchased with the CVV. The Department will further address this through technical assistance, such as guidance or training depending on need.

b. Codify That White Potatoes Are WIC Eligible (§ 246.10(e)(12), Table 4)

This final rule permanently removes white potatoes as an excluded vegetable, as summarized in the 2022 proposed rule. Doing so codifies the provision in the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) that precludes the exclusion or restriction of any variety of fresh, whole, or cut vegetables (except vegetables with added sugars, fats, or oils) in WIC. FNS issued WIC Policy Memorandum #2015-3: *Eligibility of White Potatoes for Purchase with the Cash-Value Voucher*, which has allowed for the purchase of white potatoes with the CVV through present day. No comments opposed to this provision were provided.

c. Allow Larger Sizes of Packaged Fresh Fruits and Vegetables (§ 246.10(e)(12), Table 4)

This final rule codifies allowing larger package sizes of fresh fruits and vegetables to be WIC-eligible as summarized in the 2022 proposed rule. Prior to this rulemaking, regulations prohibited larger package sizes of fresh cut produce, referred to as “party trays.” In accordance with current nutrient requirements, packages of fresh fruits and vegetables regardless of size may not contain added sugars, fats, or oils (which may appear in the form of dips, sauces, or glazes).

The change will also allow participants with more than one family member participating in WIC to use aggregate benefits to purchase larger amounts of precut fruits and vegetables.

The Department received broad general support for this provision, with commenters noting the added flexibility of larger package sizes will better serve participants and support consumption of a variety of fruits and vegetables. WIC State agencies noted party trays commonly contain dips or sauces, which are not WIC-eligible and may cause confusion among participants, and that party trays are typically less cost effective and have a greater risk of food spoilage if not consumed quickly. The Department acknowledges these concerns, will continue to provide technical assistance to WIC State agencies to assist in implementing the provisions of this final rule, and encourages WIC State agencies to address package size considerations to minimize food spoilage through nutrition education.

B. Juice

This final rule codifies a reduction in juice from 128 to 64 ounces in the child food package and from 144 to 64 ounces in the pregnant and breastfeeding food package as proposed, and a reduction in juice from 96 ounces to 64 ounces in the postpartum food package, which modifies the proposed provision to eliminate juice. In addition, this rule allows substitution of a \$3 CVV for the full juice amount across all food packages as originally proposed.

1. Reduce Maximum Monthly Allowance for Juice (§ 246.10(e)(10) and (11), Tables 2 and 3)

This final rule codifies the reduction of juice from:

- 128 ounces to 64 ounces in the child food package, as proposed,
- 144 ounces to 64 ounces in the pregnant and breastfeeding food packages, as proposed, and
- 96 ounces to 64 ounces in the postpartum food package. Based on public comment, the Department modified its proposal to eliminate juice in the postpartum food package.

Many commenters, including WIC State agencies, expressed support for the reduction in juice with several suggesting the Department eliminate juice from all WIC food packages.

Commenters cited overconsumption, particularly among young children, as reason to reduce or eliminate juice, noting the lack of dietary fiber that may contribute to excess caloric intake. The Department agrees with the importance of limiting juice consumption as part of a healthy dietary pattern and notes the reduced quantities provide more appropriate supplemental amounts at approximately 27 to 53 percent of DGA-recommended limits for juice for most participants compared to 40 to 107 percent previous WIC food packages provided.¹² The DGA emphasizes the consumption of whole forms of fruits and vegetables over juice. While the DGA includes 100 percent juice as part of the fruit and vegetable food groups, it emphasizes whole fruit and a variety of vegetables from all subgroups, and places limits on the amount of juice that contributes to a healthy dietary pattern. Juice is not a separate food subgroup (like dark-green vegetables) in the DGA recommended dietary patterns. Additionally, the DGA recognizes juice as lower in dietary fiber than whole fruits or vegetables. The DGA identifies dietary fiber as a dietary component of public health concern for the U.S. population due to underconsumption, and these low intakes are associated with health concerns.

Comments in opposition cited juice as a convenient and cost-effective source of fruit, an under consumed food group among the WIC-eligible population. Some commenters expressed general concern with the reduced benefit level, believing this disincentivizes participation and may impede participant retention goals. Several commenters requested the Department reconsider eliminating juice from the postpartum food package, noting the benefits of juice are applicable to the entire WIC-eligible population and the elimination is not aligned with the Department's goal of improving equitable access to supplemental foods.

¹² For children ages 12 to 23 months, the reduced juice quantity provides 53 percent of the upper DGA limit based on 4 ounces/day for 700-1000 kcal. For children 2 to 4 years, the reduced juice quantity provides 36-53 percent of the upper DGA limit based on 4-6 ounces/day for 1000-1600 kcals. For all pregnant and breastfeeding food packages, the reduced juice quantity provides 27 percent of the upper DGA limit based on 8 ounces/day for 2000-2400 kcals.

The Department agrees that juice, specifically 100 percent juice which the WIC food packages provide, is a convenient and cost-effective source of nutrients, particularly vitamin C. However, the Department also acknowledges that juice is lower in dietary fiber – a dietary component of public health concern – than whole fruits and vegetables, and that juice in the current WIC food packages provides a disproportionate amount of fruit and vegetable servings compared to servings from whole forms. The Department believes the overall improved variety, flexibility, and choice afforded through the WIC food packages will appeal to participants while also providing foods in appropriate supplemental amounts.

The Department appreciates comments citing the benefits of juice across life stages, including for postpartum individuals, and agrees with the importance of ensuring equitable access to nutrient-dense foods for all participant categories. Further, the Department acknowledges the recommended amounts of fruits and vegetables in the 2020-2025 DGA are equivalent across life stages; specifically, the DGA recommends 2 and 2.5 to 3 cup equivalents per day of fruits and vegetables, respectively, for pregnant, breastfeeding, and postpartum individuals. The provision of 64 fluid ounce provides approximately 27 percent of the upper limit of juice in the recommended fruit and vegetable category of the DGA for postpartum women, which aligns with the supplemental amounts provided for all pregnant and breastfeeding participant categories.

2. Allow CVV as a Substitute for Juice (§ 246.10(e)(10) and (11), Tables 2 and 3)

This final rule codifies the provision allowing participants to substitute a \$3 CVV for the full juice amount (64 fluid ounces) through individual tailoring during benefits issuance, as summarized in the 2022 proposed rule. The dollar value of the CVV substitution for juice will be adjusted annually for inflation, consistent with fruit and vegetable CVV adjustments in § 246.16.

Most commenters expressed support for the CVV substitution option, citing the importance of participant choice and the benefits of whole fruits and vegetables in comparison to juice, namely dietary fiber. Commenters further suggested increasing the dollar amount of the CVV substitution to \$4 or more, believing this higher amount to be reflective of the market value for juice, and that as a Federal requirement or WIC State agency option the CVV be the default with juice as the substitution upon participant request. The Department agrees with the importance of participant choice and clarifies that (a) WIC State agencies have the option to make the \$3 CVV the default with juice substituted upon request and (b) the dollar value of the CVV substitution will be evaluated and adjusted annually for inflation to ensure it keeps pace with the market value of juice.

Comments in opposition noted substituting 64 ounces of juice with a \$3 CVV results in fewer net servings of fruits and vegetables as whole forms of fruits and vegetables typically cost more than juice, with one suggestion to also allow substituting additional juice for the CVV. The Department notes that while juice in nutrient-dense forms can be included in healthy dietary patterns, the 2020-2025 DGA emphasizes fruits and vegetables in whole forms and sets limits on the amount of juice consumption. As noted above, juice in the current WIC food packages provides a disproportionate amount of fruit and vegetable servings compared to servings from whole forms. Further, the option to substitute a \$3 CVV for the full juice amount (64 fluid ounces), supports the Department's goals of providing greater flexibility, variety, and choice to accommodate special dietary needs, cultural practices, and personal preferences.

C. Milk and Milk Substitutions

This final rule revises milk and milk substitutions as proposed with some modifications based on public comments and in consideration of providing greater flexibility, variety, and choice to WIC State agencies and participants. The changes include:

Reduce milk amounts provided in child, pregnant, and breastfeeding food packages.

Permit only unflavored milk and establish an added sugar limit for yogurts and plant-based milk alternatives.

- Allow plant-based¹³ substitution options for milk.
- Add a calcium specification for tofu and a vitamin D specification for yogurts.
- Allow reduced-fat yogurts for 1 year-old children without restrictions.
- Remove cheese as a separate food category from the fully breastfeeding food package.
- Require authorization of unflavored lactose-free milk.
- Increase yogurt substitution amounts.
- Remove the limitation that no more than a total of 4 quarts of milk (for participants in Food Packages IV-VI) or 6 quarts of milk (for participants in Food Package VII) may be substituted for a combination of cheese, yogurt, or tofu.
- Create separate food packages for children 12 through 23 months and children 2 through 4 years.
- Update the FDA standards of identity citations for yogurt.

1. Reduce Maximum Monthly Allowances of Milk (§ 246.1(e)(10) and (11), Tables 2 and 3)

As NASEM recommended, this final rule codifies the proposed reduction in milk amounts from:

- 16 quarts to 12 quarts for children ages 12 to 23 months in the child food package
- 16 quarts to 14 quarts for children ages 2 through 4 years in the child food package,

¹³ To reflect the addition of plant-based milk alternatives to the currently allowed soy-based beverage as a WIC-eligible, the preamble refers to “plant-based milk alternatives,” a term consistent with that the FDA uses in their draft labeling recommendations and inclusive of soy-based beverage.

- 22 quarts to 16 quarts in the pregnant and partially breastfeeding food packages, and
- 24 quarts to 16 quarts in the fully breastfeeding package.

These changes provide appropriate supplemental quantities and improve the balance of foods in the food packages.

The provision to reduce milk amounts received mixed support. Many commenters, including several WIC State and local agencies, expressed support for the reduced milk amounts, with the primary rationales that participants report receiving too much milk, the changes are consistent with the supplemental nature of WIC even after the reductions to the dairy amounts, and the WIC food packages still provide most of the recommended dairy amounts. Some commenters also suggested alternatives to the provision as proposed, including retaining current amounts or reducing amounts to a lesser degree for various participant categories. However, there were also many commenters, including a few WIC State agencies, who opposed the reduced amounts. Comments in opposition stated that dairy provides important nutrients and should not be reduced in a program that serves at-risk participants; dairy foods are some of the most highly redeemed products in the WIC food packages and a reduction would be noticeable and impact WIC participants and retailers; reducing milk amounts conflicts with the DGA and runs counter to WIC's nutrition focus; and that the change, which is not needed as a cost-savings measure, will lead to participants increasing their consumption of less nutritious beverages, and will reduce participation in WIC. The Department also acknowledges, while legally non-binding, the report language from the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (Pub. L. 118-42) requests that the Secretary not reduce the maximum monthly allowance with respect to milk when submitting this final rule.

The Department agrees that milk provides important nutrients, and WIC continues to support access to dairy products while rebalancing the foods and beverages currently provided in quantities that exceed recommended amounts. The current DGA recommends consuming amounts of foods to meet nutrient needs while not exceeding calorie requirements. The recommended amounts of dairy range from 1.66 to 3.00 cups per day across life stages. At current levels, the WIC food packages provide up to 128 percent of these amounts from milk alone. Recognizing the inconsistency with WIC's supplemental intent, NASEM recommended reducing the milk amounts to provide a more balanced supplement to participants' diets. Ultimately, the reduced milk quantities reflect NASEM's recommendations and will provide 71 to 96 percent of the dairy amounts the DGA recommends; help to rebalance the food packages to better align with DGA dietary patterns; and are more consistent with the supplemental nature of WIC. The reduced quantities for children are also comparable to the amounts in the Child and Adult Care Food Program (CACFP) nutrition standards.¹⁴ Further, the Department believes the comprehensive set of changes made in this final rule align with nutrition science and consumer preferences and will result in more participants fully redeeming their food benefits.

Regarding the concern that reduced milk quantities will disincentivize program participation, the Department believes that through flexibilities and additions made in this final rule, such as increasing the CVV, adding canned fish to more WIC food packages, and adding additional juice, dairy, and whole grain substitution flexibilities and food options to accommodate special dietary needs, cultural practices, and personal preferences, participants will continue to see the WIC food packages as a valuable benefit.

¹⁴ Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans (FNS-2022-0043) (<https://www.regulations.gov/document/FNS-2022-0043-0001>).

2. Permit Only Unflavored Milk and Establish an Added Sugar Limit for Yogurts and Plant-Based Milk Alternatives (§ 246.10(e)(12), Table 4)

This final rule permits only unflavored milk and establishes an added sugar limit for yogurts and plant-based milk alternatives.

a. Permit only Unflavored Milk

This final rule codifies the provision to allow only unflavored milk as summarized in the 2022 proposed rule.

This provision received broad support, with commenters, including several WIC State agencies, stating that only a small number of WIC State agencies currently authorize flavored milk. The Department will provide targeted technical assistance to WIC State agencies currently authorizing flavored milk to support successful implementation of this change. Commenters in support of this provision also cited alignment with the DGA recommendation that nutrient-dense beverages include little to no added sugars. Commenters who opposed no longer allowing flavored milk, including a few WIC State agencies, stated that participants would not drink unflavored milk and that a healthy dietary pattern can include some added sugars, which would allow for added sugars in dairy. The Department clarifies the 2020-2025 DGA includes a limit on added sugars of less than 10 percent of calories per day and that nutrient-dense beverages include little, if any, sweeteners. The DGA further recommends that children 12 through 23 months of age avoid added sugars because their nutrient requirements are high relative to the amount of food consumed, providing virtually no room in their diets for added sugars. The Department clarifies that this provision also applies to lactose-free milk.

b. Establish an Added Sugars Limit for Yogurts and Plant-Based Milk Alternatives

This final rule replaces the current total sugars limits with an added sugars limit and codifies the following provisions for reducing sugars in yogurts and plant-based milk alternatives based on public comment as requested in the 2022 proposed rule:

- Plain or flavored yogurts (dairy and plant-based) must contain ≤ 16 grams of added sugars per 8 ounces (see *Vitamin D Fortification of Yogurts* for vitamin D requirement).
- Plant-based milk alternatives must contain ≤ 10 grams of added sugars per 8 fluid ounces (see *Plant-Based Milk Alternatives* for other nutrient requirements).

To maintain consistency across food categories that currently have total sugar limits, this final rule also codifies an added sugars limit for breakfast cereal (see section F. Breakfast Cereals).

The Department acknowledges the 2022 proposed rule requested comment on an added sugars limit for yogurt and soy-based beverages. As discussed below (see *Allow Plant-Based Alternatives that Meet Nutrient Specifications*), the Department is codifying changes to allow plant-based milk alternatives that meet the nutrient specifications for WIC-eligible soy beverages. Therefore, the Department considered comments regarding added sugars in soy-based beverages to apply to this broader category of plant-based milk alternatives, summarized below.

Commenters in support of using an added versus total sugars limit in yogurt and plant-based milk alternatives, including several WIC State agencies, highlighted that added sugars are not equivalent to natural sugars found in lactose or fruit, an added sugar limit is more consistent with DGA recommendations, and added sugars information is available on the Nutrition Facts label under FDA requirements. The Department agrees with the commenters and notes that using an added sugars limit instead of a total sugars limit increases consistency with proposed limits for Federally administered Child Nutrition Programs, which is of value to USDA and those who participate in such programs. At the time NASEM developed their WIC food packages

recommendations, FDA's regulation to include added sugars on food labels was not yet implemented. Given the DGA recommendations on limiting added sugar, and that the FDA's labeling requirement for added sugars are in effect, this final rule includes an added sugar limit for yogurt and plant-based milk alternatives (as well as for breakfast cereal, see section F).

Comments in opposition stated that specific to yogurt, the varied fat levels of yogurts result in differing amounts of naturally occurring sugar from lactose. These commenters suggested the added sugars limits NASEM provided in Table 6.5 (page 303) of their 2017 report would be complex and create an administrative burden. Commenters further highlighted the lack of naturally occurring sugar in plant-based yogurts, noting these products require additional added sugars for palatability, and expressed concern regarding any proposed limit for total or added sugars. The Department agrees there would be substantial administrative burden associated with added sugars limits that differ based on the fat content of yogurt. The added sugars limit of ≤ 16 grams per 8 ounces of yogurt aligns with NASEM's suggested limits, which ranged from 11-18 grams of added sugars per 8 ounces depending on fat content, while easing administrative burden and aligning with proposed limits for Federally administered Child Nutrition Programs. The Department believes that a limit on the allowable added sugars content in plant-based yogurts is important for consistency with current dietary guidance and to support healthy dietary patterns.

3. Allow Plant-Based Alternatives that Meet Nutrient Specifications as Milk Substitution Options (§ 246.10(e)(10) through (12), Tables 2 through 4)

This final rule adds plant-based milk alternatives, yogurts, and cheeses as milk substitution options.

a. Plant-Based Milk Alternatives

This final rule codifies allowing plant-based milk alternatives that meet the nutrient specification for WIC-eligible soy beverages in current WIC regulations (§ 246.10(e)(12), Table 4) as summarized in the 2022 proposed rule, with the addition of an added sugar limit codified in this final rule (see *Establish an Added Sugars Limit for Yogurts and Plant-Based Milk Alternatives*, above).

This final rule also codifies a technical correction to 7 CFR 246.10(e)(10) through (12) to reflect the addition of plant-based milk alternatives to the currently allowed soy-based beverage as a WIC-eligible food by replacing “soy-based beverage” with “plant-based milk alternatives,” a term consistent with FDA draft labeling recommendations¹⁵ for these products. Additionally, the Department is clarifying that the current WIC State agency option to authorize plain or flavored (e.g., vanilla, chocolate, etc.) soy-based beverage will apply to all plant-based milk alternatives, and such products will be required to meet added sugar requirements. The Department is also clarifying that Federal regulations will not require or allow for medical documentation to issue plant-based milk alternatives or other milk substitution options. Among the goals of this final rule are to accommodate special dietary needs and cultural and personal preferences and to provide more equitable access to the supplemental foods WIC provides. Requiring medical documentation to issue foods outside of Food Package III creates an unnecessary burden on participants and inequitable access if WIC State agencies’ policies differ in how participants can obtain a milk substitution. Therefore, WIC State agencies that require medical documentation to provide a milk substitution option may no longer do so; rather, WIC State agencies must issue

¹⁵ [FDA Provides Draft Labeling Recommendations for Plant-based Milk Alternatives to Inform Consumers](https://www.fda.gov/news-events/press-announcements/fda-provides-draft-labeling-recommendations-plant-based-milk-alternatives-inform-consumers#:~:text=The%20draft%20guidance%2C%20%E2%80%9CLabeling%20of%20Plant-based%20Milk%20Alternatives,and%20Nutrition%20Service%20fluid%20milk%20substitutes%20nutrient%20criteria) (https://www.fda.gov/news-events/press-announcements/fda-provides-draft-labeling-recommendations-plant-based-milk-alternatives-inform-consumers#:~:text=The%20draft%20guidance%2C%20%E2%80%9CLabeling%20of%20Plant-based%20Milk%20Alternatives,and%20Nutrition%20Service%20fluid%20milk%20substitutes%20nutrient%20criteria).

milk substitutions to participants when individually tailoring WIC food packages to accommodate special dietary needs and cultural and personal preferences.

Most commenters, including WIC State agencies, supported offering other plant-based milk alternatives that meet nutrient specifications and discussed that many children who are allergic to milk are also allergic to soy, and so providing other plant-based milk alternatives provides a healthy beverage option for these participants. Commenters also discussed that providing additional plant-based milk alternatives provides more options for those with cultural preferences for non-dairy milks and urged the Department to allow a variety of plant-based milks beyond soy. Some commenters, including WIC State agencies, noted the limited availability of products that meet the current nutrient specifications and expressed concern for the relatively high cost of plant-based milks. The Department recognizes the limited availability of products that currently meet nutrient specifications and, given that dairy and soy are among the most common food allergens, is creating a pathway to allow WIC State agencies to authorize such products as they become available rather than waiting for a future rulemaking. Such a pathway provides WIC State agencies with greater flexibility to prescribe and tailor WIC food packages that accommodate participants' special dietary needs and personal and cultural food preferences, thus increasing equity. Additionally, USDA understands the cost concerns that some WIC State agencies expressed, and while the Department encourages WIC State agencies to offer as much flexibility, variety, and choice as possible for their participants, USDA also reminds WIC State agencies that they are not required to authorize all WIC-eligible foods. When deciding which types and brands of WIC foods to authorize, including when authorizing plant-based milk alternatives, WIC State agencies should consider factors such as package size, food prices, product availability across their jurisdiction, and program management costs along with participant preference and demand.

Some commenters also expressed a concern about the unit of measure since some products are available in 48-ounce containers. The current substitution ratio for soy-based beverages – an equal quart for quart substitution – will apply to plant-based milk alternatives, as will the ability for participants to substitute these products for the full milk allotment. Since milk and plant-based milk alternatives provide critical nutrients such as calcium and vitamin D, it is important that WIC participants have a way to redeem their full food benefit. For all foods authorized, WIC State agencies must authorize container sizes that equal or add up to the full MMA. However, this final rule also gives WIC State agencies the option to also authorize container sizes that may not equal or add up to the full MMA (see section J. Maximum Monthly Allowance (MMA)).

While the Department received broad support for this provision, several commenters expressed mixed views on the nutrient specifications for, or current nutrient content of, plant-based milk alternatives. One WIC State agency and one local WIC agency supported allowing plant-based milk alternatives but opposed the nutrient requirements, citing variety and flexibility as more important than matching the nutrient content of dairy milk. In contrast, some commenters expressed concern about the lack of equivalency in the nutrient content of plant-based milk alternatives relative to WIC-eligible dairy products, noting the important nutrients dairy-based products provide and citing the AAP, the AND, the American Academy of Pediatric Dentistry (AAPD), and the American Heart Association (AHA) as not recommending plant-based milk alternatives. A couple of commenters opposing this provision asserted the proposed authorization of lactose-free milk and flexibilities for substituting yogurt and cheese will ensure dairy's nutrients and health benefits are accessible to all WIC participants without a need to authorize plant-based milk alternatives.

USDA agrees cow's milk provides important nutrients, including calcium, vitamin D, and potassium – defined as nutrients of public health concern in the 2020-2025 DGA. As such, based

on recommendations from NASEM, FNS proposed in 2006, implemented in 2007, and finalized in 2014 a provision to allow soy-based beverage that was fortified to contain nutrients in amounts similar to cow's milk. This was to ensure participants who substitute soy-based beverage for milk consume priority nutrients in similar amounts relative to dairy milk. Allowing other plant-based milk alternatives with the same nutrient specifications as soy-based beverage supports consumption of priority nutrients in similar amounts relative to dairy milk. It also creates consistency across eligible products and reduces administrative burden and the possibility of participant and vendor confusion.

USDA does not agree that lactose-free milk and dairy-based yogurt and cheese alone are sufficient alternatives for WIC participants. Individuals do not consume dairy for a variety of reasons, including special dietary needs such as an allergy, or cultural or personal preferences. While some individuals with lactose intolerance may tolerate dairy-based yogurt and cheese and soy-based beverages, dairy and soy are among the top food allergens, making these foods unavailable options as milk substitutions for WIC participants with these allergies.

The Department highlights the 2020-2025 DGA's recognition of beverages fortified with calcium, vitamin A, and vitamin D as included in the dairy group because of the similarity in nutrient composition when compared to cow's milk. While the nutritional content of many plant-based milk alternatives currently available in the retail marketplace is not similar to dairy milk or soy-based beverages, the pathway the Department is creating through this rulemaking will allow for products to be added in the future. Additionally, USDA notes that in response to the 2022 proposed rule, the AAP commented, "Dairy-free alternatives to milk can be helpful for children with milk allergies or other dairy restrictions." While noting that "many of these products lack the essential nutrients that dairy products contain," they also stated that they would be "supportive of the addition of dairy-free alternatives to the WIC food package so long as their

protein, vitamin D, and calcium amounts are similar to milk and that they do not contain significant added sugars.” Allowing WIC State agencies to authorize additional plant-based milk alternatives that meet the nutrient specifications for WIC-eligible soy beverage, as the marketplace allows, supports equitable access to supplemental foods consistent with the legislative intent of the WIC Program.

b. Add Plant-Based Yogurts and Plant-Based Cheeses

Based on public comment requested, this final rule codifies allowing plant-based yogurts and cheeses as substitution options for milk as summarized in the 2022 proposed rule with modification to the vitamin D specification and the use of an added versus a total sugar limit (see *Establish an Added Sugars Limit for Yogurts and Plant-Based Milk Alternatives*) for plant-based yogurt:

- Plant-based yogurts must contain ≤ 16 grams of added sugars and at least 250 milligrams of calcium, 6.5 grams of protein, and 106 IU (2.67 micrograms) of vitamin D per 8 ounces.
- Plant-based cheeses must contain at least 250 milligrams of calcium and 6.5 grams of protein per 1.5 ounces.

Several commenters, including WIC State agencies, supported allowing additional plant-based yogurts and cheeses (i.e., not just soy-based) as milk substitution options to accommodate those with dairy and soy allergies and provide variety for those who follow vegetarian or vegan dietary patterns. As with plant-based milk alternatives, commenters likewise cited availability and cost concerns. As noted in the discussion for plant-based milk alternatives, while the availability of products that meet nutrient requirements for plant-based yogurts and cheeses are limited currently, creating a pathway for future inclusion eliminates a barrier to addressing special dietary needs and cultural and personal preferences. USDA also received a request for the

vitamin D requirement to match the minimum optional vitamin D fortification amount outlined in the FDA's updated Standard of Identity (SOI) (see *Vitamin D Fortification of Yogurts*) for the discussion on vitamin D). Only a few commenters opposed adding plant-based yogurts and cheeses, with a concern expressed for participant confusion because plant-based milk alternatives are not allowed, and an assertion that dairy-based yogurt and cheese provide important nutrients. This final rule allows plant-based milk alternatives, thus there is consistency in allowing plant-based milk alternatives, yogurts, and cheeses. USDA agrees that WIC-eligible dairy-based foods provide important nutrients, including calcium and vitamin D. Likewise, allowing plant-based yogurts and plant-based cheeses that meet the nutrient specifications contained in this rule allows for greater access to these nutrients by participants with certain conditions or for those who follow vegetarian or vegan dietary patterns.

5. Add a Calcium Specification for Tofu and a Vitamin D Specification for Yogurt (§ 246.10(e)(12), Table 4)

This final rule adds a calcium specification for tofu and a vitamin D specification for yogurt.

a. Calcium Fortification of Tofu

This final rule codifies a calcium requirement for tofu as summarized in the 2022 proposed rule with modification to 100 milligrams of calcium per 100 grams of tofu.

Commenters, including WIC State agencies, expressed general support for requiring calcium fortification of tofu, stating this would be especially beneficial for participants with milk allergies. Many commenters expressed concerns about current marketplace availability of tofu products that meet the proposed specification (200 milligrams of calcium per 100 grams of tofu), stating that this requirement would remove or eliminate all tofu products currently eligible and noting the effect that adding calcium has on the texture of tofu.

Based on comments, USDA conducted additional marketplace analyses. Using USDA Agricultural Research Service's (ARS) Food Data Central Database, 27 out of 40 tofu products randomly selected across a variety of brands and textures were found to provide 100 milligrams or more of calcium per 100 grams of tofu. For the three WIC State agencies that provided information about products in their state, this calcium amount is consistent with the lower end of what they reported as being available: 100-153 milligrams of calcium per 100 grams of tofu. Calcium is a priority nutrient for the WIC target population, so adding a calcium specification for WIC-eligible tofu ensures those who substitute tofu for milk still obtain calcium. Lowering the minimum requirement from 200, as proposed, to 100 milligrams of calcium per 100 grams of tofu increases access to this priority nutrient in a manner that reflects current marketplace availability.

b. Vitamin D Fortification of Yogurts

This final rule codifies a vitamin D requirement for yogurts (dairy- and plant-based) as summarized in the 2022 proposed rule with modification to 106 IU (2.67 micrograms) of vitamin D per 8 ounces of yogurt. The Department is also extending the implementation date for this requirement to [insert date 36 months after publication of this final rule], based on public comment. This date is a deadline, thus if products that meet the vitamin D specification are available sooner, WIC State agencies may and are encouraged to authorize these products in advance of this date.

Most commenters, including WIC State agencies, supported adding a vitamin D specification to yogurt to improve participant health, citing the underconsumption of this nutrient. The primary concern among commenters, including a couple of WIC State agencies, who supported and opposed this provision was marketplace availability and the potential for reducing or eliminating

all currently authorized yogurts followed by a concern about manufacturers' willingness to modify products. However, through the public comment process, an industry advocacy group and several yogurt manufacturers expressed their support for a vitamin D specification for WIC-eligible yogurts. No manufacturers or industry representatives submitted comments in opposition to adding a vitamin D specification, and two of the manufacturers and an industry advocacy group recommended that USDA implement a specification to match the minimum optional vitamin D fortification amount outlined in the FDA's updated SOI for yogurt (21 CFR 131.200), which states that: "If added, vitamin D must be present in such quantity that the food contains not less than 10 percent Daily Value per Reference Amount Commonly Consumed (RACC) thereof, within limits of current good manufacturing practices." With a RACC of 6 ounces and a Daily Value of 800 IU (20 micrograms), the minimum amount of vitamin D the FDA SOI requires if yogurt is optionally fortified with vitamin D is 80 IU (2.0 micrograms) per 6-ounce serving. This amount meets the FDA definition of a "good source" of a nutrient and translates to approximately 106 IU (2.67 micrograms) per 8 ounces, slightly higher than the 2022 proposed rule's 100 IU (2.5 micrograms) per 8 ounces. The Department finds merit in industry's request to align vitamin D specifications for WIC-eligible yogurts with the FDA's SOI for yogurt (21 CFR 131.200) when yogurt is voluntarily fortified with vitamin D and is modifying the proposed specification accordingly.

Industry commenters also requested USDA extend implementing this provision to 30 months to allow time for manufacturers to reformulate products. The Department finds this timeline to be reasonable based on the current marketplace requirements for vitamin D in yogurt and the Department's experience with review of reformulated and new products. To allow additional time for WIC State agencies' product review and APL and MIS updates, the Department is further extending the implementation date for the vitamin D requirement for yogurt by an additional 6 months, for a total of 36 months after publication of this final rule.

USDA received one comment stating that vitamin D is already present in several other fortified WIC-eligible foods and this nutrient should be obtained through active time outdoors. As noted in the proposed rule, the DGA identifies vitamin D as a nutrient of public health concern for people in all life stages and notes that vitamin D recommendations are hard to achieve through natural sources from diet alone and would require consuming foods and beverages fortified with this vitamin. The DGA also notes that some individuals may have difficulty producing sufficient vitamin D from sunlight exposure. Additionally, the Centers for Disease Control and Prevention (CDC)¹⁶ and National Institute of Health (NIH)¹⁷ encourage vitamin D consumption through food or dietary supplements to reduce UV exposure and ensure an adequate amount is obtained when neighborhood conditions like weather, crime, traffic, and lack of outdoor space for safe play limit the ability to spend time outdoors.

6. Allow Reduced-Fat Yogurts for 1-Year-Old Children Without Restrictions (§ 246.10(e)(10) and (11), Tables 2 and 3)

This final rule codifies allowing reduced-fat yogurts for 1-year-old children without restriction as summarized in the 2022 proposed rule (i.e., both whole fat and reduced-fat yogurts may be issued to children 12-13 months of age without consultation with the participant's healthcare provider).

Commenters, including several WIC State agencies, largely supported this provision, citing that the DGA dietary pattern for children 12 through 23 months of age includes low-fat plain yogurts in the dairy food group for this age category to support consumption of a combination of foods to

¹⁶ The Center for Disease Control and Prevention notes “there is no know level of UV exposure that would increase vitamin D levels without also increasing skin cancer risk. https://www.cdc.gov/cancer/skin/basic_info/outdoors.htm.

¹⁷ National Institutes of Health guidance for vitamin D states that clothing and sunscreen can block skin production of vitamin D and that neighborhood social conditions may reduce sun exposure (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6843675/>) and NIH fact sheet “Vitamin D – Health Professional Fact Sheet,” (<https://ods.od.nih.gov/factsheets/VitaminD-HealthProfessional/>).

meet nutrient needs within limited calories. Commenters also stated that the change would expand yogurt variety and participant choice for children in this age group, improve participants' shopping experience because of the expanded options it affords, increase access to and consumption of dairy/yogurt, and reduce administrative, participant, and healthcare provider burden. The few commenters who opposed this provision, including WIC State agencies, stated that this change would create an administrative burden, requiring WIC State agencies to re-work the current category/subcategory structure on the MIS for the different fat levels of yogurt, and requesting to retain whole fat yogurt as the default standard issuance and allow the participant to determine which yogurt best suits their needs at the store.

The Department appreciates support for this provision and highlights the change to allow whole and low-fat yogurts as standard issuance to children 12 to 23 months of age aligns with the 2020-2025 DGA and expands yogurt variety and participant choice. While there are administrative efforts associated with the change, this one-time effort to update the MIS reduces the ongoing administrative burden of prescribing fat content at the time of food package prescription, as well as participant and healthcare provider burden associated with the current WIC State agency option to require (if necessary) a consultation with the child's health care provider to issue low-fat (0.5-2 percent) or nonfat yogurt.

The Department received one comment expressing concern the change may increase the amount of sugar young children consume, given the relatively higher added sugar content of low-fat yogurt. Through this rulemaking, USDA is reducing added sugars provided through the WIC food packages by no longer allowing flavored milk and placing limits on added sugars for WIC-eligible plant-based beverages and dairy and plant-based yogurts. The Department believes this change allows modest flexibility to participants within the DGA-recommended limits on sugars that supports a healthy dietary pattern over time and that through nutrition education WIC staff

can work with parents and caretakers to identify the yogurt that works for them and encourage foods and beverages with little to no added sugars.

7. Remove Cheese from the Fully Breastfeeding Food Package (§ 246.10(e)(7)(ii) and (e)(10) and (11), Tables 2 and 3)

This final rule removes cheese as a separate food category for fully breastfeeding participants (Food Package VII) as NASEM recommended to provide a better balance of nutrients and align with the DGA recommendation for reducing saturated fat consumption. Participants receiving the fully breastfeeding food package will continue to be able to substitute cheese for milk like all other participants receiving milk in their food package.

The Department received several comments in support of this provision, including from several WIC State agencies, stating that reducing the cheese allotment would be consistent with NASEM and DGA recommendations regarding reducing saturated fat intake and provide a better balance of nutrients. Commenters also noted that retaining the ability to substitute cheese for milk allows participants continued access to this food. Some commenters opposed this provision, including several WIC State agencies, asserting that it is detrimental to nursing mothers who have increased caloric needs and particularly so for individuals who are lactose intolerant but may tolerate cheese. These comments also discussed the overall importance of dairy products to health and nutrition and that removing cheese could limit calcium and protein for breastfeeding participants and disincentivize fully breastfeeding.

The Department reiterates that cheese remains available to all participants (except for infants) as a partial milk substitution. While participants receiving the fully breastfeeding food package will no longer have cheese as a separate food item, they are still able to substitute cheese for milk like all other participants issued milk in their food package. Thus, the revised fully breastfeeding food

package continues to provide access to dairy in an amount consistent with the supplemental nature of WIC by providing 71 percent of the DGA dietary pattern recommendations (compared to the current fully breastfeeding food package that provides 119 percent). This change aligns with DGA recommendations for reducing saturated fat consumption and DGA guidance to consume a balanced diet that meets, but does not exceed, recommended food group and subgroup amounts and nutrients appropriate for an individual's life stage. With a greater CVV, more canned fish and eggs, and both legumes and peanut butter, the fully breastfeeding food package provides a food benefit consistent with higher caloric needs during this life stage and a better balance of nutrients. Further, as this rule expands options for participants who are lactose-intolerant, such as adding plant-based yogurt and plant-based cheese options and requiring WIC State agencies to authorize lactose-free milk, this rulemaking is expected to improve equitable access to key nutrients WIC supplemental foods provide.

The following provisions did not receive significant or substantial public comment; this final rule codifies the following provisions as summarized in the 2022 proposed rule:

- Require all State agencies to authorize unflavored lactose-free milk.
- Increase yogurt substitution amounts from 1 quart of yogurt for 1 quart of milk to allow up to 2 quarts of yogurt for 2 quarts of milk.
- Expand substitution options by removing the limitation that no more than a total of 4 quarts of milk (for participants in Food Packages IV-VI) or 6 quarts of milk (for participants in Food Package VII) may be substituted for a combination of cheese, yogurt, or tofu.
- Create separate food packages for children 12 through 23 months (Food Package IV-A) providing 12 quarts of milk and children 2 through 4 years (Food Package IV-B) providing 14 quarts of milk.
- Update the FDA Standard of Identity (SOI) citations for yogurt.

D. Infant Foods

As NASEM recommended, this final rule reduces the amount of infant cereal for all infants and reduces the amount of infant fruits and vegetables and infant meat for fully breastfed infants.

This final rule also increases substitution amounts for infant fruits and vegetables; allows forms other than fresh; and lowers the minimum age for all infants to receive a CVV. These changes provide supplemental quantities and align with AAP's complementary feeding recommendations. This final rule does not exclude "added fats" from the ingredients authorized for infant foods as originally proposed.

Early Introduction of Peanut Butter to Infants

This final rule does not address the early introduction of peanut butter to infants. While the Department appreciates comments on this topic in conjunction with comments on the proposed changes to infant foods, the topic is outside the scope of this final rule. Infants ages 6 through 11 months receive complementary foods in the categories of infant cereals, infant food fruits and vegetables, and infant food meat. Currently, a legumes and peanut butter category is not part of the infant food packages. In their 2017 report, NASEM did not recommend changes to include new infant foods, such as legumes and peanut butter, to the infant food packages or review the appropriate amount of peanut butter to include in the infant food package if such changes were made. The Department recognizes there is an evolving body of scientific data that supports the early introduction of peanut-containing foods to help prevent a food allergy to peanuts; however, the applicability to the WIC food packages still requires further exploration and this topic may be included as part of the next comprehensive scientific review of the WIC food packages.

1. Reduce Infant Cereal, Infant Fruits and Vegetables, and Infant Meat (§ 246.10(e)(9), Table 1)

This final rule codifies the reductions to infant foods as summarized in the 2022 proposed rule.

The revisions do not change the types of infant foods offered, maintaining alignment with DGA

recommendations to introduce foods from all food groups starting at about 6 months of age and to include foods rich in iron and zinc, particularly for infants fed human milk. The reduction to infant foods provides appropriate supplemental quantities, as NASEM recommended, and align with the AAP's complementary feeding recommendations. In the interest of clarity, reduction to infant cereal, infant fruits and vegetables, and infant meat are discussed separately in this section.

a. Infant Cereal

Based on NASEM recommendations, this final rule codifies the reduction in the amount of infant cereal from 24 ounces to 16 ounces for fully breastfed infants and from 24 ounces to 8 ounces for partially (mostly) breastfed and fully formula fed infants. NASEM's review identified the current infant food packages as providing 150 percent of the maximum amounts of infant cereal recommended by the AAP.

Many commenters, including multiple WIC State agencies, expressed support for the reduction in infant cereal noting alignment with NASEM and AAP recommendations. Multiple WIC State agencies reported low redemption rates of infant cereal, and another commenter stated that cereal is often used as a starter food for infants up to 9 months of age and not used much thereafter.

Some commenters expressed concern about reducing cereal for breastfed infants as it is a reliable source of iron for infants past 6 months of age, especially for infants who do not receive iron-fortified formula and for the WIC population, which has higher nutritional risk.

One commenter stated that the 2017 NASEM report reflects an incorrectly calculated AAP recommendation for infant cereal. The Department does not agree with this comment. NASEM's recommendations are based on the AAP's 2014 Pediatric Nutrition, 7th Edition recommendations, which were unchanged in their 2020 update and remain current.

The Department agrees that providing iron and zinc rich foods to infants 6 months of age and older is important, especially for fully breastfed infants. This final rule provides infant cereal in amounts that align with the NASEM and current AAP recommendations and recognize that breastfed infants may require more iron and zinc fortified cereal than formula fed infants because human milk contains low levels of these nutrients. USDA may further assess adequate iron intake through infant cereal during the next comprehensive review of the WIC food packages.

Arsenic in Infant Cereal

In addition to comments on the amount of infant cereal in WIC food packages, the Department received a few comments encouraging the removal of infant rice cereal as a WIC-eligible food, citing high arsenic levels. Through comments, the Department is aware that several WIC State agencies have already removed refined infant rice cereals from APLs due to concerns of arsenic levels. One commenter suggested requiring infant cereals to be whole grain with the exclusion of brown rice as a method of reducing exposure to arsenic, while others acknowledged arsenic concerns but encouraged USDA to keep infant rice cereal as a WIC-eligible due to the importance of having gluten-free options.

The Department is following the recommendations of the FDA's Closer to Zero¹⁸ plan to reduce dietary exposure to contaminants (including arsenic) to as low as possible while maintaining access to nutritious foods. FDA states arsenic is found in both inorganic and organic forms and that inorganic arsenic is generally considered more toxic than organic arsenic. The amount of inorganic arsenic found in rice products, such as infant rice cereals, varies among manufacturers.

¹⁸ Food and Drug Administration's Closer to Zero: Reducing Childhood Exposure to Contaminants from Foods (<https://www.fda.gov/food/environmental-contaminants-food/closer-zero-reducing-childhood-exposure-contaminants-foods>).

To ensure infant safety, FDA has established an action level for inorganic arsenic in infant rice cereals that is intended to reduce the possible risks of neurodevelopmental delays and other health problems that may occur from consuming inorganic arsenic. Production of infant rice cereals by companies following FDA's current good manufacturing practices helps to ensure the safety of this food category. The Department agrees infant rice cereal is an important gluten-free alternative and is maintaining this as an option in the WIC food packages consistent with FDA guidance. WIC State agencies are encouraged to authorize a variety of infant cereal grain types and maintain their authority to establish criteria in addition to the minimum Federal requirements, to include limiting infant rice cereal if deemed necessary. USDA will continue to work with FDA to communicate key messaging regarding the safety of the food supply when appropriate.

b. Infant Fruits and Vegetables

As NASEM recommended, this final rule codifies the reduction in jarred infant fruits and vegetables for fully breastfed infants from 256 ounces per month to 128 ounces per month.

According to NASEM, the current fruit and vegetable amount in the fully breastfed food package provides more than a one cup-equivalent of fruits and vegetables per day, an amount difficult for 6 through 11-month-old infants to consume. The revised amount aligns with the amount currently provided to partially (mostly) breastfed and fully formula fed infants.

Many commenters, including WIC State agencies, expressed support for the proposed reductions in infant fruits and vegetables due to low redemption rates and the importance of introducing a variety of foods – in multiple forms – to infants beginning at about 6 months. The Department agrees. As noted in the 2022 proposed rule, the current food package provides fully breastfed infants with more than a one cup-equivalent of fruits and vegetables per day, an amount difficult for an infant 6 to 11 months of age to consume.

The few comments in opposition cited general concern for a reduction in the amount of food provided, noting this may disincentivize the fully breastfeeding food package. The Department appreciates this concern and believes that the numerous changes to this food package, designed to increase variety, choice, and flexibility will provide continued appeal for fully breastfeeding participants. In addition, the Department notes that the reduction aligns with the overarching rationale for this rulemaking to provide supplemental amounts of food and improve the balance of foods and nutrients in the food packages.

The Department also received one suggestion to codify the reduced amount but introduce this provision beginning at 4 months of age. While the Department recognizes some infants may show developmental signs of readiness for nutrient-dense complementary solid foods before 6 months of age, the AAP recommends complementary foods should be introduced to infants at about 6 months of age.

c. Infant Meats

This final rule codifies the reduction in infant meats for fully breastfed infants from 77.5 to 40 ounces, as summarized in the 2022 proposed rule. This revised amount provides approximately 65 percent of the AAP-recommended maximum (previously 130 percent).

Many commenters, including WIC State and local agencies, expressed support for the reduction of infant meats in the fully breastfeeding package to align with the supplemental nature of the program and cited low redemption rates of infant meats. Several commenters stated that many of their WIC clients do not like the single ingredient jarred infant meats. Another commenter stated that pureed meats are one of the lowest redeemed foods and are not as culturally acceptable within their Tribe as other protein sources. There were few comments in opposition to this

provision. Some commenters stated that meats are a good source of complete protein, heme iron, zinc, and other vitamins and minerals that support neurologic development and immune function, especially among breastfed infants that do not receive iron supplementation in formula. Another commenter stated that meat-based protein is considered optimal for infants as it is a high-quality protein and digested and absorbed more efficiently.

The Department agrees that infant meats provide a good source of iron and zinc that is important for fully breastfed infants. However, reducing infant meats to a supplemental quantity is consistent with the goals of this rulemaking and dietary guidance to consume a balanced diet that meets but does not exceed recommended amounts of foods and nutrients.

Infant Meat Redemption

Due to the low redemption of infant meat and the importance of this food as an iron source for fully breastfed infants, the Department requested public comment on ways to support increased redemption of infant meats, and iron-rich foods in general, for fully breastfed infants. Several commenters requested USDA allow alternatives to infant jarred meats, such as infant combination foods containing meats and vegetables, or allowing meat alternatives such as eggs, legumes, and tofu. Other commenters recommended adding fresh meat and fish to infant food packages. The Department appreciates these suggestions but believes that before such changes can be incorporated, additional research is needed to identify and develop strategies to increase iron consumption among WIC infants, as well as identify good sources of heme iron that meet eligibility criteria for WIC. Although no changes were made in this final rule in response to these comments, the Department will consider these comments in the future development of nutrition education and resources.

The Department appreciates the suggestions to increase redemption and consumption of infant meat and alternate options for iron-rich foods. NASEM considered inclusion of infant meat dinners (which contain meat and vegetables) but determined the amount of iron per ounce is significantly lower compared to single ingredient products. NASEM also determined that the non-heme iron found in eggs, tofu, and legumes would not be nutritionally equivalent to the heme iron available in infant meats. Regarding seafood for infants, while the current EPA-FDA advice for eating fish¹⁹ provides updated information about methylmercury exposure for younger children, neither agency has issued advice on which varieties of fish are safe or how much to recommend for infants to limit methylmercury exposure. Further, the DGA does not provide an infant dietary pattern with recommended amounts and types of fish. The Department may include an assessment of the amounts and types of fish that could be available in infant food packages during the next comprehensive review of the WIC food packages.

Commenters also highlighted the importance of nutrition education as a way to improve iron consumption. The Department agrees that nutrition education can be used to encourage consuming iron rich foods, including those containing meat, and this messaging should continue to be part of the nutrition education provided to WIC participants.

2. Increase CVV Substitution Amounts for Infant Fruits and Vegetables, Allow Forms Other than Fresh, and Lower the Minimum Age for Infants to Receive a CVV (§ 246.10(e)(9), Table 1)

This final rule codifies the increase to the CVV substitution amount for infants; allows the CVV for infants to be used to purchase at least one other form of fruits and vegetables in addition to fresh (see section A. Fruits and Vegetables. Require One Other Form of Fruits and Vegetables in

¹⁹ Advice about Eating Fish (<https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-updated-advice-about-eating-fish>).

Addition to Fresh); and lowers the age (from 9 to 6 months) at which the CVV can be substituted for infant fruits and vegetables, as summarized in the 2022 proposed rule.

Many commenters expressed support for all three actions in this provision, stating they better meet the needs of and empower families to prepare more foods at home, accommodate varied food preferences, and are more consistent with the developmental progression of feeding complementary foods. One commenter suggested allowing the CVV substitution to begin at 4 months of age, which the Department will not implement as NASEM and the DGA recommend introducing complementary foods around 6 months of age (see b. Infant Fruits and Vegetables above).

One commenter opposed this provision, stating that allowing the CVV substitution would be inconsistent with NASEM recommendations and reduce the net fruit and vegetable servings obtained through WIC and expressed concern that substituting a CVV for infant fruit and vegetable purees may result in older family members consuming the food, instead of the infant as intended. The Department clarifies this provision mirrors NASEM's recommendation to provide either: 128 ounces of infant fruits and vegetables; 64 ounces of infant fruits and vegetables and a \$10 CVV; or no infant fruits and vegetables and a \$20 CVV, and that all three options support a supplemental amount of fruits and vegetables for infants. Substituting jarred infant fruits and vegetables with the CVV may allow participants to buy more servings of these foods and allow caregivers to prepare foods with developmentally appropriate textures for older infants.

Regarding the potential of another family member using the infant CVV, the Department appreciates this concern and believes it is addressed through education at the time of food package issuance, which includes instructions that all foods issued – not just the CVV substitution – are intended for participant use only.

3. Withdraw Proposed Provision to Prohibit Added Fats in Infant Foods (§ 246.10(e)(12), Table 4)

This final rule will not codify excluding “added fats” from the ingredients allowed in infant foods as summarized in the 2022 proposed rule. The Department proposed this change to align infant food packages with the healthy eating patterns of children as they grow. However, several commenters expressed general concern about this proposed provision, finding the recommendation vague and affirming that variables (such as those described below) would need to be considered to carry out the provision effectively. Other commenters discussed the benefits of fats, including omega-3 fatty acids needed for brain development. One commenter questioned the availability of infant meats without broth/gravy containing added fats, suggesting USDA consider excluding added fats from infant cereal, fruits, and vegetables only. The Department finds merit in the concerns commenters expressed pertaining to restricting all added fats from infant foods which would include polyunsaturated fats which play a role in brain development of infants as well as the operational feasibility of implementing this provision. USDA may consider additional research during the next comprehensive review of the food package to determine if restricting added fats is feasible in a way that supports infants’ comprehensive nutrition needs and program administration.

E. Add Infant Formula Flexibilities and Create a Separate Food Package for Partially (Mostly) Breastfeeding Participants

This final rule increases formula amounts in the first month for partially (mostly) breastfed infants; allows all prescribed infant formula quantities to be considered “up to” amounts; and creates a separate and enhanced food package for partially (mostly) breastfeeding participants. These changes will be codified as proposed, with no modification, and will collectively add flexibilities to infant formula amounts and create a separate food package to strengthen support individual breastfeeding goals to help participants establish successful long-term breastfeeding.

1. Increase Formula Amounts in the First Month for Partially (Mostly) Breastfed Infants (§ 246.10(e)(1)(ii) and (e)(9), Table 1)

This final rule codifies the increased maximum monthly infant formula amounts for partially (mostly) breastfed infants in the first month from 104 fluid ounces to up to 364 fluid ounces, as summarized in the proposed rule. Consistent with current requirements, the amount of formula issued will continue to be tailored based on an individual nutrition and breastfeeding assessment.

[Note: The revised amount of 364 fluid ounces reflects the FNB and corresponds to the MMA of 388 fluid ounces of reconstituted liquid concentrate, 384 fluid ounces of ready-to-feed, or 435 fluid ounces of reconstituted powder formula for partially breastfed infants aged one through three months. Therefore, this provision eliminates the need for the birth to one month feeding category.]

This proposed change received support from many commenters, who cited that the change would assist participants in achieving their breastfeeding goals, ensure infants receive adequate nutrition, increase breastfeeding duration, and decrease premature categorization of fully formula-fed infants. A few commenters requested USDA focus on providing education and counseling resources to help WIC staff support participants in the early postpartum period. They also requested additional breastfeeding supports to address breastfeeding challenges as well as additional funding for training staff and incentivizing the breastfeeding packages. One commenter requested the Department consider making the “up to” 364 ounces in the first month a WIC State agency option. A few commenters mentioned that more research is needed to determine if the presence of formula on the WIC EBT card impacts a participant’s breastfeeding journey.

Increasing the amount of infant formula in the first month for partially (mostly) breastfed infants, as NASEM recommended, encourages participants in the early postpartum period to try to breastfeed or extend breastfeeding duration by providing flexibility to tailor formula amounts based on an individual nutrition and breastfeeding assessment. As NASEM noted, this change is intended to prevent the premature categorization of an infant as “fully formula fed” and a mother as “postpartum” and allow the mother to receive the partially (mostly) breastfeeding food package to support nutritional needs and breastfeeding goals. USDA agrees with commenters who stated that early postpartum anticipatory guidance and frequent contact with skilled breastfeeding staff are key ways to encourage and support WIC participants in reaching their individual breastfeeding goals. The Department finds merit with the comments requesting further examination of the impact of this provision on breastfeeding duration and will consider this for future research opportunities.

2. Allow Prescribed Infant Formula Quantities to Be Considered “up to” Amounts (§ 246.10(e)(9), Table 1)

This final rule codifies that all prescribed infant formula quantities will be considered “up to” amounts as summarized in the 2022 proposed rule. This change is intended to reduce interference with the successful establishment of breastfeeding.

Many commenters expressed support for allowing all prescribed infant formula quantities to be considered “up to” amounts. Specifically, several commenters expressed support for tailoring formula benefits to meet individual needs. An individual commenter thanked the Department for removing the minimum nutrition requirement. One commenter stated the change aligns with recommendations among the healthcare/nutrition community on customized nutrition and another said the change would help establish long-term breastfeeding.

One commenter supported removing the FNB requirement stating that it, and MMAs, create a narrow window of formula amounts that WIC agencies must provide depending on the age of the client. While the Department appreciates this comment, the FNB is intended to provide close to 100 percent of the nutritional needs of a non-breastfed infant from birth to 6 months and is used as the basis for determining comparable MMAs of infant formula across the three physical forms of formula. The MMA is intended to provide infants the FNB with consideration of the reconstituted fluid ounce yields of the physical forms of formula products. However, formula amounts, even those in the fully formula-fed category, can still be individually tailored to meet, but not exceed, the formula needs of breastfeeding infants.

A few commenters had questions about the meaning of this provision as well as operational concerns. One commenter stated they would rather address overissuing/over feeding of formula via education at the time formula is issued. Another commenter requested clarity on what is meant by the phrase “up to” amounts for fully formula fed infants. The Department clarifies that across all infant food packages, formula amounts should be considered “up to” amounts to emphasize the importance of assessing the actual need for formula and reduce the possibility of interfering with the successful establishment of the participant’s desired breastfeeding behavior. One commenter stated this change will be a burden for MIS changes because the FNB serves as a cutoff to determine whether participants are fully formula feeding or partially (mostly) breastfeeding and that WIC State agencies using the roundup method still need an FNB. The Department appreciates this concern and provides further clarification on implementation related comments in section V. Implementation.

Iron Standard Comments

Although the Department did not propose a revision to the iron standard for infant formula, it did seek comment on the current infant formula iron requirement of at least 10 milligrams of iron per

liter (at least 1.5 milligrams per 100 kcal) of formula. Several commenters stated that the current requirement for iron-fortified formula should remain, noting iron-deficiency anemia continues to be a health concern for infants in the United States. A few commenters said they would support a change if backed by evidence. One commenter stated they support reducing the standard if this allows for a greater variety of formula to be available for WIC participants without compromising infant health. Another commenter noted that because infants normally have dietary iron sources other than formula (especially fortified infant cereal and meats), that 12 milligrams of iron per liter in formula appears to supply more iron than is necessary. In its comments, the AAP concluded that infant formula containing 12 milligrams of elemental iron per liter is safe for its intended use. One commenter requested that USDA consider revising the minimum iron requirements for infant formula to be consistent with the 1 milligram per 100 kcal requirement under § 246.10(e)(1)(iii) for iron-fortified infant formulas.

The Department appreciates the comments provided and agrees with most commenters that a regulatory change to the current iron specifications for infant formula is not warranted at this time due to inadequate evidence available to support a modification. The Department agrees with NASEM that updated data is needed to understand the optimal level of iron in infant formula, particularly in cases where the baseline iron status of infants is not optimal. The FDA announced on May 19, 2023, that NASEM will conduct a study to look at supply, market competition, and regulation of infant formula in the U.S. The study will explore the current state of the U.S. infant formula market. The study will also examine the differences in nutrition content, labeling, and regulatory requirements between infant formula sold in the U.S. and forms sold in foreign markets. Results of the study will be submitted to Congress and the FDA. New evidence from this study and other available sources regarding iron formula supplementation, including the FDA/NASEM study may be used to inform the next review of the WIC food packages.

3. Create a Separate and Enhanced Food Package for Partially (Mostly) Breastfeeding

Participants (§ 246.10(e)(5), (7), (10), and (11), Tables 2 and 3)

This final rule codifies the creation of separate food packages for partially (mostly) breastfeeding participants, as summarized in the proposed rule. Pregnant participants will now receive Food Package V-A and partially (mostly) breastfeeding participants and pregnant participants with two or more fetuses will now receive Food Package V-B.

Many commenters expressed support for creating a separate and enhanced food package for partially (mostly) breastfeeding participants. Several commenters stated it better met the nutrient needs of participants in these categories, better aligned with NASEM recommendations on customized nutrition, supported breastfeeding, more accurately reflected breastfeeding rates, better categorized participants, and strengthened WIC's ability to address food access and health disparities among participants. Some comments were in support of the new food package for partially (mostly) breastfeeding participants, but encouraged incentivizing breastfeeding in other ways, including through the use of breastfeeding peer counselors and nutrition education.

A few commenters asked that breastfeeding benefits be expanded to two years instead of one year to incentivize breastfeeding. WIC legislation specifies that "breastfeeding women means women up to one year postpartum who are breastfeeding their infants."²⁰ Therefore, the Department is unable to extend the fully breastfeeding category to participants who are past one year postpartum.

Some commenters specifically addressed the food package for participants who are pregnant with or breastfeeding multiples. One commenter stated that participants who are breastfeeding

²⁰ 42 USC 1786(b)(1).

multiples should remain in the same category as pregnant with multiples participants so they can benefit from the extra calories this food package provides. Another commenter asked for a separate food package for breastfeeding multiples, since applying the 1.5 multiplier to the allowed food quantities for Food Package VII can be difficult to translate to actual WIC purchases. The commenter also requested the food package be updated to list specific MMAs in amounts that translate to whole containers. Per the DGA and NASEM's recommendations, participants who are fully breastfeeding multiple infants, pregnant with multiple fetuses, or both pregnant and breastfeeding have higher nutrient and caloric needs than participants with singletons. In the absence of any evidence on the additional energy needs for the participants fully breastfeeding multiple infants, NASEM estimated the additional energy need would be approximately 400 kcal per day for additional milk produced and assumed no further maternal fat mobilization. This represents approximately 50 percent more energy than the fully breastfeeding package supplies, indicating the current regulation to provide 1.5 times Food Package VII to these participants is appropriate. To eliminate concern about providing "half" of a food package, WIC State agencies have the option to issue foods in Food Package VII in amounts averaged over a 2-month timeframe where they issue double the "regular" fully breastfeeding package one month and the "regular" fully breastfeeding package the next month. NASEM did not study, nor did USDA propose a separate WIC food package for participants fully breastfeeding multiple infants.

Several commenters raised concerns that this change could have negative impacts on breastfeeding efforts. A few commenters stated the proposed revision would make the food packages for exclusively breastfeeding participants and partially (mostly) breastfeeding participants similar, minimizing the actual and perceived value of the exclusively breastfeeding package compared to the partially breastfeeding package. Some commenters reasoned the new

food package, along with the reduction in benefits for fully breastfeeding participants, would disincentivize participants to fully breastfeed.

The Department appreciates comments highlighting the importance of nutrition education and other resources to support and encourage exclusive breastfeeding and will continue to evaluate and add to breastfeeding support services as needed. The Department clarifies that participants in the fully breastfeeding category will still receive more benefits than partially (mostly) breastfeeding participants due to their higher caloric needs.

F. Breakfast Cereals

This final rule requires that WIC-eligible whole grain breakfast cereals contain a whole grain as the first ingredient. This rule modifies the initial proposal and requires 75 percent of a WIC State agency's authorized breakfast cereals to meet the whole grain criteria of having whole grain as the first ingredient; and breakfast cereals contain no more than 6 grams of added sugars per dry ounce.

1. Revise Whole Grain Criteria for Breakfast Cereals (§ 246.10(e)(12), Table 4)

This final rule codifies the whole grain criteria for breakfast cereals as summarized in the 2022 proposed rule, requiring WIC-eligible whole grain cereals to contain a whole grain as the first ingredient.

Commenters expressed general support for this provision, with many WIC State agencies appreciating the reduced burden to operationalize the criteria for whole grain breakfast cereal, explaining the current criteria (having whole grain as the primary ingredient by weight and meeting the FDA labeling requirements for making a health claim as a *whole grain food with moderate fat content*) requires careful assessment of the ingredient list and Nutrition Facts label.

Several commenters appreciated the Department's intent to align the criteria with other Federal nutrition programs and suggested that for full alignment, USDA modify the provision to allow breakfast cereals with either a whole grain as the first ingredient or at least 50 percent whole grains. While the Department appreciates this suggestion, requiring that whole grain breakfast cereals contain a whole grain as the first ingredient aligns with the goal of easing program administration for WIC State and local agencies, vendors, and participants. The revised criteria will not necessarily preclude a product with at least 50 percent whole grains from qualifying as a WIC-eligible whole grain breakfast cereal.

The few comments opposing this provision cited concern that breakfast cereals with a refined grain as the first ingredient but with more than 50 percent total whole grains would no longer be eligible. The Department understands and addresses this concern by requiring that at least 75 percent of breakfast cereals meet the criteria for whole grain cereal, as discussed below.

2. Require 75 Percent of WIC State Agency Authorized Breakfast Cereals Meet Whole Grain Criteria (§ 246.10(e)(10) through (12), Tables 2 through 4)

This final rule codifies the requirement that WIC-eligible breakfast cereals meet the whole grain criteria as summarized in the 2022 proposed rule with modification to require 75 percent of cereals rather than 100 percent of cereals meet the whole grain requirement as initially proposed.

USDA received numerous comments in support of the provision as proposed. In expressions of support, commenters stated that requiring all WIC-eligible breakfast cereals to be whole grain aligns with the DGA recommendation to consume at least half of total grains as whole grains and supports consumption of an under consumed food subgroup and the nutrients whole grains provide. Several commenters suggested the provision would have an added benefit of expanding marketplace availability of whole grain cereals. The Department agrees with the importance of

consuming whole grains and clarifies that while the marketplace could expand further, there are numerous breakfast cereals currently available that meet the whole grain criteria, including gluten-free varieties suitable for individuals with allergies to wheat.

While commenters supported the goal of increasing whole grain consumption, the Department received many comments in opposition to requiring that all breakfast cereals meet the whole grain criteria. WIC State agencies cited the increased burden on small vendors and the reduction in participant choice as primary concerns. Some commenters noted that cereal consumption can help drive milk and fruit consumption as well as highlighted the overall nutrients cereals provide (e.g., iron and folate) and hypothesized that the changes would negatively impact consumers who prefer refined grain, rice- and corn-based breakfast cereals. Other commenters expressed the view that this change will better serve participants with high rates of diet-related diseases, including obesity and diabetes, and low levels of whole grain consumption.

The Department appreciates the comments received on this provision and specific suggestions to modify the requirement so that 75 percent of WIC-eligible breakfast cereals meet the whole grain criteria. Breakfast cereal is included in the WIC food packages to deliver key nutrients – primarily iron – to WIC participants. Some highly redeemed WIC cereals deliver key nutrients (e.g., iron, folate) but do not contain whole grains or contain some whole grains but do not have a whole grain as the first ingredient. The Department acknowledges that consuming non-whole grain cereal contributes to the delivery of important nutrients for healthy development, including iron and folate, as well as the nutrients from milk and fruit consumed with it. Additionally, the Department values consistency across Federal nutrition programs and recognizes that in the School Meal Programs, the majority of, but not all, grain items must be whole grain. For these reasons and recognizing a healthy dietary pattern can include whole and refined grains in nutrient-dense forms, the Department is requiring that at least 75 – rather than 100 – percent of

breakfast cereals a WIC State agency authorizes contain whole grain as the first ingredient. The Department remains committed to promoting increased whole grain consumption through nutrition education and highlights that WIC State agencies maintain the option to require that all cereals contain whole grain as the first ingredient. The Department encourages WIC State agencies to utilize redemption data to evaluate participant selections and support shifts in behavior toward the consumption of whole grain breakfast cereals by authorizing an appropriate number and selection of whole grain options.

3. Breakfast Cereals must Contain no More than 6 grams of Added Sugar per Dry Ounce (§ 246.10(e)(12), Table 4)

This final rule codifies a limit of 6 grams of added sugars per dry ounce of breakfast cereal based on public comment as requested in the 2022 proposed rule.

In response to the request for comment on the use of an added sugars limit instead of a total sugars limit for breakfast cereal, the Department received broad general support. Commenters noted an added sugars limit aligns with current dietary guidance and Federal standards for Child Nutrition Programs. Commenters further highlighted that an added sugars limit allows for distinction between naturally occurring sugars and those added during product manufacturing, which is not possible with a total sugars limit. The Department agrees there is value in alignment across Federal nutrition programs and that an added sugars limit is consistent with the 2020-2025 DGA as well as feasible to operationalize following the addition of added sugars to the Nutrition Facts label.²¹

²¹ NASEM provided final recommendations for total sugars in its 2017 report, also providing added sugars limits for specific products should the FDA's regulation to include added sugars on food labels be implemented. With FDA's labeling requirement for added sugars now in place and recognizing value in consistency across Federal Child Nutrition Programs, USDA is replacing total sugar limits with added sugars limits for specific food categories as discussed in this final rule.

Comments in opposition cited concern that an added sugars limit may reduce the number of WIC-eligible breakfast cereals. A small number of WIC State agencies noted the additional burden associated with identifying breakfast cereals meeting the added sugars limit. One commenter suggested an added sugars limit may increase the use of low- and no-calorie sweeteners to retain product palatability. The Department clarifies the added sugars limit maintains the same numeric limit (6 grams) as the current total sugars limit; however, the limit no longer applies to naturally occurring sugars, in effect creating a more permissive standard for products containing naturally occurring sugars. In practice this means that no currently eligible WIC breakfast cereals will be excluded under the added sugars limit. The Department appreciates the burden associated with identifying products that meet WIC specifications and the potential substitution of low- and no- calorie sweeteners for caloric alternatives; however, the Department recognizes these considerations exist regardless of whether the limit applies to total or added sugars.

G. Whole Wheat Bread, Whole Grain Bread, and Other Whole Grain Options

This final rule reduces the amount of whole wheat bread, whole grain bread, and whole grain options in the child food packages and increases the amount in the pregnant, postpartum, and breastfeeding food packages as proposed. This rule also expands whole grain options as proposed with the modification to allow for additional whole grain options that meet regulation requirements.

1. Revise Maximum Monthly Allowances for Whole Wheat, Whole Grain Bread, and Other Whole Grain Options (§ 246.10(e)(10) and (11), Tables 2 and 3)

This final rule codifies the reduction in bread and whole grain options in the child food packages (from 32 to 24 ounces), and the increase in bread and whole grain options in the pregnant,

postpartum, and breastfeeding food packages (from 16 to 48 ounces) as summarized in the 2022 proposed rule.

Commenters, including several WIC State agencies, expressed mixed support for this provision, with many generally supporting the increase for pregnant, postpartum, and breastfeeding participants but with some concern cited over the reduced quantities for children. Commenters asserted the importance of consuming and ensuring equitable access to whole grains, highlighting the reduced quantity for children could lead to a reduction in whole grain intake. Consistent with comments received on other provisions reducing quantities of supplemental foods provided, including juice and milk, several WIC State agencies noted the reduced quantity of bread and whole grain options may disincentivize participation and impede participant retention goals. Commenters generally appreciated the Department aligning quantities with the common 24-ounce package size.

The Department agrees that providing whole wheat bread, whole grain bread, and other whole grain options through the WIC food packages is important to support whole grain consumption among WIC participants. The quantities of 24 ounces for children and 48 ounces for pregnant, postpartum, and breastfeeding participants provide up to 53 percent of the whole grain subgroup amount recommended in the DGA dietary patterns, which the Department believes is an appropriate supplemental amount. Providing quantities that align with common package sizes found in the marketplace supports the Department's goal of providing equitable access to supplemental foods while ensuring operational feasibility. In combination with the codified change to the MMA (see section J: Maximum Monthly Allowances (MMA)) that provides additional flexibility in authorizing package sizes, the change will also ease the burden on vendors to stock the 16-ounce package sizes that may be difficult to acquire.

2. Change Criteria for Whole Grain Breads (§ 246.10(e)(12), Table 4)

This final rule codifies the change in criteria for whole grain bread to require that such breads must contain at least 50 percent whole grains with the remaining grains being either enriched or whole grains as summarized in the 2022 proposed rule. The current requirement that whole grain bread conform to FDA standards of identity, as applicable, is maintained.

Most commenters, including many WIC State agencies, supported the change in criteria for whole grain bread, with several acknowledging the alignment with other Federal nutrition programs. Many commenters stipulated support for this provision as dependent on the Department providing guidance on the evaluation of grain products, noting that product labels often do not easily identify the whole grain composition placing the burden on WIC State agencies to identify allowable products under the revised criteria. Commenters further suggested USDA consider individuals with intolerances or allergies to wheat in finalizing the criteria for whole grain breads.

The Department agrees with the importance of guidance on the evaluation of grain products meeting the criteria for whole grain breads and will support WIC State agencies in the implementation of this provision. The Department understands the importance of providing whole grain foods that do not contain gluten to accommodate special dietary needs and clarifies that in addition to whole wheat bread, which contains gluten, whole grain breads, which may or may not contain gluten depending on the grain(s) included, continue to be WIC-eligible foods. The Department encourages WIC State agencies to authorize whole grain breads without gluten as necessary to meet the needs of their participants. Additionally, the Department is expanding whole grain options in this final rule, as discussed below.

3. Expand Whole Grain Options (§ 246.10(e)(10) through (12), Tables 2 through 4)

This final rule codifies the expansion of whole grain options to include the following options as summarized in the 2022 proposed rule: quinoa; wild rice; millet; triticale; amaranth; kamut; sorghum; wheat berries; tortillas made with folic acid-fortified corn masa flour (once available in the marketplace); corn meal (including blue); teff; buckwheat; and whole wheat pita, English muffins, bagels, and naan. Further, based on public comments received, to increase participant choice, and maximize administrative flexibility, this final rule allows WIC State agencies to authorize additional whole grain options that meet nutrient requirements in WIC regulations (i.e., do not include added fats or sugars, salt, or oil,²² and provided the MMA requirements are met (see section J. Maximum Monthly Allowances (MMA))).

Commenters, including numerous WIC State and local agencies, broadly supported this provision, noting the expanded options will allow participants to enjoy a greater range of nutrient-dense foods while accommodating special dietary needs (e.g., food allergies) and cultural and personal preferences. In expressions of support, several WIC State agencies suggested USDA add additional gluten-free options such as red rice, black rice, freekeh, spelt, and farro, or that USDA include flexibility for WIC State agencies to authorize other nutritionally appropriate whole grain options based on popularity and availability.

The Department agrees with the importance of participant choice and accommodating cultural and personal dietary preferences and appreciates suggestions to further expand whole grain options. The Department recognizes that culturally preferred foods vary and are unique to individual cultural identity and that WIC State agencies are best positioned to determine the whole grain options to authorize to accommodate the needs of their participants. Therefore, through this final rulemaking, USDA provides the option for WIC State agencies to authorize

²² Whole grain options must be without added sugars, fats, oils, or salt (i.e., sodium) as specified in § 246.10 Table 4 of “Final Rule: Revisions in the WIC Food Packages.” 79 FR 12274 (March 4, 2014).

additional whole grain options that do not include added fats or sugars, salt, or oil, including but not limited to the options suggested through public comments (e.g., red rice, black rice, freekeh, spelt, farro). The Department encourages WIC State agencies to add products based on participant appeal in addition to the other factors outlined at § 246.10(b)(1)(i) including nutritional standards, competitive cost, and Statewide availability. If added to the APL, USDA reminds WIC State agencies of the requirement at 7 CFR 246.4(c) to submit an amendment to the State Plan for the current fiscal year to the appropriate USDA FNS Regional Office.

One commenter requested clarification on changes to the minimum stocking requirements for vendors, noting the potential for food waste and economic loss if vendors are required to stock whole grain options that are not popular locally. In response, the Department clarifies that with this provision, there will be no changes to the whole grain stocking requirement of at least one whole grain cereal set in WIC regulations § 246.12(g)(3)(i). The Department recognizes WIC State agencies may choose to establish additional minimum stocking requirements to ensure access to a greater variety of supplemental foods. However, establishing additional minimum stocking requirements cannot have the effect of limiting either the number or distribution of WIC authorized vendors in such a way that participants cannot reasonably redeem their benefits.

H. Canned Fish

This final rule expands the categories of participants receiving canned fish as proposed, with the modification of including 1 year old children, to create more equitable access to this under consumed, nutrient-dense food.

1. Add Canned Fish to Food Packages for Children (1 through 4 Years) (§ 246.10(e)(4)(ii) and (e)(10) through (11), Tables 2 through 3)

This final rule codifies the addition of canned fish to the food packages for children with modification to provide:

- 6 ounces per month for children 2 through 4 years of age, versus 5 ounces as proposed, and
- 6 ounces per month for children 12 through 23 months of age.

In the 2022 proposed rule, out of an abundance of caution for the safety of young children and the concern for methylmercury exposure, USDA limited the addition of canned fish per month to 5 ounces for children 2 through 4 years and excluded canned light tuna as a canned fish option for children. At the time, the Department lacked information on marketplace availability of WIC-eligible canned varieties in sizes that would provide a supplemental amount for 1-year old children and meet the EPA-FDA²³ advice for eating fish and DGA recommendations.

Commenters, including WIC State and local agencies, expressed broad support for providing fish in the child food packages, citing the benefits of fish in helping children meet their nutrient needs for optimum growth and development as well as reducing risk of developing chronic diseases. In addition to being supportive of adding fish, the food industry, many WIC State agencies, and professional organizations commented on the importance of providing light tuna as an option for all children 1 to 4 years of age.

To inform this final rule, USDA requested public comment on the availability of 3-ounce or smaller package sizes of canned salmon, Atlantic mackerel, and sardines in boneless varieties, and canned light tuna in package sizes safe for consumption by young children (i.e., 2 ounces).

²³ Advice about Eating Fish | FDA (<https://www.fda.gov/food/consumers/advice-about-eating-fish>)-Recommendations include 2 servings* of fish a week from the “Best Choices” list.

- *Serving size for 1-3 years old is 1 ounce. Serving size for 4-5 years old is 2 ounces.
- Children ages 1-4 years: Canned light tuna and chub mackerel should not be consumed if greater than 2 oz per week is consumed.

In response, many commenters provided information on package size availability and availability of fish without bones including confirmation from the food industry that salmon and light tuna are available in 2.5- to 2.6-ounce sizes and that light tuna is available in 3-ounce sizes. Some WIC State agencies requested an “up to” amount of 6 ounces per month and an increase in allowed fish amount for children to account for the available 2.6-ounce package size. Some WIC State agencies opposed adding fish to the food packages out of concern for availability of canned salmon, Atlantic mackerel, and sardines in rural stores. However, several WIC State agencies stated that 2.5- and 2.6-ounce packages of light tuna with low-sodium options are available in many areas.

In alignment with NASEM and DGA recommendations and EPA-FDA joint advice about eating fish, and in consideration of the numerous comments and evidence received on marketplace availability of smaller container sizes of WIC-eligible varieties of canned fish in both boneless and bone-in options, this final rule adds 6 ounces of canned fish to the food packages for children 1 through 4 years of age in the same varieties as canned fish offered to pregnant, postpartum, and breastfeeding participants (i.e., salmon, sardines, Atlantic mackerel, Chub mackerel, and light tuna).

The Department appreciates and agrees with comments highlighting the important role WIC nutrition education will have in encouraging parents and caretakers to select boneless canned fish or remove bones prior to consumption to prevent choking, choose lower sodium varieties and amounts that limit methylmercury exposure, and preserve unused portions of canned fish safely.

2. Add Canned Fish in Food Packages for Pregnant, Postpartum, and Partially (Mostly) Breastfeeding Participants; Revise Amounts for Fully Breastfeeding Participants (§ 246.10(e)(5)(ii), (e)(6)(ii), and (e)(10) and (11), Tables 2 and 3)

This final rule codifies the monthly amounts of canned fish for pregnant, postpartum, and partially (mostly) and fully breastfeeding participants as summarized in the 2022 proposed rule:

- Pregnant and postpartum: 10 ounces canned fish
- Partially (mostly) breastfeeding: 15 ounces canned fish
- Fully breastfeeding: 20 ounces canned fish

Commenters expressed broad support for adding canned fish to the WIC food packages for pregnant, postpartum, and partially (mostly) breastfeeding participants and revising amounts for fully breastfeeding participants. In expressions of support, commenters asserted that omega-3 fish oils are essential for reducing risk for pre-term births and other such complications and that the changes would provide more equitable access to a nutrient-dense food choice, for which current intakes fall below DGA-recommended levels. A WIC State agency commented that the change will improve nutrient content and versatility of the WIC food packages. The Department appreciates comments expressing concern about the reduction of canned fish for the fully breastfeeding food package and requests to increase amounts of canned fish for partially (mostly) and fully breastfeeding participants. The revised monthly canned fish amounts for all pregnant, postpartum, and breastfeeding participants align with the supplemental nature of WIC and recommendations for DGA healthy dietary patterns.

3. Revise WIC-Eligible Varieties (§ 246.10(e)(12), Table 4)

This final rule codifies removing jack mackerel from the WIC-eligible canned fish varieties as summarized in the 2022 proposed rule.

Commenters expressed broad support for revising WIC-eligible fish varieties. One WIC state agency expressed opposition to the exclusion of jack mackerel, adding that the decision would increase its administrative burden. The FDA and EPA currently do not have methylmercury data

on the commercial canned fish product “jack mackerel” and do not include this product in their joint advice about eating fish. Furthermore, the FDA guidance on defining jack mackerel species referenced in § 246.10(e)(12) is no longer available. Due to the lack of data on methylmercury levels in jack mackerel, this final rule retains the provision to remove jack mackerel as an allowable fish type for WIC. All other WIC-eligible varieties of canned fish (i.e., salmon, sardines, Atlantic mackerel, Chub mackerel, and light tuna) will be available to child, pregnant, postpartum, and breastfeeding participants.

In response to the request USDA received to remove “canned” from the name of the fish category to account for other package types, the Department clarifies that § 246.10(e)(12), table 4 outlines minimum requirements and specifications for canned fish and defines that “canned” fish refers to processed food items in cans or other shelf-stable containers such as jars or pouches, which serves to denote that fresh and frozen fish are not WIC-eligible items.

I. Legumes and Eggs

This final rule requires authorizing both dried and canned legumes; requires substituting legumes and peanut butter for eggs in certain situations; and provides the option to substitute tofu for eggs as proposed. This rule will also provide the option for State agencies to authorize nut and seed butters as a modification to the proposed rule. The changes allow participants (except infants) to substitute the following for one dozen eggs to accommodate special dietary needs, cultural practices, and personal preferences:

- 1 pound dry or 64 ounces canned legumes
- 18 ounces peanut butter
- 1 pound tofu (as State agency option)
- 18 ounces of nut or seed butter (as State agency option)

1. Require Both Dried and Canned Legumes (§ 246.10(e)(10) through (12), Tables 2 through 4)

This final rule codifies the requirement for WIC State agencies to authorize both dried and canned legumes as summarized in the 2022 proposed rule. Prior to this rulemaking, regulations only required dried legumes and State agencies had the option to allow canned legumes.

Commenters expressed broad support for this change to increase flexibility and choice for participants, specifically citing the time-saving benefits of canned legumes, flexibility for participants lacking knowledge or equipment to prepare dried legumes, and potential increases in redemption rates. The Department agrees that this change will reduce a potential barrier to preparing and consuming legumes for participants who are unable to prepare dried legumes.

Among comments were requests to allow frozen unflavored legumes and small amounts of added sugars in canned legumes, reasoning that some canning processes require sugar to maintain the quality and structure of the food. USDA currently allows small amounts of added sugar to canned legumes for processing. The Department clarifies that WIC State agencies will retain their current authority to elect to authorize only low/lower sodium canned varieties.

Regarding adding frozen legumes to the list of authorized legumes, currently, frozen legumes can be purchased with the CVV. The Department will explore the feasibility of adding frozen legumes to the legumes category for consideration in future rulemaking.

USDA did not receive any comments in opposition, though a few commenters noted the potential need for MIS changes. The Department addresses this concern for all categories of food in section V. Implementation.

2. Require Authorization of Legumes and Peanut Butter as Substitutes for Eggs and Allow State Agencies to Choose to Authorize Tofu to Substitute for Eggs (§ 246.10(e)(10) through (12), Tables 2 through 4)

This final rule codifies the requirement for WIC State agencies to allow participants to substitute legumes and peanut butter for eggs and the option for WIC State agencies to authorize tofu as a substitute for eggs as summarized in the 2022 proposed rule.

Numerous commenters, including several WIC State agencies, expressed support for this provision citing a greater variety to accommodate special dietary needs, cultural practices, or personal preferences, as outlined in the 2022 proposed rule. In conjunction with this provision, the Department requested comment on the impact of requiring WIC State agencies to authorize tofu as an egg substitution. Some commenters expressed concern with the substitution of tofu for eggs, stating that eggs are high-protein, low-cost, and a better nutrition source than tofu. While the Department agrees that eggs are a high-protein, low-cost food, it believes the proposed substitutions are appropriate for those who cannot or choose not to eat eggs due to allergies or food preferences. As noted in the 2022 proposed rule, allowing tofu as a substitute for eggs provides participants with a source of iron and choline when eggs, legumes, and peanut butter are not acceptable food choices. However, the Department appreciates the comment from a WIC State agency expressing concern that tofu may not be readily accessible and clarifies that while legumes and peanut butter must be offered to participants as egg substitutions, authorizing tofu as a substitute for eggs is a WIC State agency option. A few commenters expressed concerns related to implementation in MIS and point of sale systems. The Department addresses MIS concerns for all categories of section V. Implementation.

3. Allow WIC State Agencies the Option to Authorize Nut and Seed Butters as a Substitute for Peanut Butter (§ 246.10(e)(10) through (12), Tables 2 through 4)

This final rule codifies the WIC State agency option to authorize nut and seed butters as a substitute for peanut butter based on public comment as requested in the 2022 proposed rule. While NASEM did not recommend alternative nut and seed butter as substitutions, the Department recognizes nut and seed butters are included in a healthy dietary pattern as recommended by the DGA and requested public comment on allowing these products as a peanut butter or legume substitution option to further accommodate participants with food allergies. The Department specifically requested comments on the commercial availability of nut and seed butters that are nutritionally comparable to peanut butter/legumes in terms of specific nutrients (e.g., protein, iron).

Commenters overwhelmingly supported allowing nut and seed butters as substitute for peanut butter, stating that many nut and seed butters could be nutritionally equivalent to peanut butter for protein, iron, choline, and fiber. They also discussed the prevalence and severity of peanut allergies and the importance of WIC food packages providing foods nutritionally equivalent to peanut butter.

The Department recognizes allergies to peanuts and other tree nuts as being among the most common food allergies in children in the United States. In USDA's School Meal Programs, schools must provide meal modifications for participants with disabilities, which may include providing substitutions for students with peanut or tree nut allergies. This requirement for the School Meal Programs and allowing nut and seed butters as a substitute to peanut butter as a WIC State agency option, both support access for participants with food allergies. Since peanut butter serves as a source of iron – a priority nutrient NASEM identified for WIC participants and a DGA nutrient of public health concern for women who are pregnant – in the WIC food packages, this final rule allows WIC State agencies the option to authorize nut and seed butters that provide a comparable nutritive value to peanut butter (i.e., protein and iron). This

substitution will be extended to participants through individual tailoring of the WIC food packages to accommodate special dietary needs, cultural practices, or personal preferences.

As individuals who are allergic to peanuts may also be allergic to tree nuts, the Department encourages WIC State agencies to consider authorizing a suitable option (i.e., at least one seed butter) for these participants. The Department does not expect this change to result in a meaningful cost impact at the National level, as discussed in the accompanying Regulatory Impact Analysis. WIC State agencies should take a measured approach to product selection, which considers cost-containment policies and practices, when establishing their WIC authorized food list.

J. Maximum Monthly Allowances (MMA) (§§ 246.10(b)(1)(iii), (b)(2)(i), and (b)(2)(ii)(A); 246.11(a)(1))

This final rule codifies the option for WIC State agencies to authorize additional product package sizes that provide less than the full MMA as summarized in the 2022 proposed rule. WIC State agencies are still required to make available the full MMA amounts to participants (i.e., at least one package size, or a combination of sizes, must add up to the full MMA for each food in each of the WIC food packages). This final rule also codifies that, in instances where multiple household members are receiving the same food, WIC State agencies may authorize package sizes that exceed the MMA for each individual WIC food package (i.e., aggregate WIC benefits) provided the amount does not exceed the total of the combined MMA for the household. Foods on a WIC State agency's APL must continue to meet the needs of each individual WIC food package prescription.

Many commenters, including WIC State agencies, expressed general support, stating that providing greater package size flexibility reduces barriers to WIC shopping and increases options

for participants; and more options save time and transportation costs for participants by reducing the need to shop at multiple stores and/or make return trips, particularly for those in rural and/or Tribal areas; reduce barriers to benefit redemption and WIC participation; and could ease burdens for small vendors who have expressed difficulty stocking the currently required package sizes. One commenter supported the change and noted participant education would be critical to show that redeeming a certain size may prevent the redemption of full benefits.

In requesting comments on this added WIC State agency flexibility, the Department also requested public comment on requiring State agencies to authorize both package sizes that equal or add up to the MMA (to ensure participants have a pathway to receiving the full food benefits to which program participation entitles them) and packages sizes that do not (to ensure greater variety and choice). Some commenters raised concerns with such a requirement, noting that implementation would require burdensome technical efforts or that the flexibility in approving package sizes could increase the APL size and potentially make it unmanageable. However, a few commenters requested that USDA require WIC State agencies to approve varying food package sizes to create distribution and retail efficiencies in addition to participant flexibility and choice.

The Department acknowledges the administrative burden of requiring WIC State agencies to authorize both package sizes that equal or add up to the MMA and packages sizes that do not for each food category, thus retained the latter as a WIC State agency option in this final rule. WIC State agencies wishing to exercise this option may do so at a rate reasonable to retain a manageable APL size and, as an option, are not required to do so by the implementation date for required provisions. To meet participants' needs, the Department encourages WIC State agencies to provide as much variety and choice as possible for as many food categories as possible, to the extent that is administratively and financially feasible given cost containment measures.

Additionally, the Department agrees with commenters who noted the importance of education to ensure participants receive the greatest benefit from their WIC food package and reminds WIC State agencies of this requirement as outlined in § 246.10(b)(2)(ii)(A).

IV. Miscellaneous Related Revisions and Editorial Corrections

This final rule updates the definition of *individual with disabilities*, adds breast pumps as a WIC benefit and corresponding participant violation provisions, clarifies the definition of WIC-eligible nutritionals, adds clarifying language to nutrition tailoring, updates the base year for the annual inflation adjustment to the CVV amounts, and makes conforming revisions and editorial corrections.

A. Definition of Individual with Disabilities (§ 246.2)

This final rule codifies an update to the definition of disability as summarized in the 2022 proposed rule: the term disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment as described in 28 CFR 35.108.

Commenters were in broad support of this provision and no commenters opposed.

B. Breast Pumps as a Program Benefit (§ 246.2, 246.7(j)(10), and 246.16(u)(2)(i))

This final rule codifies including breast pumps as a WIC benefit and adds reference to the sale or offer to sell breast pumps to the definition of *participant violation* (§ 246.2) as summarized in the 2022 proposed rule. It also codifies a conforming provision to ensure that every WIC applicant, parent, or caretaker is informed that selling or offering to sell WIC benefits is a participant violation and increases the dollar threshold for disqualification from \$100 to \$1,000. This update means that whenever a WIC State agency assesses a claim of \$1,000 or more,

assesses a claim for dual participation, or assesses a second or subsequent claim of any amount, the WIC State agency must disqualify the participant for one year.

All comments on this provision generally supported the change. Several commenters, including WIC State agencies, expressed support for the dollar threshold, while some commenters requested adjustments to the threshold to a lower amount, such as \$500, to allow WIC State agencies to act sooner to address violations. A WIC State agency added that the agency rarely encounters participants who are selling or offering breast pumps, but instead deals with many participants who fail to return the WIC-owned pump. The Department supports WIC State and local agencies in implementing policies and procedures to retrieve breast pumps, without the threat of disqualification, before the dollar threshold is reached.

C. WIC-Eligible Nutritionals (§ 246.2)

This final rule codifies clarifying language to the definition of WIC-eligible nutritionals, which are enteral products specifically formulated to provide nutritional support for those with qualifying conditions (see § 246.2 for full definition), as summarized in the 2022 proposed rule, to convey the intent that homemade formulas and manufactured products in the marketplace that appear to be blenderized foods (i.e., conventional foods liquified in a blender) do not meet WIC-eligible nutritionals requirements.

A few commenters, including WIC State agencies, supported the updated definition and added it would clarify which foods qualify and would better enable WIC State agencies to enforce which products can be categorized as WIC-eligible nutritionals. A few commenters, including WIC State agencies, urged USDA to continue to include commercially blenderized tube feedings in the definition, stating that commercially blenderized tube feedings meet the definition of a WIC-eligible nutritional, are nutritionally complete, intended for use under medical supervision, and

are not equivalent to manufactured blenderized conventional foods. They also requested guidance regarding manufactured products that appear to be blenderized as they have seen an increase in requests. The Department clarifies that commercially blenderized medical foods that meet the requirements of the definition will continue to be eligible for WIC. No commenters opposed.

D. Nutrition Tailoring (§ 246.10(c))

This final rule codifies adding clarifying language to nutrition tailoring that exists in current policy and language to convey that nutrition tailoring also involves making substitutions to the types and forms of foods to accommodate an individual participant's food allergy or intolerance, cultural preferences, and medical or special dietary needs, as well as situations where the participant refuses or cannot use the item, as summarized in the 2022 proposed rule. This final rule also codifies the clarification that offering a participant substitution in accordance with WIC State agency policy and Federal regulations is the first step before eliminating or reducing foods and must be based on their nutrition assessment.

Commenters, including WIC State and local agencies, were supportive of this provision, stating that the revisions will help accommodate participants with food allergies, cultural preferences, and dietary needs, and promote safety for participants with food allergies. Some commenters urged USDA to ensure product substitutions are determined in advance and not in retail settings and requested to exclude the required documentation needed when a participant requests a change to a food package based on preference.

The Department clarifies that Federal regulations at § 246.10(d)(1) do not require medical documentation to issue food substitutions outside of Food Package III (except for infant formula). The WIC competent professional authority provides nutrition education that addresses

nutrition risks identified with diets that restrict certain foods and/or food groups, and WIC State agencies are encouraged to continue ongoing communication between WIC and healthcare providers as necessary. Regarding the request to determine product substitutions in advance and not in retail settings, WIC State agencies are responsible for determining the brands, types, and forms of foods authorized, including the substitution options they elect to authorize. In some situations, such as tailoring a food package for a participant with a peanut allergy, the determination to issue legumes instead of peanut butter is made at the time the food package is issued. In other instances, the WIC State agency may allow the participant to select from a range of allowable options at the time of purchase at the store for other foods, such as canned salmon or canned tuna, and selecting brown rice, corn or wheat tortillas, or whole-grain barley based on their preference and product availability.

E. Annual Inflation Adjustment for the Cash-Value Voucher (CVV) (§ 246.16(j))

This final rule codifies updating the base year (from 2008 to 2022) for the annual inflation adjustment to the CVV amounts as summarized in the 2022 proposed rule.

Most commenters expressed support for this provision, stating that it helps to offset increased food costs, ensures that participants obtain the recommended intake of fruits and vegetables, and allows for the continuity of the benefit. A few commenters stated that the rounding procedure as described in § 246.16(j)(5) should be revised so that the inflation adjustment is rounded up to the nearest multiple of \$1 (not rounded down to the next multiple of \$1 as is currently in regulation). The approach selected by FNS aligns with the one used in the Supplemental Nutrition Assistance Program (SNAP), which also rounds inflation adjustments down to the next multiple of \$1 (7 CFR 273.10(e)(4)(ii)), as well as the National School Lunch Program's national average payment rates, which are rounded down to the nearest cent (7 CFR 210.4(b)). The 2022

proposed rule did not request public comment or make any changes to the current rounding procedures. Therefore, the Department is not making this change in this final rule.

One commenter opposed, stating that the CVV amounts should not be increased for inflation for at least five years since the 2023 amounts should be sufficient for now. The Department disagrees with this suggestion since unadjusted CVV amounts would over time decrease the amounts of fruits and vegetables participants could purchase, thereby conflicting with NASEM's recommendation to provide approximately half of the recommended daily amounts of fruits and vegetables for adults and children.

F. Conforming Revisions and Editorial Corrections (§ 246.10)

This final rule codifies conforming revisions and corrections to typographical and grammatical errors as well as improvements for conciseness and clarity of final provisions. The changes will have no substantive effect on the public.

V. Implementation

The Department initially proposed WIC State agencies would have 18 months from publication of the final rule to implement the revisions to the food packages and all other provisions in the rule. Additionally, the Department proposed that once the WIC State agency began issuing each new food package, it be done on a State agency-wide basis. The Department requested comments on the administrative burden associated with both proposed implementation components.

Commenters generally highlighted time, limited resources, and extensive system changes needed to successfully implement the provisions in this final rule. These changes included MIS changes, administrative time associated with the identification and review of new products, changes to shopping applications, participant education, work with retailers, and food product

development. While WIC State agencies need to ensure their MIS is flexible to adapt to this and other changes effected through this rulemaking, the Department acknowledges that at any given time WIC State agencies are at different stages of updating their systems. To allow for the MIS changes this final rule requires, the Department extended the implementation timeframe for this final rule.

After evaluating comments, the Department is providing a 24-month implementation timeline for all provisions, with two exceptions: a 60-day implementation timeline for the revised CVV amounts for all children and women participants, and a 36-month timeline for implementing the Vitamin D specification in yogurt. WIC State agencies are allowed and encouraged to implement the provisions earlier than the 24-month timeline; however, they must issue food benefits based on either the new food package in its entirety or maintain the current food package. For example, a WIC State agency may not add fish to the current foods and quantities available under the children's food package and make no other changes. A WIC State agency may, however, phase-in the new WIC food packages on a participant category basis. WIC State agencies may also implement any provisions expanding substitution options (e.g., additional whole grain options) at any time, including before completing the phasing in of the new food packages. To minimize participant and vendor confusion, once the WIC State agency begins issuing the new WIC food packages, it must be done on a State agency-wide basis.

With near unanimous support of a CVV increase in public comments in response to the proposed rule, implementation of the final CVV amounts 60 days after publication of the final rule promotes timely access to the scientifically recommended amounts of fruits and vegetables. In addition, WIC State agencies need less time to update their MIS to issue the new amounts.

Among the commenters who opposed or expressed concern for the proposed vitamin D specification for yogurt, the primary concern was marketplace availability followed by a concern about manufacturers' willingness to modify products. Several commenters expressed their support for implementing a vitamin D specification for WIC-eligible yogurts but requested USDA provide a longer timeframe for this provision to allow for product reformulation. Based on information regarding the lifecycle for reformulated and new products, USDA agrees that extending implementation of this provision to 36 months would allow sufficient time to reformulate products as well as time for WIC State agencies to review and select products and work with vendors.

The implementation dates are as follows:

- WIC State agencies must implement the provision in tables 2 and 3 to 7 CFR 246.10(e)(10) and (11) increasing the cash value voucher, adjusted for inflation, for children to \$26, pregnant and postpartum women to \$47, and partial and fully breastfeeding women to \$52 on [insert date 60 days after date of publication in the Federal Register].
- WIC State agencies must implement the provision in table 4 to 7 CFR 246.10(e)(12) that establishes a minimum vitamin D requirement for yogurt no later than April 19, 2027.
- WIC State agencies must implement all other required provisions of this rule no later than April 20, 2026.

Procedural Matters

Executive Order 12866, 13563, and 14094

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14094 of April 6, 2023, focuses on modernizing regulatory review and updates the definition of a significant regulation.

This final rule has been determined to be significant under section 3(f)(1) of Executive Order (E.O.) 12866, as amended by E.O 14094, and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. It follows this rule as appendix A. The following summarizes the conclusions of the regulatory impact analysis:

Need for Action

Section 17 of the Child Nutrition Act mandates that the United States Department of Agriculture (USDA) conduct a comprehensive scientific review of the WIC food packages at least every ten years and revise the foods available, as needed, to reflect nutritional science, public health concerns, and cultural eating patterns (42 U.S.C. 1786(f)(11)(C)). This rule makes changes that are intended to provide WIC participants with a wider variety of foods that align with the latest nutritional science; provide WIC State agencies with greater flexibility to prescribe food packages that accommodate participants' personal and cultural food preferences and special dietary needs; provide more equitable access to supplemental foods; and better promote and

support individual breastfeeding goals of participants to help establish successful long-term breastfeeding.

Benefits

The changes to the WIC food packages enacted under this rule are intended to provide WIC participants with a wider variety of foods that align with the latest nutritional science, provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participant personal and cultural food preferences and special dietary needs, and better promote and support the establishment of successful long-term breastfeeding.

The increases in the value of the cash-value voucher (CVV) for fruits and vegetables, increases in canned fish, and changes to whole grain requirements will better align the WIC food packages with the 2020-2025 DGA. The DGA identified average daily food group intakes of fruits, vegetables, seafood, and whole grains as falling below the recommended intake ranges for adults and children.²⁴ Increased consumption of these foods is expected to increase intakes of key nutrients, including dietary fiber, potassium, vitamin D, vitamin A, vitamin C, folate, and polyunsaturated fatty acids. Dietary fiber, potassium, and vitamin D, considered nutrients of public health concern in the general U.S. population, are currently also under-consumed by WIC participants.^{25, 26}

²⁴ Gleason, S., Hansen, D., & Wakar, B. (2021). Indicators of diet quality, nutrition, and health for Americans by program participation status, 2011–2016: WIC report. Prepared by Insight Policy Research, Contract No. GS-10F-0136X. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Michael Burke. www.fns.usda.gov/research-and-analysis.

²⁵ Ibid.

²⁶ Borger, C., Zimmerman, T., Vericker, T., et al. (2020). WIC Infant and Toddler Feeding Practices Study 2: Fourth Year Report. Prepared by Westat, Contract No. AG-3198-K-15-0033 and AG-3198-K-15-0050. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Courtney Paolicelli. Available online at: www.fns.usda.gov/research-and-analysis.

NASEM's analysis estimates that in order to meet half of the recommended intakes of fruits and vegetables, WIC participants would need to spend \$24, \$43, or \$47 (adjusted for inflation to FY 2022), depending on participant category, to meet 50 percent of the recommended intakes for fruits and vegetables. This suggests that the current regulatory CVV levels (which would have been \$9 for children and \$11 for pregnant, postpartum, and breastfeeding individuals in FY 2022 had Congress not temporarily enacted higher levels through annual appropriations that aligned with the NASEM recommendations) only provide enough for around 19 percent and 12 percent of recommended fruit and vegetable intakes for these groups, respectively. By increasing the value of the CVV to the levels proposed by NASEM to meet 50 percent of the recommended fruit and vegetable intakes, the rule is expected to significantly increase fruit and vegetable purchases and consumption among WIC participants.

While it is difficult to quantify the full extent of projected benefits associated with the revisions to the WIC food packages, USDA's and NASEM's analyses find that the revisions better align the WIC food packages with the latest nutrition recommendations in the DGA and accordingly will support participants in achieving healthy dietary patterns. The 2020-2025 DGA highlights the importance of a healthy dietary pattern to help achieve a healthy body weight and reduce the risk of chronic disease. The DGA also emphasizes the importance of exposing young children to nutrient-dense foods at an early age to support the establishment of healthy dietary patterns. By supporting healthy dietary patterns among pregnant women, the changes to the WIC food packages will advance the Program's capacity to address nutrition-related causes of maternal and infant morbidity and mortality. The Department finds that this rule presents an effective approach to supporting pregnant participants and families with infants and young children in achieving balanced, healthy diets and broadly promoting public health.

Costs

The Department estimates that the rule to revise regulations governing the WIC food packages would result in a net increase in Federal WIC spending of \$4.9 billion, in the form of Federal transfer payments for increased WIC food expenditures, over five years from FY 2025 through FY 2029. This increase in Federal WIC food expenditures is driven by the increase in the CVV, which is estimated to increase WIC food expenditures by \$5.6 billion over five years when compared to current CVV levels as outlined in 7 CFR 246.10. However, the CVV levels in this rule were enacted on a temporary basis for FY 2022, FY 2023, and FY 2024. As a result, when compared to the FY 2022, FY 2023, and FY 2024 WIC food packages, the CVV increase made permanent in this rule would not impact Federal WIC expenditures. With the CVV impact zeroed out of the overall cost estimate for the rule, the remaining provisions are expected to result in a net decrease in Federal WIC food spending of \$617 million over five years, or about a 2.3 percent reduction in total food expenditures when compared to the food packages as currently enacted in FY 2023. These estimates are summarized at the food category level in the RIA in appendix A at the end of this document, where all changes under a given food category (e.g., changes to quantity issued, expanded substitution options, and flexibility in package sizes) are considered for their collective impacts on projected quantities redeemed and unit costs. Based on the implementation timeline described above, these cost estimates assume that the CVV increase will be fully in effect in FY 2025 and that the other provisions will be fully in effect beginning in FY 2026.

As described above, the increase in value of the CVV accounts for most of the increased Federal spending, adding around \$5.6 billion in costs over five years. This estimate assumes that the redemption rate of the increased CVV will continue at 2020 redemption levels (71.6 percent) and accounts for annual inflation adjustments. The addition of canned fish to most food packages is

estimated to add around \$213 million in additional spending over five years. The increase to the amounts of jarred infant fruits and vegetables that can be substituted for CVV and the expansion of the allowable age range to substitute CVV for jarred fruits and vegetables are estimated to increase redemptions for these items, adding \$119 million in additional spending over five years, despite the reduction in the quantity of jarred fruits and vegetables issued to fully breastfed infants. Requiring all State agencies to authorize both dry and canned legumes is estimated to increase costs by \$16 million over five years as some participants shift from purchasing dry legumes to more costly canned legumes.

The remaining provisions will either result in net savings at the food category level or are not estimated to have a significant impact on costs. Although the expanded substitution options for milk and juice are expected to increase redemption rates for these food categories, the reductions to the maximum monthly allowances issued are still expected to result in a net savings of \$118 million for milk and \$640 million for juice over five years. The estimated savings associated with the reduction in the allowances for juice offset part of the costs of the increase to the CVV—encouraging greater consumption of whole fruits and vegetables as emphasized in the DGA. While the rule will increase the amount of infant formula allowed in the first month for partially breastfed infants, this change is intended to support continued breastfeeding and is estimated to result in a shift of 5 percent of infant mother dyads from fully formula feeding food packages to partially breastfeeding food packages, which would ultimately lead to a net savings of \$34 million on infant formula over five years. The changes to infant meats, infant cereals, whole wheat/whole grains, breakfast cereal, and cheese are also expected to result in cost savings as summarized in Table 2d of the RIA in appendix A at the end of this document.

In addition to the above impact on Federal transfer payments, the Department also estimates that WIC State agencies and local agencies will incur an increase in administrative burden associated with administering and explaining the changes to participants. This additional administrative burden is expected to account for about \$179 million in State agency and local agency labor costs over five years between FY 2025 and FY 2029. These administrative costs are considered allowable expenses for State agencies under their annually awarded Nutrition Services and Administration (NSA) grants. In general, the Department expects that State agencies will be able to absorb the costs associated with implementing the provisions under this rule with current NSA funds.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule will not have a significant impact on a substantial number of small entities. This final rule will not have a significant adverse impact on small entities in the Special Supplemental Nutrition Program for Women, Infants, and Children; the impact is not significant as it allows for greater options and flexibilities within approved food lists for State and local agencies to offer participants. State agencies are already required on an annual basis to review their approved foods lists.

Factual Basis: The provisions of this final rule will apply to small local agencies operating the Special Supplemental Nutrition Program for Women, Infants and Children and to State agency staff who must monitor local agencies in remote locations. These entities meet the definition of “small governmental jurisdiction” and “small entity” in the Regulatory Flexibility Act. These entities will not be negatively impacted by the changes and options in this rule.

As discussed in the Regulatory Impact Analysis (RIA), this rule is not expected to change the administrative burden on most vendors. There may be a small one-time burden on small vendors to stock three varieties of vegetables instead of two, but the overall burden on vendors will remain substantially unchanged. Requiring vendors to stock at least three vegetables serves to improve access and equity to nutritious foods for WIC participants by providing a greater variety of vegetables, particularly important for those living in locations where it is difficult to access vegetables.

The Department does not routinely track data necessary to determine how WIC benefit redemptions vary by most vendor characteristics, including indicators for whether the store is a small business or independent grocer. The Department estimates that due to the one-time stocking burden, approximately 150 vendors may decide to discontinue participation in the Program out of approximately 40,000 total vendors, or approximately one to two vendors per State agency, on average. This estimate assumes that, among vendors with WIC redemptions in the bottom 10 percent nationwide, those such as small convenience stores that offer limited grocery items may have the greatest difficulty stocking one additional vegetable. Comments from the public on this assumption were requested in the proposed RIA and none were received.

Due to the unavailability of data on vendor size, the Department does not have estimated costs for small vendors to offer a third variety of vegetables. However, based on the estimated number of small vendors that could be impacted, this rule will not have a significant economic impact on a substantial number of small entities. The updated stocking requirement will require vendors to carry one additional form of vegetable and will allow vendors to meet this requirement by stocking fresh, canned, or frozen vegetables, depending on their policies. Given the flexibility in this requirement, the Department anticipates minimum negative impact on vendors and, in the long-term, and expects that the administrative burden on vendors will remain substantially unchanged.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as a “major rule”, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; gross domestic product (GDP) deflator source: Table 1.1.9 at <https://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments, or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance under Number 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV). Since WIC is State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial

challenge to the provisions of this final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA Regulation 4300-004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the final rule, including an analysis of participant data and provisions contained in the final rule. The CRIA outlines outreach, mitigation, and monitoring strategies to lessen any possible civil rights impacts. The CRIA concludes by stating FNS believes that the promulgation of this final rule will impact WIC State agencies including Indian Tribal Organizations (ITOs), WIC vendors, WIC local agencies and clinic sites, food producers and manufacturers, and WIC participants. Specifically, WIC participants will be impacted by the changes to the WIC food packages to align with the latest nutrition science, accommodate special dietary needs and personal and cultural food preferences, and promote breastfeeding. WIC vendors will be required to consistently stock three vegetable varieties. State agencies, including ITOs, will have to identify new foods and package sizes and update their WIC Approved Product Lists consistent with the changes outlined in the final rule. WIC local agency and clinic staff will have to review and update procedures to ensure they prescribe the revised food package correctly and accurately communicate the changes to participants. Additionally, although the final rule's changes to the food packages were selected to align with available products, there may be a minimal need for food manufacturers to reformulate products or create new products or package sizes. However, FNS finds that the implementation of the outreach, mitigation, and monitoring strategies by the FNS Civil Rights Division and FNS WIC may lessen these impacts. If deemed necessary, FNS Civil Rights Division will propose further

mitigation and outreach strategies to alleviate impacts that may result from the implementation of the final rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On November 30, 2021, FNS provided opportunity for consultation on the rule and received substantive feedback from several Tribal leaders which was taken into consideration during the development of this final rule, including support for more traditional foods, consideration of impacts on small or Tribal stores, and swift publication of the rulemaking. FNS will explore additional opportunities for engagement as needed. Once the proposed rule was published in the **Federal Register**, FNS encouraged stakeholders representing ITOs to provide input on whether the proposed rule poses any adverse tribal implications. Several ITOs provided public comment on multiple aspects of the proposed rule. The Department considered all comments, including those received by ITOs. No Tribes requested additional consultation after the proposed rule was published. We are unaware of any current Tribal laws that could be in conflict with this final rule. If a Tribe requests consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule revises existing information collection requirements currently approved under OMB Control Number 0584-0043, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping Burden” (expiration date January 31, 2027), and contains new requirements for the same information collection. These information collection requirements are subject to review and approval by OMB.

The Department published the proposed rule, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages,” in the **Federal Register** on November 21, 2022 (FR 71090). In connection with the proposed rule, the Department submitted an Information Collection Request (ICR) discussing the information requirements impacted by the rule to OMB for review.²⁷ The proposed rule requested public comment on proposed changes in the information collection burden that would result from this rule. No comments were received on the proposed information collection requirements and associated burdens. Comments received on other sections of the proposed rule highlighted the administrative burden required of State agencies to successfully implement the provisions in the final rule. The Department evaluated the administrative burden comments received on individual provisions throughout the rule and cross referenced them with the proposed changes in the ICR. The Department did not receive any comments disputing the estimated administrative burden as

²⁷ See ICR Reference No: 202211-0584-006, available at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202211-0584-001.

a result of this rulemaking. Therefore, the Department believes this administrative burden has been appropriately captured in the burden estimates that were presented with the proposed rule.

This final rule does not change the information collection requirements that were proposed in the proposed rule. However, the baseline number of hours currently approved under OMB Control Number 0584-0043 have been updated since the proposed rule was published, due to the regular revision of the WIC Program ICR. The revisions to the existing information collection requirements and the introduction of new information collection requirements that will take effect with the final rule will result in an overall increase in burden hours for State and local agencies, applicants for Program benefits, and businesses responding to these requirements. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB approval.

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping Burden.

OMB Number: 0584-0043

Expiration Date: January 31, 2027

Type of Request: Revision of a currently approved collection.

Abstract: This is a revision of existing information collection requirements in the information collection under OMB Control Number 0584-0043 that are affected by this rulemaking. This final rule revises regulations governing the WIC food packages to align them with the current *Dietary Guidelines for Americans* and to reflect recommendations from the National Academies of Sciences, Engineering, and Medicine while promoting nutrition security and equity and considering program administration. This final rule impacts the burden associated with reporting and recordkeeping requirements for State and local agencies, reporting requirements for Program

applicants and participants, and reporting requirements for businesses. The average burden per respondent and the annual burden hours are summarized and explained below.

(i) Burden Revisions Related to Certification

During the certification process, a program applicant or participant provides pertinent data, receives notification of their rights and responsibilities, receives information on other health-related and public assistance programs, is assigned a food package based on their nutrition risk assessment and categorical eligibility, and receives their initial nutrition education including breastfeeding promotion and support. Currently, the Department estimates that it takes 25 minutes per applicant or participant to complete this certification process. Due to the program (food package) changes in this rule, the Department estimates that the certification process will take an additional three minutes to complete per participant. These three minutes account for the time required for clinic staff to review updated procedures, correctly prescribe the food package with the changes, and communicate the changes to each participant. Therefore, the Department estimates that going forward, certification will require 28 minutes (0.4676 hours) per applicant or participant. This change will increase the reporting burden for State and local agencies and program applicants and participants as follows:

- For the 1,379,126 adult participants, the Department estimates an additional 69,094.21 hours (3 minutes or 0.0501 hours x 1,379,126 participants) of reporting burden for certification. This will add 48,365.95 hours to the annual reporting burden for the 1,267 government local agencies that perform certifications for 70 percent of adult participants ($0.7 \times 1,379,126 = 965,388.20$ adult participants), and 20,728.26 hours to the annual reporting burden for the 543 non-profit local agencies that perform certifications for the remaining 30 percent of adult participants ($0.3 \times 1,379,126 = 413,737.80$ adult participants).

- For the 3,400,090 child participants, the Department estimates an additional 170,344.51 hours ($0.0501 \text{ hours} \times 3,400,090 \text{ participants}$) of reporting burden for certification. This will add 119,241.16 hours to the annual reporting burden for the 1,267 government local agencies that perform certifications for 70 percent of child participants ($0.7 \times 3,400,090 = 2,380,063$ child participants), and 51,103.35 hours to the annual reporting burden for the 543 non-profit local agencies that perform certifications for the remaining 30 percent of child participants ($0.3 \times 3,400,090 = 1,020,027$ child participants).
- For the 1,464,744 infant participants, the Department estimates an additional 73,383.67 hours ($0.0501 \text{ hours} \times 1,464,744 \text{ participants}$) of reporting burden for certification. This will add 51,368.57 hours to the annual reporting burden for the 1,267 government local agencies that perform certifications for 70 percent of infant participants ($0.7 \times 1,464,744 = 1,025,320.80$ infant participants), and 22,015.10 hours to the annual reporting burden for the remaining 543 non-profit local agencies that perform certifications for the remaining 30 percent of infant participants ($0.3 \times 1,464,744 = 439,423.20$ infant participants).

Additionally, the Department estimates that communicating the food package changes in this rule to current participants will require a one-time, five-minute (0.0835 hours) explanation per participant. An estimated 521,370.66 burden hours will be required for all current WIC participants to receive this explanation ($6,243,960 \text{ participants} \times 5 \text{ minutes or } 0.0835 \text{ hours} = 521,370.66 \text{ hours}$). Staff at the 1,267 government local agencies will require 364,959.46 hours to provide this explanation to the 70 percent of WIC participants they serve ($0.7 \times 6,243,960 = 4,370,772 \text{ participants} \times 0.0835 \text{ hours} = 364,959.46 \text{ hours}$), and staff at the 543 non-profit local agencies will require 156,411.20 hours to provide this explanation to the remaining 30 percent of WIC participants they serve ($0.3 \times 6,243,960 = 1,873,188 \text{ participants} \times 0.0835 \text{ hours} = 156,411.20 \text{ hours}$).

(ii) Burden Revisions Related to Updating Food Lists

Each State agency is required to identify foods that are acceptable for use in the Program in their jurisdiction, in accordance with program regulations. This includes establishing criteria for and identifying foods, substitutions, brands and packaging the State agency will authorize for use in the Program. The rule includes additional requirements and options for WIC-authorized foods that will impact State agencies' identification of foods, substitutions, brands, and packaging acceptable for use in the Program to include:

- Requiring one other form of fruits and vegetables in addition to fresh.
- Allowing greater flexibility to authorize additional package sizes (e.g., fresh fruits and vegetables, yogurt, bread).
- Allowing plant-based yogurts and plant-based cheeses as substitution options for milk.
- Requiring the authorization of lactose-free milk.²⁸
- Allowing additional whole grain options as substitutes for bread.
- Requiring the authorization of canned legumes in addition to dry legumes.
- Allowing the authorization of nut and seed butters as an alternative to peanut butter.

Currently, the Department estimates that identifying foods for use in the Program takes an average of 40 hours per State agency each year. With the changes to acceptable foods in the rule, the Department estimates that, on average, it will take each State agency an additional three hours (based on an estimated range of 2 to 4 hours per State agency) to comply with this regulatory provision. This represents an average of a 5 to 10 percent increase in burden time. Therefore, the Department estimates 3,827 total annual burden hours for this provision (89 State agencies x 43 hours per State agency), which is an increase of 267 hours due to the rule.

(iii) Burden Revisions Related to Training State and Local Agencies

²⁸ Although, currently an option (not a requirement) all states and most ITOs already authorize some kind of lactose-free milk.

Each State agency is required to provide local agencies with a list of foods that are acceptable for use in the Program in their jurisdiction. Due to the changes in the WIC food packages the food lists will be revised. State agencies will need to develop and deliver training for local agencies on the revised food lists. In addition, State agencies will attend an FNS-provided training about the food package changes. These training activities result in a one-time estimated burden of five hours for each State agency (one hour to attend the FNS training, three hours to develop State agency-specific trainings for local agencies, and one hour to provide training to local agencies). The Department estimates an additional one-time State agency reporting burden of 445 hours for these training activities (89 State agencies x 5 hours = 445 hours).

Local agencies will be required to attend the hour-long training on updated food lists provided by their State agency. Therefore, the Department estimates an additional one-time burden of 1,267 hours for the 1,267 government local agencies and 543 hours for the 543 non-profit local agencies to attend their State agency training.

(iv) Burden Revisions Related to Vendor Authorization

The Department estimates that the new requirement for WIC-authorized retail vendors to stock three varieties of vegetables (currently vendors are required to stock two varieties) will result in 150 fewer vendors submitting applications and/or fewer vendors signing agreements. This estimate assumes that among vendors with WIC redemptions in the bottom 10 percent nationwide, those such as small convenience stores that offer limited grocery items may have the greatest difficulty stocking an additional vegetable, and therefore will be most impacted by the small increase in the minimum stock requirement in the final rule (37,417 retail vendors - 150 = 37,267 retail vendors).

State agencies are required to enter into a written agreement with retail vendors. State agencies must review completed application forms and sign a vendor agreement where the agreement

period must not exceed three years. The Department estimates that one-third of all retail vendors will submit applications each year and that it requires the State agency 40 minutes (0.668 hours) to review each application and agreement. With the expected decrease in the number of retail vendors due to the rule, the Department estimates a decrease in the associated State agency reporting burden of 33.07 hours (0.33×150 retail vendors = 49.50 fewer applications and agreements to review $\times 0.668$ hours = 30.07 fewer hours).

Additionally, retail vendors spend an estimated one hour every three years completing these applications or agreements. With the expected decrease in the number of retail vendors due to the rule, the Department estimates a decrease in the associated retail vendor reporting burden of 49.50 hours (0.33×150 retail vendors = 49.50 fewer vendors completing applications and agreements $\times 1$ hour = 49.50 fewer hours).

The Department further estimates that each retail vendor application and agreement requires one hour to collect and record in the State agency's recordkeeping system; most State agencies use an electronic MIS for this purpose. With the expected decrease in the number of retail vendors due to the rule, the Department estimates a decrease in the State agency recordkeeping burden associated with collecting and recording vendor applications and agreements of 49.50 hours (0.33×150 retail vendors = 49.50 fewer vendors completing applications and agreements $\times 1$ hour = 49.50 fewer hours).

(v) Additional Burden Considerations

This rule includes breast pumps as a Program benefit and adds reference to the sale or offer to sell breast pumps to the definition of *participant violation* (§ 246.2). In addition, the change (increase) to the dollar threshold for participant violations (§ 246.16(u)(2)(i)) will result in a decrease in the number of participant claims. Taken together these two provisions will offset each other and will not have an impact on the investigation and complaints filed and therefore

will not impact the currently approved burden estimate for § 246.23(c)(1) (disposition of participant claims).

Respondents: Businesses or other for-profit Organizations, non-profit WIC local agencies, State, local, or Tribal government, and individuals and households. Respondent groups identified include State Agencies (including Indian Tribal Organizations and U.S. Territories), applicants for Program benefits, and retail vendors.

Estimated Number of Respondents: 6,283,126

Estimated Number of Responses per Respondent: 3.98

Estimated Total Annual Burden on Respondents: 6,920,986.07 hours

Estimated Annual Reporting & Recordkeeping Burden for 0584-0043 as a Result of the Rulemaking

Regulation citation	Description of activities	Estimated number of respondents	Annual responses per respondent	Total annual responses	Average burden hours per response	Estimated total annual burden hours	Hours currently approved under OMB #0584-0043	Estimated change in burden hours due to rulemaking	Estimated change in burden hours due to adjustments	Total estimated change in burden hours
Reporting										
State and Local Agencies (including Indian Tribal Organizations and U.S. Territories)										
246.7(b), (i), (n) Women	Certification	1,267.00	761.95	965,388.20	0.4676	451,415.52	403,049.57	+48,365.95	0.00	+48,365.95
246.7(i) Children	Certification	1,267.00	1,878.50	2,380,063.00	0.4676	1,112,917.46	993,676.30	+119,241.16	0.00	+119,241.16
246.7(i) Infants	Certification	1,267.00	809.25	1,025,320.80	0.4676	479,440.01	428,071.43	+51,368.57	0.00	+51,368.57
246.7(i)	Explaining food package updates	1,267.00	3,449.70	4,370,772.00	0.0835	364,959.46	0.00	+364,959.46	0.00	+364,959.46
246.10(b)(1)	Identification of acceptable foods	89.00	1.00	89.00	43.00	3,827.00	3,560.00	+267.00	0.00	+267.00
246.10(b)(2)(i)	Attend, develop, and provide training to local agencies	89.00	1.00	89.00	5.00	445.00	0.00	+445.00	0.00	+445.00

	on revised food lists									
246.10(b)(2)(i)	Local agency training on revised food lists	1,267.00	1.00	1,267.00	1.00	1,267.00	0.00	+1,267.00	0.00	+1,267.00
246.12(h)	Vendor applications & agreements	89	138.18	12,298.11	0.668	8,215.14	8,248.20	-33.07	0.00	-33.07

Reporting

Applicants for Program Benefits

246.7(i) Women	Certification	1,379,126.00	1.00	1,379,126.00	0.4676	644,879.32	575,785.11	+69,094.21	0.00	+69,094.21
246.7(i) Children	Certification	3,400,090.00	1.00	3,400,090.00	0.4676	1,589,882.08	1,419,537.58	+170,344.51	0.00	+170,344.51
246.7(i) infants	Certification	1,464,744.00	1.00	1,464,744.00	0.4676	684,914.29	611,530.62	+73,383.67	0.00	+73,383.67
246.7(i)	Explaining food package updates	6,243,960.00	1.00	6,243,960.00	0.0835	521,370.66	0.00	+521,370.66	0.00	+521,370.66

Reporting

Retail Vendors (WIC-Authorized Food Stores) and Businesses (Non-Profit WIC Local Agencies)

246.7(i) Women	Certification	543.00	761.95	413,737.80	0.4676	193,463.80	172,735.53	+20,728.26	0.00	+20,728.26
246.7(i) Children	Certification	543.00	1,878.50	1,020,027.00	0.4676	476,964.63	425,861.27	+51,103.35	0.00	+51,103.35
246.7(i) infants	Certification	543.00	809.25	439,423.20	0.4676	205,474.29	183,459.19	+22,015.10	0.00	+22,015.10
246.7(i)	Explaining food package updates	543.00	3,449.70	1,873,188.00	0.0835	156,411.20	0.00	+156,411.20	0.00	+156,411.20
246.10(b)(2)(i)	Local agency training on revised food lists	543.00	1.00	543.00	1.00	543.00	0.00	+543.00	0.00	+543.00
246.12(h)(1)(i)	Vendor applications & agreements	12,298.11	1.00	12,298.11	1.00	12,298.11	12,347.61	-49.50	0.00	-49.50

Recordkeeping

State Agencies (including Indian Tribal Organizations and U.S. Territories)

246.12(h)(1)(i)	Vendor applications & agreements	89.00	138.18	12,298.11	1.00	12,298.11	12,347.61	-49.50	0.00	-49.50
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Total	6,283,126	3.98	25,014,72 2.33	0.28	6,920,986 .07	5,250,210 .02	+1,670,77 6.05	0.00	+1,670,77 6.05
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Summary of Requested Burden Revisions:

Summary of Requested Burden Revisions to # 0584-0043			
	Responses	Respondents	Time Burden
Current Inventory: Total Burden	55,379,381	6,283,276	15,686,416
Current Inventory: Reporting	42,789,469	6,283,276	15,400,737
Current Inventory: Recordkeeping	12,589,883	39,316	285,664
Current Inventory: Public Disclosure	29	29	15
Total Burden Revision Requested	67,869,052	6,283,126	17,357,192
Burden Revision Requested: Reporting	55,279,189	6,283,126	17,071,563
Burden Revision Requested: Recordkeeping	12,589,833	39,316	285,615
Burden Revision Requested: Public Disclosure	29	29	15
Difference in Total Burden from Rulemaking	12,489,671	-150	1,670,776

E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Foods, Grants administration, Grant programs-health, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Public health, Reporting and recordkeeping requirements, Women.

Accordingly, Food and Nutrition Service amends 7 CFR part 246 as follows:

PART 246 – SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. Amend § 246.2 by:
 - a. Adding the definition for “Disability” in alphabetical order:
 - b. Removing the definition for “Individual with disabilities;”
 - c. Revising the definition for “Participant violation;” and
 - d. Removing the definition “WIC-eligible nutritionals for participants with qualifying conditions (hereafter referred to as “WIC-eligible nutritionals)” and adding the definition “WIC-eligible nutritionals for participants with qualifying conditions (hereafter referred to as “WIC-eligible nutritionals)”” in its place.

The additions and revision read as follows:

§ 246.2 Definitions.

* * * * *

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. See 28 CFR 35.108.

* * * * *

Participant violation means any deliberate action of a participant, parent, or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts, to obtain benefits; selling or offering to sell WIC benefits, cash-value vouchers, paper food instruments, EBT cards, supplemental foods, or breast pumps in person, in print, or online; exchanging or attempting to exchange WIC benefits, cash-value vouchers, paper food instruments, EBT cards, supplemental foods, or breast pumps for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, farmers' market, or vendor staff; and dual participation.

* * * * *

WIC-eligible nutritionals for participants with qualifying conditions (hereafter referred to as "WIC-eligible nutritionals") means certain enteral products that are specifically formulated and commercially manufactured (as opposed to a naturally occurring foodstuff used in its natural state) to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal, or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme. WIC-

eligible nutritionals include many, but not all, products that meet the definition of medical food in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

3. Amend § 246.7 by revising paragraph (j)(10) to read as follows:

§ 246.7 Certification of participants.

* * * * *

(j) * * *

(10) During WIC certification, every Program applicant, parent, or caretaker shall be informed that selling or offering to sell WIC benefits, cash-value vouchers, paper food instruments, EBT cards, supplemental foods, or breast pumps in person, in print, or on-line is a participant violation.

* * * * *

4. Revise § 246.10 to read as follows:

§ 246.10 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants. The State agency must ensure that local agencies comply with this section.

(b) *State agency responsibilities.* (1) State agencies may:

(i) Establish criteria in addition to the minimum Federal requirements in table 4 to paragraph (e)(12) of this section for the supplemental foods in their States, except that the State agency may not selectively choose which eligible fruits and vegetables are available to participants. These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal. For eligible fruits and vegetables, State agencies may restrict packaging, e.g., plastic containers, and package sizes such as single serving of processed fruits and vegetables available for purchase with the cash-value voucher. In addition, State agencies may identify certain processed WIC-eligible fruits and vegetables on food lists where the potential exists for vendor or participant confusion in determining authorized WIC-eligible items.

(ii) Make food package adjustments to better accommodate participants who are homeless. At the State agency's option, these adjustments would include, but not be limited to, issuing authorized supplemental foods in individual serving-size containers to accommodate lack of food storage or preparation facilities.

(iii) Authorize package sizes, in addition to those authorized to fulfill paragraph (b)(2)(i) of this section, that increase participant variety and choice, except WIC formula, which must be authorized in sizes that correspond with the maximum monthly allowances per paragraphs (e)(9) and (11) of this section.

(2) State agencies must:

(i) Identify the brands of foods and package sizes that are acceptable for use in the Program in their States in accordance with the requirements of this section; all State agencies must authorize at least one package size (or combination of package sizes) that equal or add up to the maximum monthly allowances of all authorized supplemental foods in each of the food packages. State agencies must also provide to local agencies, and include in the State Plan, a list of acceptable foods and their maximum monthly allowances as specified in tables 1 through 4 to paragraphs (e)(9) through (12) of this section; and

(ii) Ensure that local agencies:

(A) Make available to participants the maximum monthly allowances of authorized supplemental foods, except as noted in paragraph (c) of this section, inform participants about the maximum monthly allowances of authorized supplemental foods to which they are entitled as a Program participant and any food substitution options as specified in tables 1 through 3 to paragraphs (e)(9) through (11) of this section that the State agency authorizes, and abide by the authorized substitution rates for WIC food substitutions as specified in tables 1 through 3 to paragraphs (e)(9) through (11);

(B) Make available to participants more than one food from each WIC food category except for the categories of peanut butter and eggs, and any of the WIC-eligible fruits and

vegetables (fresh or processed) in each authorized food package as listed in paragraph (e) of this section;

(C) Authorize only a competent professional authority to prescribe the categories of authorized supplemental foods in quantities that do not exceed the regulatory maximum and are appropriate for the participant, taking into consideration the participant's nutritional and breastfeeding needs; and

(D) Advise participants or their caretaker, when appropriate, that the supplemental foods issued are only for their personal use. However, the supplemental foods are not authorized for participant use while hospitalized on an in-patient basis. In addition, consistent with § 246.7(m)(1)(i)(B), supplemental foods are not authorized for use in the preparation of meals served in a communal food service. This restriction does not preclude the provision or use of supplemental foods for individual participants in a nonresidential setting (e.g., child care facility, family day care home, school, or other educational program); a homeless facility that meets the requirements of § 246.7(m)(1); or, at the State agency's discretion, a residential institution (e.g., home for pregnant teens, prison, or residential drug treatment center) that meets the requirements currently set forth in § 246.7(m)(1) and (2).

(c) *Nutrition tailoring.* Nutrition tailoring is the process of modifying an individual food package to better meet the supplemental nutritional needs of each participant. It entails making substitutions, reductions, and/or eliminations to food types and physical food forms in accordance with paragraphs (e)(9) through (11) of this section to accommodate special dietary needs, cultural practices, and/or personal preference. The full maximum monthly allowances of all supplemental foods in all food packages must be made available to participants unless medically or nutritionally warranted. Reductions in these amounts cannot be made for cost-savings, administrative convenience, caseload management, or to control vendor abuse. Reductions in these amounts or eliminations of foods cannot be made for categories, groups, or subgroups of WIC participants and may be done only after a nutrition assessment and offering

substitution options available in the State in accordance with paragraphs (e)(9) through (11) and State agency policy. The provision of less than the maximum monthly allowances of supplemental foods to an individual WIC participant in all food packages is appropriate only when:

(1) Medically or nutritionally warranted (e.g., to eliminate a food due to a food allergy);

(2) A participant refuses or cannot use the maximum monthly allowances, or chooses to take less than the maximum monthly allowance; or

(3) The quantities necessary to supplement another program's contribution to fill a medical prescription would be less than the maximum monthly allowances.

(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 (see paragraph (e)(3) of this section);

(iii) Any exempt infant formula;

(iv) Any WIC-eligible nutritional;

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

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

(2) *Medical documentation for other supplemental foods.* (i) State agencies may authorize local agencies to issue a non-contract brand infant formula that meets the requirements in table 4 to paragraph (e)(12) of this section without medical documentation in order to meet religious eating patterns; and

(ii) The State agency has the discretion to require medical documentation for any contract brand infant formula other than the primary contract infant formula and may decide that some contract brand infant formula may not be issued under any circumstances.

(3) *Medical determination.* For purposes of this paragraph (d), medical documentation means that a health care professional licensed to write medical prescriptions under State law has:

(i) Made a medical determination that the participant has a qualifying condition as described in paragraphs (e)(1) through (7) of this section that dictates the use of the supplemental foods, as described in paragraph (d)(1) of this section; and

(ii) Provided the written documentation that meets the technical requirements described in paragraphs (d)(4)(ii) and (iii) of this section.

(4) *Technical requirements—(i) Location.* All medical documentation must be kept on file (electronic or hard copy) at the local clinic. The medical documentation kept on file must include the initial telephone documentation, when received as described in paragraph (d)(4)(iii)(B) of this section.

(ii) *Content.* All medical documentation must include the following:

(A) The name of the authorized WIC formula (infant formula, exempt infant formula, WIC-eligible nutritional) prescribed, including amount needed per day;

(B) The authorized supplemental food(s) appropriate for the qualifying condition(s) and their prescribed amounts;

(C) Length of time the prescribed WIC formula and/or supplemental food is required by the participant;

(D) The qualifying condition(s) for issuance of the authorized supplemental food(s) requiring medical documentation, as described in paragraphs (e)(1) through (7) of this section; and

(E) Signature, date, and contact information (or name, date, and contact information), if the initial medical documentation was received by telephone and the signed document is

forthcoming, of the health care professional licensed by the State to write prescriptions in accordance with State laws.

(iii) *Written confirmation*—(A) *General*. Medical documentation must be written and may be provided as an original written document, an electronic document, or by facsimile or telephone to a competent professional authority until written confirmation is received.

(B) *Medical documentation provided by telephone*. Medical documentation may be provided by telephone to a competent professional authority who must promptly document the information. The collection of the required information by telephone for medical documentation purposes may only be used until written confirmation is received from a health care professional licensed to write medical prescriptions and used only when absolutely necessary on an individual participant basis. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time (i.e., one- or two-weeks' time) after accepting the initial medical documentation by telephone.

(5) *Medical supervision requirements*. Due to the nature of the health conditions of participants who are issued supplemental foods that require medical documentation, close medical supervision is essential for each participant's dietary management. The responsibility remains with the participant's health care provider for this medical oversight and instruction. This responsibility cannot be assumed by personnel at the WIC State or local agency. However, it would be the responsibility of the WIC competent professional authority to ensure that only the amounts of supplemental foods prescribed by the participant's health care provider are issued in the participant's food package.

(e) *Food packages*. There are seven food packages available under the Program that may be provided to participants. The authorized supplemental foods must be prescribed from food packages according to the category and nutritional needs of the participants. Breastfeeding assessment and the mother's plans for breastfeeding serve as the basis for determining food package issuance for all breastfeeding women. The intent of the WIC Program is that all

breastfeeding women be supported to exclusively breastfeed their infants and to choose the fully breastfeeding food package without infant formula. Breastfeeding mothers whose infants receive formula from WIC are to be supported to breastfeed to the maximum extent possible with minimal supplementation with infant formula. Formula amounts issued to a breastfed infant are to be tailored to meet but not exceed the infant's nutritional needs. The seven food packages are as follows:

(1) *Food Package I—Infants birth through 5 months—(i) Participant category served.* This food package is designed for issuance to infants from birth through age 5 months who do not have a condition qualifying them to receive Food Package III (see paragraph (e)(3) of this section). The following infant feeding variations are defined for the purposes of assigning food quantities and types in Food Packages I: Fully breastfeeding (the infant doesn't receive formula from the WIC Program); partially (mostly) breastfeeding (the infant is breastfed but also receives infant formula from WIC up to the maximum allowance described for partially (mostly) breastfed infants in table 1 to paragraph (e)(9) of this section; and fully formula fed (the infant is not breastfed or is breastfed minimally (the infant receives infant formula from WIC in quantities that exceed those allowed for partially (mostly) breastfed infants).

(ii) *Infant feeding age categories—Birth through 5 months.* Three infant food packages are available from birth through 5 months—fully breastfeeding, partially (mostly) breastfeeding, or fully formula-fed.

(iii) *Infant formula requirements.* This food package provides iron-fortified infant formula that is not an exempt infant formula and that meets the requirements in table 4 to paragraph (e)(12) of this section. The issuance of any contract brand or noncontract brand infant formula that contains less than 10 milligrams of iron per liter (at least 1.5 milligrams iron per 100 kilocalories) at standard dilution is prohibited. Except as specified in paragraph (d) of this section, local agencies must issue as the first choice of issuance the primary contract infant formula, as defined in § 246.2, with all other infant formulas issued as an alternative to the

primary contract infant formula. Noncontract brand infant formula and any contract brand infant formula that does not meet the requirements in table 4 to paragraph (e)(12) of this section may be issued in this food package only with medical documentation of the qualifying condition. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that indicates the need for the infant formula. For situations that do not require the use of an exempt infant formula, such determinations include, but are not limited to, documented formula intolerance, food allergy or inappropriate growth pattern. Medical documentation must meet the requirements described in paragraph (d) of this section.

(iv) *Physical forms.* Local agencies must issue all WIC formulas (infant formula, exempt infant formula and WIC-eligible nutritionals) in concentrated liquid or powder physical forms. Ready-to-feed WIC formulas may be authorized when the competent professional authority determines and documents that:

(A) The participant's household has an unsanitary or restricted water supply or poor refrigeration;

(B) The person caring for the participant may have difficulty in correctly diluting concentrated or powder forms; or

(C) The WIC infant formula is only available in ready-to-feed.

(v) *Authorized category of supplemental foods.* Infant formula is the only category of supplemental foods authorized in this food package. Exempt infant formulas and WIC-eligible nutritionals are authorized only in Food Package III (see paragraph (e)(3) of this section). The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for infants in Food Packages I are stated in table 1 to paragraph (e)(9) of this section.

(2) *Food Package II—Infants 6 through 11 months—(i) Participant category served.* This food package is designed for issuance to infants from 6 through 11 months of age who do not

have a condition qualifying them to receive Food Package III (see paragraph (e)(3) of this section).

(ii) *Infant food packages.* Three food packages for infants 6 through 11 months are available — fully breastfeeding, partially (mostly) breastfeeding, or fully formula fed.

(iii) *Infant formula requirements.* The requirements for issuance of infant formula in Food Package I, specified in paragraphs (e)(1)(iii) and (iv) of this section, also apply to the issuance of infant formula in Food Package II.

(iv) *Authorized categories of supplemental foods.* Infant formula, infant cereal, and infant foods are the categories of supplemental foods authorized in this food package. The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for infants in Food Packages II are stated in table 1 to paragraph (e)(9) of this section.

(3) *Food Package III—Participants with qualifying conditions—(i) Participant category served and qualifying conditions.* This food package is reserved for issuance to women, infants, and children who have a documented qualifying condition that requires the use of a WIC formula (infant formula, exempt infant formula, or WIC-eligible nutritional) because the use of conventional foods is precluded, restricted, or inadequate to address their special nutritional needs. Medical documentation must meet the requirements described in paragraph (d) of this section. Participants who are eligible to receive this food package must have one or more qualifying conditions, as determined by a health care professional licensed to write medical prescriptions under State law. The qualifying conditions include but are not limited to premature birth, low birth weight, failure to thrive, inborn errors of metabolism and metabolic disorders, gastrointestinal disorders, malabsorption syndromes, immune system disorders, severe food allergies that require an elemental formula, and life threatening disorders, diseases and medical conditions that impair ingestion, digestion, absorption, or the utilization of nutrients that could adversely affect the participant's nutrition status. This food package may not be issued solely for the purpose of enhancing nutrient intake or managing body weight.

(ii) *Non-authorized issuance of Food Package III.* This food package is not authorized for:

(A) Infants whose only condition is:

(1) A diagnosed formula intolerance or food allergy to lactose, sucrose, milk protein, or soy protein that does not require the use of an exempt infant formula; or

(2) A non-specific formula or food intolerance;

(B) Women and children who have a food intolerance to lactose or milk protein that can be successfully managed with the use of one of the other WIC food packages (i.e., Food Packages IV through VII (see paragraph (e)(4) through (7) of this section); or

(C) Any participant solely for the purpose of enhancing nutrient intake or managing body weight without an underlying qualifying condition.

(iii) *Restrictions on the issuance of WIC formulas in ready-to-feed (RTF) forms.* WIC State agencies must issue WIC formulas (infant formula, exempt infant formula, and WIC-eligible nutritionals) in concentrated liquid or powder physical forms unless the requirements for issuing RTF are met as described in paragraph (e)(1)(iv) of this section. In addition to those requirements, there are two additional conditions which may be used to issue RTF in Food Package III:

(A) If a ready-to-feed form better accommodates the participant's condition; or

(B) If it improves the participant's compliance in consuming the prescribed WIC formula.

(iv) *Unauthorized WIC costs.* All apparatuses or devices (e.g., enteral feeding tubes, bags, and pumps) designed to administer WIC formulas are not allowable WIC costs.

(v) *Authorized categories of supplemental foods.* The supplemental foods authorized in this food package require medical documentation for issuance and include WIC formula (infant formula, exempt infant formula, and WIC-eligible nutritionals), infant cereal, infant foods, milk, eggs, canned fish, fresh and other State-authorized forms of fruits and vegetables, breakfast cereal, whole wheat/whole grain bread, juice, and legumes and/or peanut butter. The maximum

monthly allowances, allowed options, and substitution rates of supplemental foods for infants in Food Package III are stated in table 1 to paragraph (e)(9) of this section. The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for children and women in Food Package III are stated in table 3 to paragraph (e)(11) of this section.

(vi) *Coordination with medical payors and other programs that provide or reimburse for formulas.* WIC State agencies must coordinate with other Federal, State, or local government agencies or with private agencies that operate programs that also provide or could reimburse for exempt infant formulas and WIC-eligible nutritional benefits to mutual participants. At a minimum, a WIC State agency must coordinate with the State Medicaid Program for the provision of exempt infant formulas and WIC-eligible nutritional benefits that are authorized or could be authorized under the State Medicaid Program for reimbursement and that are prescribed for WIC participants who are also Medicaid recipients. The WIC State agency is responsible for providing up to the maximum amount of exempt infant formulas and WIC-eligible nutritional benefits under Food Package III in situations where reimbursement is not provided by another entity.

(4) *Food Package IV-A and B—Children 1 through 4 years—(i) Participant category served.* This food package is designed for issuance to children 1 through 4 years of age who do not have a condition qualifying them to receive Food Package III (see paragraph (e)(3) of this section) and is divided into: Food Package IV-A for children 1 to less than 2 years of age (i.e., 12 through 23 months) and Food Package IV-B for children 2 years through 4 years of age.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fresh and other State-authorized forms of fruits and vegetables, whole wheat/whole grain bread, eggs, legumes or peanut butter, and canned fish are the categories of supplemental foods authorized for both Food Package IV-A and IV-B. The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for children in Food Packages IV-A and IV-B are stated in table 2 to paragraph (e)(10) of this section.

(5) *Food Package V-A and B—Pregnant and partially (mostly) breastfeeding women—*

(i) *Participant categories served.* This food package is designed for issuance to three categories of women who do not have a condition qualifying them to receive Food Package III (see paragraph (e)(3) of this section) and is divided into: Food Package V-A for issuance to women with singleton pregnancies and Food Package V-B for issuance to women pregnant with two or more fetuses and, for up to 1 year postpartum, partially (mostly) breastfeeding women whose partially (mostly) breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum allowances described in table 1 to paragraph (e)(9) of this section. Women partially (mostly) breastfeeding more than one infant from the same pregnancy and pregnant women fully or partially breastfeeding singleton infants are eligible to receive Food Package VII as described in paragraph (e)(7) of this section.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fresh and other State-authorized forms of fruits and vegetables, whole wheat/whole grain bread, eggs, legumes and peanut butter, and canned fish are the categories of supplemental foods authorized in this food package. The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for women in Food Packages V-A and V-B are stated in table 2 to paragraph (e)(10) of this section.

(6) *Food Package VI—Postpartum women—*(i) *Participant categories served.* This food package is designed for issuance to women up to 6 months postpartum who are not breastfeeding their infants, and to breastfeeding women up to 6 months postpartum whose participating infant receives more than the maximum amount of formula allowed for partially (mostly) breastfed infants as described in table 1 to paragraph (e)(9) of this section and who do not have a condition qualifying them to receive Food Package III (see paragraph (e)(3) of this section) .

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fresh and other State-authorized forms of fruits and vegetables, whole wheat/whole grain bread, eggs, legumes or peanut butter, and canned fish are the categories of supplemental foods authorized in

this food package. The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for women in Food Package VI are stated in table 2 to paragraph (e)(10) of this section.

(7) *Food Package VII—Fully breastfeeding—(i) Participant categories served.* This food package is designed for issuance to breastfeeding women up to 1 year postpartum whose infants do not receive infant formula from WIC (these breastfeeding women are assumed to be exclusively breastfeeding their infants) and who do not have a condition qualifying them to receive Food Package III (see paragraph (e)(3) of this section). This food package is also designed for issuance to women partially (mostly) breastfeeding multiple infants from the same pregnancy, and pregnant women who are also partially (mostly) breastfeeding singleton infants and who do not have a condition qualifying them to receive Food Package III. Women fully breastfeeding multiple infants from the same pregnancy receive 1.5 times the supplemental foods provided in Food Package VII.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fresh and other State-authorized forms of fruits and vegetables, whole wheat/whole grain bread, eggs, legumes and peanut butter, and canned fish are the categories of supplemental foods authorized in this food package. The maximum monthly allowances, allowed options, and substitution rates of supplemental foods for women in Food Package VII are stated in table 2 to paragraph (e)(10) of this section.

(8) *Supplemental foods—Maximum monthly allowances, options and substitution rates, and minimum requirements.* Tables 1 through 3 to paragraphs (e)(9) through (11) of this section specify the maximum monthly allowances of foods in WIC food packages and identify WIC food options and substitution rates. Table 4 to paragraph (e)(12) of this section describes the minimum requirements and specifications of supplemental foods in the WIC food packages.

(9) *Full nutrition benefit and maximum monthly allowances supplemental foods for infants in Food Packages I, II, and III.* Full nutrition benefit and maximum monthly allowances,

options, and substitution rates of supplemental foods for infants in Food Packages I, II, and III (see paragraph (e)(1), (2), and (3) of this section) are stated in table 1 to this paragraph (e)(9) as follows:

Table 1 to Paragraph (e)(9)—Food Packages I, II, and III: Full Nutrition Benefit (FNB) and Maximum Monthly Allowances (MMA) of Supplemental Foods for Infants by Feeding Option and Food Package Timeframe

Foods ¹	Fully Formula Fed (FF)		Partially (Mostly) Breastfed (BF/FF)		Fully Breastfed (BF)	
	Food Packages I-FF & III-FF A: 0 through 3 months B: 4 through 5 months	Food Packages II-FF & III-FF 6 through 11 months	Food Packages IBF/FF & III BF/FF A: 0 through 3 months B: 4 through 5 months	Food Packages II BF/FF & III BF/FF 6 through 11 months	Food Package I-BF 0 through 5 months	Food Package II-BF 6 through 11 months
WIC Formula^{2,3,4,5,6,7,8}	A: FNB = Up to 806 fl oz MMA= 823 fl reconstituted liquid concentrate or 832 fl oz RTF or 870 fl oz reconstituted powder B: FNB = Up to 884 fl oz MMA = 896 fl oz reconstituted liquid concentrate or 913 fl oz RTF or 960 fl oz reconstituted powder	FNB = Up to 624 fl oz MMA = 630 fl oz reconstituted liquid concentrate or 643 fl oz RTF or 696 fl oz reconstituted powder	A: FNB = Up to 364 fl oz MMA = 388 fl oz reconstituted liquid concentrate or 384 fl oz RTF or 435 fl oz reconstituted powder B: FNB = Up to 442 fl oz MMA = 460 fl oz reconstituted liquid concentrate or 474 fl oz RTF or 522 fl oz reconstituted powder	FNB = Up to 312 fl oz MMA = 315 fl oz reconstituted liquid concentrate or 338 fl oz RTF or 384 fl oz reconstituted powder	N/A	N/A
Infant Cereal^{9,10,11}	N/A	8 oz	N/A	8 oz	N/A	16 oz
Infant food fruits and vegetables^{9,10,11,12,13}	N/A	128 oz	N/A	128 oz	N/A	128 oz
Infant food meat^{9,10}	N/A	N/A	N/A	N/A	N/A	40 oz

Notes: Abbreviations in order of appearance in table: FF = fully formula fed; BF/FF = partially (mostly) breastfed; BF = fully breastfed; RTF = ready-to-feed; N/A = Not applicable (the supplemental food is not authorized in the corresponding food package).

¹ Table 4 to paragraph (e)(12) of this section describes the minimum requirements and specifications for supplemental foods. The competent professional authority (CPA) is authorized to determine nutritional risk and prescribe supplemental foods in Food Packages I, II, and III (see paragraphs (e)(1), (2), and (3) of this section) (per medical documentation), as established by State agency policy. Food Package III is issued to participants with qualifying medical conditions. A WIC formula is issued to participants receiving Food Package III under the direction of a health care provider.

² Amounts represent the FNB defined as the minimum amount of reconstituted fluid ounces of liquid concentrate infant formula as specified for each infant food package category and feeding variation. The FNB is based on a 13-ounce can that formed the basis of substitution rates for other physical forms of infant formula (i.e., powder and RTF infant formula).

³ Following a WIC nutrition and breastfeeding assessment of the needs of the dyad, breastfed infants, even those in the fully formula fed category, should be issued the quantity of formula needed to support any level of breastfeeding up to the FNB. This amount may be less than the FNB.

⁴ WIC formula means infant formula, exempt infant formula, or WIC-eligible nutritionals. Infant formula may be issued for infants in Food Packages I, II and III. Medical documentation is required for issuance of WIC formula and other supplemental foods in Food Package III. Only infant formula may be issued for infants in Food Packages I and II.

⁵ State agencies must issue whole containers that are all the same size of the same physical form.

⁶ The MMA is specified in reconstituted fluid ounces for liquid concentrate, RTF liquid, and powder forms of infant formula and exempt infant formula. Reconstituted fluid ounce is the form prepared for consumption as directed on the container. Formula provided to infants in any form may not exceed the MMA.

⁷ The FNB is intended to provide close to 100 percent of the nutritional needs of a non-breastfed infant from birth to 6 months. State agencies must provide at least the FNB authorized to non-breastfed infants up to the MMA for the physical form of the product specified for each food package category unless the food package is tailored to allow “up to” amounts to support breastfeeding.

⁸ State agencies may round up to issue whole containers of infant formula over the food package timeframe. State agencies must use the methodology described in accordance with paragraph (h)(1) of this section.

⁹ Per paragraph (b)(2)(ii)(A) of this section, State agencies must make the full MMA of all foods available to participants by providing at least one package size (or combination of sizes) that add up to the full MMA. However, per paragraph (b)(1)(iii) of this section, State agencies may authorize other package sizes (excluding WIC formula) to increase participant variety and choice.

¹⁰ State agencies may round up to issue whole containers of infant foods (infant cereal, fruits and vegetables, and meat) over the food package timeframe. State agencies must use the methodology described in accordance with paragraph (h)(2) of this section.

¹¹ In lieu of infant foods (cereal, fruit, and vegetables), infants older than 6 months of age in Food Package III may receive WIC formula (infant formula, exempt infant formula, or WIC-eligible nutritionals) at the same MMA as infants ages 4 through 5 months of age of the same feeding option.

¹² At State agency option, infants 6 through 11 months in Food Packages II and III may receive a cash-value voucher (CVV) to purchase fruits and vegetables in lieu of the infant food fruits and vegetables. Fully breastfed infants, partially (mostly) breastfed infants, and fully formula fed infants may substitute half (64 oz.) or all (128 oz.) of jarred infant fruits and vegetables with a \$10 or \$20 CVV, respectively. The monthly value of the CVV substitution amounts for infant fruits and vegetables will be adjusted annually for inflation consistent with the annual inflation adjustments made to CVV values for women and children. State agencies must authorize fresh and one other form (frozen or canned). Dried fruits and vegetables are not authorized for infants. The CVV may be redeemed for any eligible fruit and vegetable (refer to table 4 of paragraph (e)(12) of this section and its footnotes).

¹³ State agencies may not categorically issue a CVV for infants 6 through 11 months. The CVV is to be provided to the participant only after an individual nutrition assessment, as established by State agency policy. State agencies must ensure that appropriate nutrition education is provided to the caregiver addressing developmental readiness, safe food preparation, storage techniques, and feeding practices to make certain participants are meeting their nutritional needs in a safe and effective manner.

(10) *Maximum monthly allowances of supplemental foods in Food Packages IV through VII.* The maximum monthly allowances, options, and substitution rates of supplemental foods for children and women in Food Packages IV through VII (see paragraphs (e)(4) through (7) of this section) are stated in table 2 to this paragraph (e)(10) as follows:

Table 2 to Paragraph (e)(10)—Food Packages IV, V, VI, and VII: Maximum Monthly Allowances (MMA) of Supplemental Foods for Children and Women

Foods ¹	Children	Women		
	Food Package IV A: 12 through 23 months B: 2 through 4 years	Food Package V A: Pregnant B: Partially (Mostly) Breastfeeding (up to 1 year postpartum) ²	Food Package VI Postpartum (up to 6 months postpartum) ³	Food Package VII Fully Breastfeeding (up to 1 year postpartum) ^{4, 5}
Juice, single strength ^{6, 7}	64 fl oz	64 fl oz	64 fl oz	64 fl oz
Milk, fluid ^{8, 9, 10, 11, 12, 13, 14, 15}	A: 12 qt ^{8, 9, 11, 12, 14} B: 14 qt ^{8, 10, 11, 12, 13, 14}	16 qt ^{8, 10, 11, 12, 13, 15}	16 qt ^{8, 10, 11, 12, 13, 15}	16 qt ^{8, 10, 11, 12, 13, 15}
Breakfast cereal ¹⁶	36 oz	36 oz	36 oz	36 oz
Eggs ¹⁷	1 dozen	1 dozen	1 dozen	2 dozen
Fruits and vegetables ^{18, 19}	\$24.00 CVV	A: \$43.00 CVV B: \$47.00 CVV	\$43.00 CVV	\$47.00 CVV
Whole wheat or whole grain bread ²⁰	24 oz	48 oz	48 oz	48 oz
Fish (canned) ^{21, 22}	6 oz	A: 10 oz B: 15 oz	10 oz	20 oz
Mature Legumes <u>and/or</u> Peanut butter ²³	1 lb dry or 64 oz canned Or 18 oz	1 lb dry or 64 oz canned And 18 oz	1 lb dry or 64 oz canned Or 18 oz	1 lb dry or 64 oz canned And 18 oz
Note: Abbreviations in order of appearance in table: N/A = Not applicable (the supplemental food is not authorized in the corresponding food package); CVV = cash-value voucher.				

¹ Table 4 to paragraph (e)(12) of this section describes the minimum requirements and specifications for supplemental foods. Per paragraph (b)(2)(ii)(A) of this section, State agencies must make the full MMA of all foods available to participants by providing at least one package size (or combination of sizes) that add up to the full MMA. However, per paragraph (b)(1)(iii) of this section, State agencies may authorize other package sizes to increase participant variety and choice. The competent professional authority (CPA) is authorized to determine nutritional risk and prescribe supplemental foods as established by State agency policy.

² Food Package V-A (see paragraph (e)(5) of this section) is issued to women participants with singleton pregnancies. Food Package V-B (see paragraph (e)(5)) is issued to two categories of WIC participants: breastfeeding women whose partially (mostly) breastfed infants receive formula from WIC in amounts that do not exceed the maximum formula allowances, as

appropriate for the age of the infant as described in table 1 to paragraph (e)(9) of this section, and women pregnant with two or more fetuses.

³ Food Package VI is issued to two categories of WIC participants: non-breastfeeding postpartum women and breastfeeding postpartum women whose infants receive more than the maximum infant formula allowances from WIC for partially (mostly) breastfed infants, as appropriate for the age of the infant as described in table 1 to paragraph (e)(9) of this section.

⁴ Food Package VII is issued to three categories of WIC participants: fully breastfeeding women whose infants do not receive formula from WIC; women partially (mostly) breastfeeding multiple infants from the same pregnancy; and pregnant women who are also fully or partially (mostly) breastfeeding singleton infants.

⁵ Women fully breastfeeding multiple infants from the same pregnancy are prescribed 1.5 times the MMA.

⁶ Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the MMA for single-strength juice.

⁷ Children and women may choose to substitute a \$3 CVV for the full juice amount (64 fluid ounces). The monthly value of the CVV substitution amount for juice will be adjusted annually for inflation consistent with the annual inflation adjustments made to CVV values for women and children. A partial CVV substitution for juice is not authorized. The CVV may be redeemed for any eligible fruit and vegetable (refer to table 4 of paragraph (e)(12) to this section and its footnotes).

⁸ Regular and lactose-free milk must be authorized. "Regular milk" refers to milk that conforms to FDA standard of identity 21 CFR 131.110 and contains lactose exclusive of fat content (e.g., low-fat milk). State agencies have the option to authorize plant-based milk alternatives, yogurts, and cheeses, described in table 4 to paragraph (e)(12) of this section and its footnotes, as milk substitution options when individually tailoring food packages.

⁹ Whole milk is the standard milk for issuance to 1-year-old children (12 through 23 months). Whole fat or low-fat yogurts may be substituted for fluid milk for 1-year-old children, and both are standard issuance when substituting yogurt. Fat-reduced milks or nonfat yogurt may be issued to 1-year-old children for whom overweight or obesity is a concern. The need for fat-reduced milks or nonfat yogurt for 1-year-old children must be based on an individual nutritional assessment.

¹⁰ Low-fat (1%) or nonfat milks are the standard milk for issuance to children ≥ 24 months of age and women. Reduced-fat (2%) milk is authorized only for participants with certain conditions, including but not limited to, underweight and maternal weight loss during pregnancy. The need for reduced-fat (2%) milk for children receiving Food Package IV-B and women must be based on an individual nutritional assessment.

¹¹ Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk (i.e., 1:2 fluid ounce substitution ratio). Dry milk may be substituted at an equal reconstituted rate to fluid milk.

¹² For children and women, 1 pound of cheese (dairy and/or plant-based) may be substituted for 3 quarts of milk; 1 quart of yogurt (dairy and/or plant-based) may be substituted for 1 quart of milk with a maximum of 2 quarts of yogurt that may be substituted for 2 quarts of milk. Women receiving Food Package VII may substitute up to of 2 pounds of cheese for 6 quarts of milk. For children and women in Food Packages IV through VI, no more than 1 pound of cheese may be substituted. State agencies do not have the option to issue additional amounts of cheese or yogurt beyond these maximums even with medical documentation.

¹³ For children ≥ 24 months of age (Food Package IV-B) and women, low-fat or nonfat yogurts are the only types of yogurts authorized.

¹⁴ When individually tailoring food packages for children, plant-based milk alternatives may be substituted for milk on a quart for quart basis up to the total MMA of milk; tofu may be substituted for milk for children at the rate of 1 pound of tofu per 1 quart of milk up to the MMA for milk.

¹⁵ When individually tailoring food packages for women, plant-based milk alternatives may be substituted for milk on a quart for quart basis up to the total MMA of milk; tofu may be substituted for milk at the rate of 1 pound of tofu per 1 quart of milk up to the total MMA of milk.

¹⁶ At least 75 percent of cereal on a State agency's authorized food list must meet whole grain criteria for breakfast cereal (refer to table 4 to paragraph (e)(12) of this section and its footnotes).

¹⁷ State agencies must authorize substitution of dry legumes (1 pound), canned legumes (64 ounces), and peanut butter (18 ounces) for each 1 dozen eggs when individually tailoring food packages. At State agency option, State agencies may authorize tofu (1 pound) or nut and seed butters (18 ounces) to substitute for each 1 dozen eggs when individually tailoring food packages.

¹⁸ State agencies must authorize fresh and one other form of processed (i.e., canned (shelf-stable), frozen, and/or dried) fruits and vegetables. State agencies may choose to authorize additional or all processed forms of fruits and vegetables. The CVV may be redeemed for any eligible fruit and vegetable (refer to table 4 to paragraph (e)(12) of this section and its footnotes). Except as authorized in paragraph (b)(1)(i) of this section, State agencies may not selectively choose which fruits and vegetables are available to participants. For example, if a State agency chooses to offer dried fruits, it must authorize all WIC-eligible dried fruits.

¹⁹ The monthly value of the fruit/vegetable CVV will be adjusted annually for inflation using fiscal year 2022 as the base year as described in § 246.16(j).

²⁰ Whole wheat or whole grain bread must be authorized. State agencies have the option to also authorize other whole grain options as described in table 4 to paragraph (e)(12) of this section and its footnotes.

²¹ Issuance of smaller container sizes is encouraged to reduce the likelihood of exceeding a safe weekly consumption level of methylmercury. The U.S. Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA) provide joint advice regarding fish consumption to limit methylmercury exposure for children. As noted in their 2021 joint advice, depending on body weight, some women and some children should choose fish lowest in methylmercury or eat less fish than the amounts in the 2020-2025 Dietary Guidelines for Americans (DGA) Healthy US-Style Dietary Pattern. More information is available on the FDA and EPA websites at [FDA.gov/fishadvice](https://www.fda.gov/fishadvice) and [EPA.gov/fishadvice](https://www.epa.gov/fishadvice).

²² As noted in the 2021 FDA-EPA joint advice about eating fish, for some children, depending on age and caloric needs, the amounts of fish in the 2020-2025 DGA are higher than in the FDA-EPA advice. The DGA states that to consume these higher amounts, these children should consume only fish from the “Best Choices” list that are even lower in mercury – among the WIC-eligible varieties, this includes Atlantic mackerel, salmon, and sardines.

²³ State agencies are required to offer both mature dry (1 pound) and canned (64 ounces) legumes. Food Packages V and VII must provide both legumes and peanut butter. However, when individually tailoring these food packages, State agencies may issue the following combinations: 1 pound dry and 64 oz. canned legumes (and no peanut butter); 2 pounds dry or 128 oz. canned legumes (and no peanut butter); or 36 oz. peanut butter (and no legumes). State agencies also have the option to authorize other nut and seed butters as a substitute for peanut butter (on a 1:1 ounce substitution ratio), as described in table 4 to paragraph (e)(12) of this section and its footnotes, when individually tailoring food packages.

(11) *Maximum monthly allowances of supplemental foods for children and women with qualifying conditions in Food Package III.* The maximum monthly allowances, options, and substitution rates of supplemental foods for participants with qualifying conditions in Food Package III are stated in table 3 to this paragraph (e)(11) as follows:

Table 3 to Paragraph (e)(11)—Food Package III: Maximum Monthly Allowances (MMA) of Supplemental Foods for Children and Women with Qualifying Conditions

Foods ¹	Children	Women		
	A: 12 through 23 months B: 2 through 4 years	A: Pregnant B: Partially (Mostly) Breastfeeding (up to 1 year postpartum) ²	Postpartum (up to 6 months postpartum) ³	Fully Breastfeeding (up to 1 year postpartum) ^{4, 5}
Juice, single strength ^{6, 7}	64 fl oz	64 fl oz	64 fl oz	64 fl oz
WIC formula ^{8, 9}	Up to 455 fl oz liquid concentrate	Up to 455 fl oz liquid concentrate	Up to 455 fl oz liquid concentrate	Up to 455 fl oz liquid concentrate
Milk, fluid ^{10, 11, 12, 13, 14, 15, 16, 17}	A: 12 qt ^{10, 11, 13, 14, 16} B: 14 qt ^{10, 12, 13, 14, 15, 16}	16 qt ^{10, 12, 13, 14, 15, 17}	16 qt ^{10, 12, 13, 14, 15, 17}	16 qt ^{10, 12, 13, 14, 15, 17}

Breakfast cereal ^{18, 19}	36 oz	36 oz	36 oz	36 oz
Eggs ²⁰	1 dozen	1 dozen	1 dozen	2 dozen
Fruits and vegetables ^{21, 22, 23}	\$24.00 CVV	A: \$43.00 CVV B: \$47.00 CVV	\$43.00 CVV	47.00 CVV
Whole wheat or whole grain bread ²⁴	24 oz	48 oz	48 oz	48 oz
Fish (canned) ^{25, 26}	6 oz	A: 10 oz B: 15 oz	10 oz	20 oz
Mature Legumes <u>and/or</u> Peanut butter ²⁷	1 lb dry or 64 oz canned Or 18 oz	1 lb dry or 64 oz canned And 18 oz	1 lb dry or 64 oz canned Or 18 oz	1 lb dry or 64 oz canned And 18 oz
Note: Abbreviations in order of appearance in table: N/A = Not applicable (the supplemental food is not authorized in the corresponding food package); CVV = cash-value voucher.				

¹ Table 4 to paragraph (e)(12) of this section describes the minimum requirements and specifications for supplemental foods. Food Package III is issued to participants with qualifying medical conditions that require use of a WIC formula and supplementary foods under the direction of a health care provider. Per paragraph (b)(2)(ii)(A) of this section, State agencies must make the full MMA of all foods available to participants by providing at least one package size (or combination of sizes) that add up to the full MMA. However, per paragraph (b)(1)(iii) of this section, State agencies may authorize other package sizes (excluding WIC formula) to increase participant variety and choice. The competent professional authority (CPA) is authorized to determine nutritional risk and prescribe supplemental foods per medical documentation, as established by State agency policy.

² Food Package III-A for women is issued to participants with singleton pregnancies. Food Package III-B for women is issued to two categories of participants: women pregnant with two or more fetuses and breastfeeding women whose partially (mostly) breastfed infants receive formula from WIC in amounts that do not exceed the maximum formula allowances, as appropriate for the age of the infant as described in table 1 to paragraph (e)(9) of this section.

³ This food package is issued to two categories of WIC participants: non-breastfeeding postpartum women and breastfeeding postpartum women whose infants receive more than the maximum infant formula allowances from WIC for partially (mostly) breastfed infants, as appropriate for the age of the infant as described in table 1 to paragraph (e)(9) of this section.

⁴ This food package is issued to three categories of WIC participants: fully breastfeeding women whose infants do not receive formula from WIC; women partially (mostly) breastfeeding multiple infants from the same pregnancy; and pregnant women who are also fully or partially (mostly) breastfeeding singleton infants.

⁵ Women fully breastfeeding multiple infants from the same pregnancy are prescribed 1.5 times the MMA.

⁶ Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the MMA for single-strength juice.

⁷ As determined appropriate by the health care provider per medical documentation, children and women may choose to substitute a \$3 CVV for the full juice amount (64 fluid ounces) - a partial CVV substitution for juice is not authorized - or use their \$3 CVV for jarred infant food fruits and vegetables. State agencies must use the conversion of \$1 CVV = 6.25 ounces of jarred infant food fruits and vegetables. The monthly value of the CVV substitution amount for juice will be adjusted annually for inflation consistent with the inflation adjustments made to women and children's CVV values.

⁸ WIC formula means infant formula, exempt infant formula, or WIC-eligible nutritionals. Participants may receive up to 455 fluid ounces of a WIC formula (liquid concentrate) as determined appropriate by the health care provider per medical documentation. The number of fluid ounces refers to the amount as prepared according to directions on the container.

⁹ Powder and ready-to-feed may be substituted at rates that provide comparable nutritive value.

¹⁰ Regular and lactose-free milk must be authorized. "Regular milk" refers to milk that conforms to FDA standard of identity 21 CFR 131.110 and contains lactose exclusive of fat content (e.g., low-fat milk). State agencies have the option to authorize plant-

based milk alternatives, yogurts, and cheeses, described in table 4 of paragraph (e)(12) of this section and its footnotes, as determined appropriate by the health care provider per medical documentation.

¹¹ Whole milk is the standard milk for issuance to 1-year-old children (12 through 23 months). Whole fat or low-fat yogurts may be substituted for fluid milk for 1-year-old children, and both are standard issuance when substituting yogurt. Fat-reduced milks or nonfat yogurt may be issued to 1-year-old children as determined appropriate by the health care provider per medical documentation.

¹² Low-fat (1%) or nonfat milks are the standard milk for issuance to children ≥ 24 months of age and women. Whole milk or reduced-fat (2%) milk may be substituted for low-fat (1%) or nonfat milk for children ≥ 24 months of age and women as determined appropriate by the health care provider per medical documentation.

¹³ Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk (a 1:2 fluid ounce substitution ratio). Dry milk may be substituted at an equal reconstituted rate to fluid milk.

¹⁴ For children and women, 1 pound of cheese (dairy- and/or plant-based) may be substituted for 3 quarts of milk and 1 quart of yogurt (dairy- and/or plant-based) may be substituted for 1 quart of milk as determined appropriate by the health care provider per medical documentation. A maximum of 2 quarts of yogurt that may be substituted for 2 quarts of milk for both children and women. Fully breastfeeding women may substitute up to 2 pounds of cheese for 6 quarts of milk. Children and pregnant, partially breastfeeding, and postpartum women may substitute no more than 1 pound of cheese. State agencies do not have the option to issue additional amounts of cheese or yogurt beyond these maximums even with medical documentation.

¹⁵ For children ≥ 24 months of age and women, low-fat or nonfat yogurts are the only types of yogurts authorized. Whole or reduced-fat yogurt may be substituted for low-fat or nonfat yogurt for children ≥ 24 months of age and women as determined appropriate by the health care provider per medical documentation.

¹⁶ For children, issuance of tofu and plant-based milk alternatives may be substituted for milk as determined appropriate by the health care provider per medical documentation. Plant-based milk alternatives may be substituted for milk for children on a quart for quart basis up to the total MMA of milk. Tofu may be substituted for milk for children at the rate of 1 pound of tofu per 1 quart of milk up to the MMA of milk, as determined appropriate by the health care provider per medical documentation.

¹⁷ For women, plant-based milk alternatives may be substituted for milk on a quart for quart basis up to the total MMA of milk. Tofu may be substituted for milk at the rate of 1 pound of tofu per 1 quart of milk up to the MMA of milk, as determined appropriate by the health care provider per medical documentation.

¹⁸ 32 dry ounces of infant cereal may be substituted for 36 ounces of breakfast cereal as determined appropriate by the health care provider per medical documentation.

¹⁹ At least 75 percent of cereals authorized on a State agency's authorized food list must meet whole grain criteria for breakfast cereal (refer to table 4 to paragraph (e)(12) of this section and its footnotes).

²⁰ State agencies must authorize substitution of dry legume (1 pound), canned legumes (64 ounces), and peanut butter (18 ounces) for each 1 dozen eggs and, at State agency option, State agencies may authorize tofu (1 pound) or nut and seed butters (18 ounces) to substitute for each 1 dozen eggs as determined appropriate by the health care provider per medical documentation.

²¹ State agencies must authorize fresh and one other form (i.e., canned (shelf-stable), frozen, and/or dried) of fruits and vegetables. State agencies may choose to authorize additional or all processed forms of fruits and vegetables. The CVV may be redeemed for any eligible fruit and vegetable (refer to table 4 to paragraph (e)(12) of this section and its footnotes). Except as authorized in paragraph (b)(1)(i) of this section, State agencies may not selectively choose which fruits and vegetables are available to participants. For example, if a State agency chooses to offer dried fruits, it must authorize all WIC-eligible dried fruits.

²² Children and women whose special dietary needs require the use of pureed foods may receive commercial jarred infant food fruits and vegetables in lieu of the CVV. For children and women who require jarred infant food fruits and vegetables in place of the CVV, State agencies must use the conversion of \$1 CVV = 6.25 ounces of jarred infant food fruits and vegetables.²³ Infant food fruits and vegetables may be substituted for the CVV as determined appropriate by the health care provider per medical documentation.

²³ The monthly value of the fruit/vegetable CVV will be adjusted annually for inflation as described in § 246.16(j).

²⁴ Whole wheat or whole grain bread must be authorized. State agencies have the option to also authorize other whole grain options as described in table 4 to paragraph (e)(12) of this section and its footnotes.

²⁵ Issuance of smaller container sizes is encouraged to reduce the likelihood of exceeding a safe weekly consumption level of methylmercury. The U.S. Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA) provide

joint advice regarding fish consumption to limit methylmercury exposure for children. As noted in their 2021 joint advice, depending on body weight, some women and some children should choose fish lowest in methylmercury or eat less fish than the amounts in the 2020-2025 DGA Healthy US-Style Dietary Pattern. More information is available on the FDA and EPA websites at [FDA.gov/fishadvice](https://www.fda.gov/fishadvice) and [EPA.gov/fishadvice](https://www.epa.gov/fishadvice).

²⁶ As noted in the 2021 FDA-EPA joint advice about eating fish, for some children, depending on age and caloric needs, the amounts of fish in the 2020-2025 DGA are higher than in the FDA-EPA advice. The DGA states that to consume these higher amounts, these children should consume only fish from the “Best Choices” list that are even lower in mercury – among the WIC-eligible varieties, these include Atlantic mackerel, salmon, and sardines.

²⁷ State agencies are required to offer both mature dry (1 pound) and canned (64 ounces) legumes. For food packages that provide both legumes and peanut butter, State agencies may issue the following combinations: 1 pound dry and 64 oz. canned legumes (and no peanut butter); 2 pounds dry or 128 oz. canned legumes (and no peanut butter); or 36 oz. peanut butter (and no legumes). State agencies have the option to authorize other nut and seed butters as a substitute for peanut butter (on a 1:1 ounce substitution ratio), as described in table 4 of paragraph (e)(12) of this section and its footnotes, as determined appropriate by the health care provider per medical documentation.

(12) *Minimum requirements and specifications for supplemental foods.* Table 4 to this paragraph (e)(12) describes the minimum requirements and specifications for supplemental foods in all food packages:

Table 4 to Paragraph (e)(12)—Minimum Requirements and Specifications for Supplemental Foods

Categories/Foods	Minimum Requirements and Specifications
WIC FORMULA	
Infant Formula	<p>All authorized infant formulas must:</p> <p>(1) Meet the definition for an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and meet the requirements for an infant formula under section 412 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 350a), and the regulations at 21 CFR parts 106 and 107;</p> <p>(2) Be designed for enteral digestion via an oral or tube feeding;</p> <p>(3) Provide at least 10 mg iron per liter (at least 1.5 mg iron/100 kilocalories) at standard dilution;</p> <p>(4) Provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution; and</p>

	(5) Not require the addition of any ingredients other than water prior to being served in a liquid state.
Exempt Infant Formula	<p>All authorized exempt infant formula must:</p> <p>(1) Meet the definition and requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 350a(h)), and the regulations at 21 CFR parts 106 and 107; and</p> <p>(2) Be designed for enteral digestion via an oral or tube feeding.</p>
WIC-eligible Nutritionals ¹	Certain enteral products that are specifically formulated and commercially manufactured (as opposed to a naturally occurring foodstuff used in its natural state) to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal, or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme.
MILK, MILK ALTERNATIVES, AND MILK SUBSTITUTIONS	
Cow's Milk ²	<p>Must conform to FDA Standard of Identity for whole, reduced-fat, low-fat, or nonfat milks (21 CFR 131.110). Must be pasteurized. Only unflavored milk is permitted. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dry.</p> <p>Dry whole milk must conform to FDA Standard of Identity (21 CFR 131.147). Nonfat dry milk must conform to FDA Standard of Identity (21 CFR 131.127).</p> <p>Cultured milks must conform to FDA Standard of Identity for cultured milk, e.g., cultured buttermilk, kefir cultured milk, acidophilus cultured milk (21 CFR 131.112).</p> <p>Acidified milk must conform to FDA Standard of Identity for acidified milk, e.g., acidified kefir milk, acidified acidophilus milk or acidified buttermilk (21 CFR 131.111).</p>

	Whole, reduced-fat, low-fat, and nonfat cow’s milk types and varieties must contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2,000 IU of vitamin A per quart (500 IU per cup).
Goat’s Milk	<p>Must be pasteurized. Only unflavored milk is permitted. May be fluid, shelf-stable, evaporated, or dry (i.e., powdered).</p> <p>Whole, reduced-fat, low-fat, and nonfat goat’s milk must contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2,000 IU of vitamin A per quart (500 IU per cup).</p>
Plant-based Milk Alternatives	Must contain ≤ 10 g of added sugars per cup and be fortified to meet the following nutrient levels (amounts are provided per cup): 276 mg calcium, 8 g protein, 500 international units vitamin A, 100 IU (2.5 micrograms) vitamin D, 24 mg magnesium, 222 mg phosphorus, 349 mg potassium, 0.44 mg riboflavin, and 1.1 mcg vitamin B12, in accordance with FDA-issued fortification guidelines. May be flavored or unflavored.
Cheese	<p>Domestic cheese made from 100 percent pasteurized milk. Must conform to FDA Standard of Identity (21 CFR part 133); Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, part-skim or whole Mozzarella, pasteurized process American, or blends of any of these cheeses are authorized.</p> <p>Cheeses that are labeled low, free, reduced, less or light in sodium, fat or cholesterol are WIC-eligible.</p>
Plant-based Cheese Alternatives	Must contain a minimum of 250 mg of calcium and 6.5 g of protein per 1.5 ounces. Plant-based curd cheeses are not authorized.
Yogurt (cow’s milk)	<p>Must be pasteurized, conform to FDA Standard of Identity (21 CFR 131.200) and contain ≤ 16 grams of added sugar and a minimum of 106 IU (2.67 micrograms) of vitamin D per 8 ounces.</p> <p>May be plain or flavored. Yogurts that are fortified with vitamin A and other nutrients may be allowed at the State agency’s option. Yogurts sold with accompanying mix-in ingredients such as granola, candy pieces, honey, nuts, and similar ingredients are not authorized. Drinkable yogurts are not authorized.</p>
Plant-based Yogurt Alternatives	Must contain ≤ 16 g of added sugars and a minimum of 250 mg of calcium, 6.5 g of protein, and 106 IU (2.67 micrograms) of vitamin D per 8 ounces. May be plain or flavored.

	<p>Plant-based yogurts sold with accompanying mix-in ingredients such as granola, candy pieces, honey, nuts, and similar ingredients are not authorized. Drinkable yogurts are not authorized.</p>
Tofu	<p>Must contain a minimum of 100 mg of calcium per 100 g of tofu. May not contain added fats, sugars, oils, or sodium.</p>
JUICE	<p>Must be pasteurized 100 percent unsweetened fruit juice. Must contain at least 30 mg of vitamin C per 100 mL of juice. Must conform to FDA Standard of Identity as appropriate (21 CFR part 146) or vegetable juice must conform to FDA Standard of Identity as appropriate (21 CFR part 156). Except for 100 percent citrus juices, State agencies must verify the vitamin C content of all State-approved juices. Juices that are fortified with other nutrients may be allowed at the State agency's option. Juice may be fresh, from concentrate, frozen, canned, or shelf stable. Blends of authorized juices are allowed.</p> <p>Vegetable juice may be regular or lower in sodium.</p>
EGGS	<p>Fresh shell domestic hens' eggs or dried eggs mix (must conform to FDA Standard of Identity in 21 CFR 160.105) or pasteurized liquid whole eggs (must conform to FDA Standard of Identity in 21 CFR 160.115).</p> <p>Hard boiled eggs, where readily available for purchase in small quantities, may be provided for homeless participants.</p>
BREAKFAST CEREAL (READY-TO-EAT AND INSTANT AND REGULAR HOT CEREALS)	<p>Must contain a minimum of 28 mg iron per 100 g dry cereal.</p> <p>Must contain \leq21.2 g of added sugar per 100 g dry cereal (\leq6 g per dry oz.)</p> <p>Seventy five percent of cereals on the State agency authorized food list must contain whole grain as the first ingredient.</p>

<p>FRUITS AND VEGETABLES (FRESH AND PROCESSED)^{3,4,5,6,7}</p>	<p>Any variety of fresh (as defined by 21 CFR 101.95) whole or cut fruit without added sugars.</p> <p>Any variety of fresh (as defined by 21 CFR 101.95) whole or cut vegetable without added sugars, fats, or oils.</p> <p>Any variety of canned fruits (must conform to FDA standard of identity as appropriate (21 CFR part 145)); including applesauce, juice pack or water pack without added sugars, fats, oils, or salt (i.e., sodium). The fruit must be listed as the first ingredient.</p> <p>Any variety of frozen fruits without added sugars, fats, oils, or salt (i.e., sodium).</p> <p>Any variety of canned or frozen vegetables without added sugars, fats, or oils. Vegetable must be listed as the first ingredient. May be regular or lower in sodium. Must conform to FDA standard of identity as appropriate (21 CFR part 155).</p> <p>Any type of dried fruits or dried vegetables without added sugars, fats, oils, or salt (i.e., sodium).</p> <p>Any type of immature beans, peas, or lentils, fresh or in canned⁴ forms.</p> <p>Any type of frozen beans (immature or mature). Beans purchased with the CVV may contain added vegetables and fruits, but may not contain added sugars, fats, oils, or meat as purchased. Canned beans, peas, or lentils may be regular or lower in sodium content.</p> <p>State agencies must allow organic forms of WIC-eligible fruits and vegetables.</p>
<p>WHOLE WHEAT BREAD, WHOLE GRAIN BREAD, AND WHOLE GRAIN OPTIONS</p>	
<p>Bread</p>	<p><u>Whole wheat bread</u> must conform to FDA Standard of Identity (21 CFR 136.180). (Includes whole wheat buns and rolls.) “Whole wheat flour” and/or “bromated whole wheat flour” must be the only flours listed in the ingredient list.</p>

	<p>OR</p> <p><u>Whole grain bread</u> must conform to FDA Standard of Identity (21 CFR 136.110) (includes whole grain buns and rolls)</p> <p>AND</p> <p>Must contain at least 50 percent whole grains with the remaining grains being either enriched or whole grains.⁸</p>
<p>Whole Grain Options</p>	<p>Brown rice, wild rice, quinoa, bulgur (cracked wheat), oats, whole-grain barley, millet, triticale, amaranth, cornmeal (including blue), corn masa flour, whole wheat macaroni (pasta) products, whole wheat bread products (i.e., pita, English muffin, bagels, naan), soft corn or whole wheat tortillas, buckwheat, teff, kamut, sorghum, wheat berries without added sugars, fats, oils, or salt (i.e., sodium). May be instant-, quick-, or regular-cooking.</p> <p>State agencies have the option to authorize other intact whole grain options without added sugars, fats, oils, or salt (i.e., sodium).</p> <p>Corn meal (including blue) must conform to FDA Standard of Identity 21 CFR 137.260 & aligning with USDA School Meal Guidance.</p> <p>Soft corn or whole wheat tortillas. Soft corn tortillas made from ground masa flour (corn flour) using traditional processing methods are WIC-eligible, e.g., whole corn, corn (masa), whole ground corn, corn masa flour, masa harina, and white corn flour. For whole wheat tortillas, “whole wheat flour” must be the only flour listed in the ingredient list. States may offer tortillas made with folic acid-fortified corn masa flour.</p> <p>Whole wheat macaroni (pasta) products. Must conform to FDA Standard of Identity (21 CFR 139.138) and have no added sugars, fats, oils, or salt (i.e., sodium). “Whole wheat flour” and/or “whole durum wheat flour” must be the only flours listed in the ingredient list. Other shapes and sizes that otherwise meet the FDA Standard of Identity for whole wheat macaroni (pasta) products (21 CFR 139.138), and have no added sugars, fats, oils, or salt</p>

	(i.e., sodium), are also allowed (e.g., whole wheat rotini, and whole wheat penne).
FISH (CANNED)⁴	<p>Light tuna (must conform to FDA Standard of Identity (21 CFR 161.190));</p> <p>Salmon (Pacific salmon must conform to FDA standard of identity (21 CFR 161.170));</p> <p>Sardines; and</p> <p>Mackerel (N. Atlantic <i>Scomber scombrus</i>, Chub Pacific <i>Scomber japonicas</i>)⁹</p> <p>May be packed in water or oil. Pack may include bones or skin. Only boneless varieties of fish may be provided to children at State agency option. Added sauces and flavorings, e.g., tomato sauce, mustard, lemon, are authorized at the State agency’s option. May be regular or lower in sodium content.</p>
MATURE LEGUMES, PEANUT BUTTER, AND PEANUT BUTTER SUBSTITUTIONS	
Mature Legumes (dry beans and peas) ¹⁰	<p>Any type of mature dry beans, peas, or lentils in dry-packaged and canned⁴ forms. Examples include but are not limited to black beans, black-eyed peas, garbanzo beans (chickpeas), great northern beans, white beans (navy and pea beans), kidney beans, mature lima (“butter beans”), fava beans, mung beans, pinto beans, soybeans/edamame, split peas, lentils, and refried beans. Does not include green beans or green peas. All categories exclude soups. May not contain added sugars, fats, oils, vegetables, fruits, or meat as purchased. Canned legumes may be regular or lower in sodium content.¹¹</p> <p>Baked beans may only be provided for participants with limited cooking facilities.¹¹</p>
Peanut Butter	Peanut butter and reduced-fat peanut butter must conform to FDA Standard of Identity (21 CFR 164.150); creamy or chunky, regular, or reduced-fat, salted or unsalted forms are allowed. Peanut butters with added marshmallows, honey, jelly, chocolate, or similar ingredients are not authorized.
Nut and Seed Butters	Must provide comparable nutritive value to peanut butter (i.e., protein and iron).

	May be creamy or chunky, regular, or reduced-fat, salted or unsalted forms are allowed. Nut and seed butter with added marshmallows, honey, jelly, chocolate, or similar ingredients are not authorized.
INFANT FOODS	
Infant Cereal	Infant cereal must contain a minimum of 45 mg of iron per 100 g of dry cereal. ¹²
Infant Fruits	Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced. The fruit must be listed as the first ingredient. ¹³
Infant Vegetables	Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced. The vegetable must be listed as the first ingredient. ¹⁴
Infant Meat	Any variety of commercial infant food meat or poultry as a single major ingredient, with added broth or gravy. Added sugars or salt (i.e., sodium) are not allowed. Texture may range from pureed through diced. ¹⁵
Note: FDA = Food and Drug Administration of the U.S. Department of Health and Human Services. Foods must comply with labeling requirements consistent with 21 CFR parts 130 and 101.	

¹ The following are not considered a WIC-eligible nutritional: Formulas used solely for the purpose of enhancing nutrient intake, managing body weight, or addressing picky eaters or used for a condition other than a qualifying condition (e.g., vitamin pills, weight control products, etc.); medicines or drugs as defined by the Federal Food, Drug, and Cosmetic Act as amended; enzymes, herbs, or botanicals; oral rehydration fluids or electrolyte solutions; flavoring or thickening agents; and feeding utensils or devices (e.g., feeding tubes, bags, pumps) designed to administer a WIC-eligible formula.

² All authorized milks must conform to FDA Standards of Identity for milks as defined by 21 CFR part 131 and meet WIC's requirements for vitamin fortification as specified in table 4 to paragraph (e)(12) of this section. Additional authorized milks include, but are not limited to calcium-fortified, lactose-reduced, organic, and UHT pasteurized milks. Other milks are permitted at the State agency's discretion provided that the State agency determines that the milk meets the minimum requirements for authorized milk.

³ Processed refers to frozen, canned (see footnote 4 to this table 4), or dried.

⁴ Canned refers to processed food items in cans or other shelf-stable containers, e.g., jars, pouches.

⁵ Fresh herbs, cut at the root or with the root intact, are authorized. The following are not authorized: spices and dried herbs; seeds; potted plants with vegetables, fruits or herbs; creamed vegetables or vegetables with added sauces; fresh fruits and/or vegetables packaged with dips, sauces, or glazes; mixed vegetables containing noodles, nuts, or sauce packets; vegetable-grain (e.g., pasta, rice) mixtures; fruit-nut mixtures; breaded vegetables; fruits and vegetables for purchase on salad bars; peanuts or other nuts; ornamental and decorative fruits and vegetables such as chili peppers or garlic on a string, gourds, painted pumpkins, fruit baskets, and decorative blossoms and flowers; and foods containing fruits such as blueberry muffins and other baked goods. Home-canned and home-preserved fruits and vegetables are not authorized.

⁶ Excludes catsup or other condiments; pickled vegetables; olives; soups; juices; and fruit leathers and fruit roll-ups. Canned tomato sauce, tomato paste, salsa, and spaghetti sauce without added sugar, fats, or oils are authorized.

⁷ State agencies have the option to allow only lower sodium canned vegetables for purchase with the cash-value voucher.

⁸ One of the following criteria must be met to confirm the product provides 50% or more whole grains: (1) product labeling contains the FDA health claim “Diet rich in whole grain foods and other plant foods and low in total fat, saturated fat, and cholesterol may reduce the risk of heart disease and some cancers” OR “Diets rich in whole grain foods and other plant foods, and low in saturated fat and cholesterol, may help reduce the risk of heart disease”; (2) meets the “rule of three” criteria (i.e., the first ingredient (or second after water) must be whole grain, and the next two grain ingredients (if any) must be whole grains, enriched grains, bran or germ; (3) the manufacturer provides written documentation that the product contains 50% or more whole grains by weight.

⁹ King mackerel is not authorized.

¹⁰ Mature dry beans, peas, or lentils in dry-packaged and canned forms are authorized under the mature legume category. Immature varieties of fresh or canned beans and frozen beans of any type (immature or mature) are authorized for purchase with the cash-value voucher only. Juices are provided as a separate WIC food category and are not authorized under the fruit and vegetable category.

¹¹ The following are not authorized in the mature legume category: soups; immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, yellow beans, and wax beans; baked beans with meat, e.g., beans and franks; beans containing added sugars (except for baked beans), fats, oils, meats, fruits, or vegetables.

¹² Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not allowed.

¹³ Mixtures with cereal or infant food desserts (e.g., peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) and combinations of single ingredients of fruits and/or vegetables (e.g., apples and squash) are allowed.

¹⁴ Combinations of single ingredients (e.g., peas and carrots) and combinations of single ingredients of fruits and/or vegetables (e.g., apples and squash) are allowed. Mixed vegetables with white potato as an ingredient (e.g., mixed vegetables) are authorized.

¹⁵ Infant food combinations (e.g., meat and vegetables) and dinners (e.g., spaghetti and meatballs) are not allowed.

(f) *USDA purchase of commodity foods.* (1) At the request of a State agency, FNS may purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency must be equivalent to the foods specified in table 4 to paragraph (e)(12) of this section.

(2) The State agency must:

(i) Distribute the commodity foods to its local agencies or participants; and

(ii) Ensure satisfactory storage facilities and conditions for the commodity foods, including documentation of proper insurance.

(g) *Infant formula manufacturer registration.* Infant formula manufacturers supplying formula to the WIC Program must be registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*). Such manufacturers wishing to bid for a State contract to supply infant formula to the Program must

certify with the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations in this chapter issued pursuant to the Act.

(h) *Rounding up.* State agencies may round up to the next whole container for either infant formula or infant foods (infant cereal, fruits, vegetables, and meat). State agencies that use the rounding up option must calculate the amount of infant formula or infant foods provided according to the requirements and methodology as described in this section.

(1) *Infant formula.* State agencies must use the maximum monthly allowance of reconstituted fluid ounces of liquid concentrate infant formula as specified in table 1 to paragraph (e)(9) of this section as the full nutritional benefit (FNB) provided by infant formula for each food package category and infant feeding option (e.g., Food Package IA fully formula fed, IA-FF (see paragraph (e)(1) of this section)).

(i) For State agencies that use rounding up of infant formula, the FNB is determined over the timeframe (the number of months) that the participant receives the food package. In any given month of the timeframe, the monthly issuance of reconstituted fluid ounces of infant formula may exceed the maximum monthly allowance or fall below the FNB; however, the cumulative average over the timeframe may not fall below the FNB without individual tailoring to allow “up to” amounts to support breastfeeding. In addition, the State agency must:

(A) Use the methodology described in paragraph (h)(1)(ii) of this section for calculating and dispersing the rounding up option;

(B) Issue infant formula in whole containers that are all the same size; and

(C) Disperse the number of whole containers as evenly as possible over the timeframe with the largest monthly issuances given in the beginning of the timeframe.

(ii) The methodology to calculate rounding up and dispersing infant formula to the next whole container over the food package timeframe is as follows:

(A) Multiply the FNB amount for the appropriate food package and feeding option (e.g., Food Package IA fully formula fed, IA-FF (see paragraph (e)(1) of this section)) by the

timeframe the participant will receive the food package to determine the total amount of infant formula to be provided.

(B) Divide the total amount of infant formula to be provided by the yield of the container (in reconstituted fluid ounces) issued by the State agency to determine the total number of containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

(2) *Infant foods.* (i) State agencies may use the rounding up option to the next whole container of infant food (infant cereal, fruits, vegetables, and meat) when the maximum monthly allowance cannot be issued due to varying container sizes of authorized infant foods.

(ii) State agencies that use the rounding up option for infant foods must:

(A) Use the methodology described in paragraph (h)(2)(iii) of this section for calculating and dispersing the rounding up option;

(B) Issue infant foods in whole containers; and

(C) Disperse the number of whole containers as evenly as possible over the timeframe (the number of months the participant will receive the food package).

(iii) The methodology to round up and disperse infant food is as follows:

(A) Multiply the maximum monthly allowance for the infant food by the timeframe the participant will receive the food package to determine the total amount of food to be provided.

(B) Divide the total amount of food provided by the container size issued by the State agency (e.g., ounces) to determine the total number of food containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

(i) *Plans for cultural substitutions.* (1) The State agency may submit to FNS a plan for substitution of food(s) acceptable for use in the Program in addition to the supplemental foods outlined in (see paragraph (e)(12) of this section) to allow for different cultural eating patterns. The plan shall provide the State agency's justification, including a specific explanation of the cultural eating pattern and other information necessary for FNS to evaluate the plan as specified in paragraph (i)(2) of this section.

(2) FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria:

(i) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.

(ii) The proposed substitute food must be widely available to participants in the areas where the substitute is intended to be used.

(iii) The cost of the substitute food must be assessed and comparable to the cost of the food it is intended to replace.

(3) FNS will make a determination on the proposed plan based on the evaluation criteria specified in paragraph (i)(2) of this section, as appropriate. The State agency shall substitute foods only after receiving the written approval of FNS.

5. Amend § 246.11 by revising paragraph (a)(1) to read as follows:

§ 246.11 Nutrition education.

(a) * * *

(1) Nutrition education including breastfeeding promotion and support shall be considered a benefit of the Program and shall be made available at no cost to the participant. Nutrition education including breastfeeding promotion and support, shall be designed to be easily understood by participants, and it shall bear a practical relationship to participant nutritional needs, household situations, and cultural preferences including information on how to

select food for themselves and their families as well as the maximum monthly allowances of authorized supplemental foods to which they are entitled as a Program participant.

* * * * *

6. Amend § 246.12 by revising paragraphs (g)(3)(i) and (u)(2)(i) to read as follows:

§ 246.12 Food delivery methods.

* * * * *

(g) * * *

(3) * * *

(i) *Minimum variety and quantity of supplemental foods.* The State agency must establish minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized. These requirements include that the vendor stock at least two different fruits, three different vegetables, and at least one whole grain cereal authorized by the State agency. The State agency may not authorize a vendor applicant unless it determines that the vendor applicant meets these minimums. The State agency may establish different minimums for different vendor peer groups. The State agency may not authorize a vendor applicant unless it determines that the vendor applicant obtains infant formula only from sources included on the State agency's list described in paragraph (g)(11) of this section.

* * * * *

(u) * * *

(2) * * *

(i) *General.* Except as provided in paragraphs (u)(2)(ii) and (iii) of this section, whenever the State agency assesses a claim of \$1,000 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the State agency must disqualify the participant for one year.

* * * * *

7. Amend § 246.16 by revising paragraphs (j) introductory text and (j)(1) through (4)

§ 246.16 Distribution of funds.

* * * * *

(j) *Inflation adjustment of the fruit and vegetable voucher.* The monthly cash value of the fruit and vegetable voucher shall be adjusted annually for inflation. Adjustments are effective the first day of each fiscal year beginning on or after October 1 each year. The inflation-adjusted value of the voucher shall be equal to a base value increased by a factor based on the Consumer Price Index for All Urban Consumers (CPI-U) for fresh fruits and vegetables, as provided in this section.

(1) *Adjustment year.* The adjustment year is the fiscal year that begins October 1 of the current calendar year.

(2) *Base value of the fruit and vegetable voucher.* The base year for calculation of the value of the fruit and vegetable voucher is fiscal year 2022. The base value to be used equals:

- (i) \$24 for children;
- (ii) \$43 for pregnant and postpartum women; and
- (iii) \$47 for breastfeeding (fully and partially (mostly)) women.

(3) *Adjusted value of the fruit and vegetable voucher.* The adjusted value of the fruit and vegetable voucher is the cash value of the voucher for adjustment years beginning on or after October 1, 2022. The adjusted value is the base value increased by an amount equal to the base value of the fruit and vegetable voucher:

- (i) Multiplied by the inflation adjustment described in paragraph (j)(4) of this section; and
- (ii) Subject to rounding as described in paragraph (j)(5) of this section.

(4) *Inflation adjustment.* The inflation adjustment of the fruit and vegetable voucher shall equal the percentage (if any) by which the annual average value of the Consumer Price Index for fresh fruits and vegetables, computed from monthly values published by the Bureau of Labor Statistics, for the twelve months ending on March 31 of the fiscal year immediately prior to the

adjustment year, exceeds the average of the monthly values of that index for the twelve months ending on March 31, 2021.

* * * * *

Cynthia Long,
Administrator,
Food and Nutrition Service.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A--Regulatory Impact Analysis

I. Statement of Need

Section 17 of the Child Nutrition Act of 1966 (Pub. L. 89-642) mandates that the USDA conduct a comprehensive scientific review of the WIC food packages at least every ten years and revise the foods available, as needed, to reflect nutritional science, public health concerns, and cultural eating patterns (42 U.S.C. 1786(f)(11)). This rule makes changes that are intended to provide WIC participants with a wider variety of foods that align with the latest nutritional science;

provide WIC State agencies with greater flexibility to prescribe food packages that accommodate participants' personal and cultural food preferences and special dietary needs; and address key nutritional needs to support healthy dietary patterns. This rule provides foods in amounts that are more consistent with the supplemental nature of the Program; encourages fruit and vegetable consumption; and strengthens support for individual breastfeeding goals of participants to help establish successful long-term breastfeeding.

II. Background

Established in 1974, the mission of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is to safeguard the health of low-income pregnant, postpartum, and breastfeeding individuals, infants, and children ages 1 through 4 years who are at nutritional risk by providing nutritious foods to supplement diets, nutrition education (to include breastfeeding promotion and support), and referrals to health and other social services. Participation in WIC is associated with improved pregnancy outcomes and lower infant mortality, and also associated with improved diet quality.²⁹ In Federal fiscal year (FY) 2023, WIC served an average of 6.58 million infants, children, and pregnant, breastfeeding, and postpartum individuals per month.³⁰

The monthly WIC food packages are prescribed to (1) address the prevalence of inadequate and excessive nutrient intakes for each WIC participant category, (2) contribute to an overall dietary pattern consistent with the Dietary Guidelines for Americans (DGA), and (3) deliver priority

²⁹ Caulfield, L., Bennett, W., Gross, S., Hurley, K., Ogunwole, S., Venkataramani, M., Lerman, J., Zhang, A., Sharma, R., Bass, E. (2022). Maternal and Child Outcomes Associated with the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Comparative Effectiveness Review No. 253. Prepared by the Johns Hopkins University Evidence-based Practice Center under Contract No. 75Q80120D00003.) AHRQ Publication No. 22-EHC019. Rockville, MD: Agency for Healthcare Research and Quality. DOI: <https://doi.org/10.23970/AHRQEPCCER253>.

³⁰ U.S. Department of Agriculture Food and Nutrition Service. WIC Data Tables, 2023. Available online at: <https://www.fns.usda.gov/pd/wic-program>.

nutrients to participants to meet their supplemental nutrition needs. There are seven WIC food packages available for the following participant categories:

- Food Package I: Infants birth through 5 months (Fully Breastfed, Partially Breastfed, and Fully Formula Fed)
- Food Package II: Infants ages 6 through 11 months (Fully Breastfed, Partially Breastfed, and Fully Formula Fed)
- Food Package III: Medically Fragile Women, Infants, and Children
- Food Package IV: Children ages 1 through 4 years
- Food Package V: Pregnant & Partially Breastfeeding Women up to 1 year postpartum
- Food Package VI: Postpartum Women (minimally or non-breastfeeding) up to 6 months postpartum
- Food Package VII: Fully Breastfeeding Women up to 1 year postpartum

On December 13, 2010, Congress passed the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111-296), amending section 17(f)(11) of the Child Nutrition Act by mandating that the USDA conduct a scientific review of the WIC food packages at least every ten years. In response to the mandate, in 2014, FNS contracted with the National Academies of Sciences, Engineering, and Medicine (NASEM) to conduct a comprehensive review of the current WIC food packages in relation to the current nutritional science, dietary guidance, and program administration considerations. In 2017, NASEM published its recommendations for WIC food package revisions in the report: “Review of WIC Food Packages: Improving Balance and Choice” (the “NASEM report”).³¹ Section 17(f)(11) of the Child Nutrition Act also requires that WIC

³¹ National Academies of Sciences, Engineering, and Medicine. “Review of WIC Food Packages: Improving Balance and Choice: Final Report,” 2017. Available online at: <https://www.fns.usda.gov/wic/review-wic-food-packages-improving-balance-and-choice>.

supplemental foods are amended as necessary to reflect nutrition science, public health concerns, and cultural eating patterns. As such, the revisions in this rule largely reflect the recommendations from the 2017 NASEM Report.

In its report, NASEM recommended modifications to the current WIC food packages to reduce foods provided in more than supplemental amounts and increase foods needed to improve intakes of priority nutrients and food groups. NASEM scaled back their recommendations for certain food package items, such as the amount of the CVV, in order to achieve cost neutrality. However, NASEM provided clear alternative nutrition-based recommendations for the Department to consider if cost neutrality were not the prevailing principle in rulemaking. Since the goal of USDA is to follow science-based recommendations that improve health equity and advance nutrition security (meaning consistent and equitable access to healthy, safe, and affordable food essential to optimal health and well-being), the Department has accepted the alternative recommendations for certain food items, such as the higher CVV.

After NASEM released its 2017 report, on December 29, 2020, the USDA and the Department of Health and Human Services released the Dietary Guidelines for Americans (DGA), 2020-2025,³² which provide science-based recommendations for healthy dietary patterns by life stage and, for the first time since the 1985 edition, specific recommendations for infants and children up to 2 years of age, as well as for those who are pregnant and breastfeeding.³³ The revisions in this rule align the WIC food packages with the 2020-2025 DGA and largely reflect the recommendations in the 2017 NASEM Report while promoting nutrition security and equity and considering program administration.

³² Referred to hereafter as “2020-2025 DGA” or “DGA.”

³³ U.S. Department of Health and Human Services/U.S. Department of Agriculture, “Dietary Guidelines for Americans, 2020-2025.” Available online at: <https://www.dietaryguidelines.gov>.

In FY 2022, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2022 (Pub. L. 117-103) directed USDA to temporarily increase the WIC cash-value voucher (CVV), which participants use to purchase fruits and vegetables, to amounts consistent with NASEM recommendations, adjusted for inflation, through September 30, 2022. As a result, the CVV was increased to the same amounts that are set in this rule, equal to \$24 for child participants, \$43 for pregnant and postpartum participants, and \$47 for fully and partially breastfeeding participants in FY 2022. The Consolidated Appropriations Act of 2023 (Pub. L. 117-328) included the same CVV increase, setting CVV values at \$25 for child participants, \$44 for pregnant and postpartum participants, and \$49 for fully and partially breastfeeding participants through September 30, 2023, after adjusting for inflation. To date, these legislative provisions have only increased the CVV on a time-limited basis. This final rule would make permanent the CVV increase initially enacted in FY 2022, by revising the regulations governing the WIC food packages. Due to the temporary nature of the CVV increases in FY 2022, FY 2023, and FY 2024, the following analysis presents both the total cost, in terms of increased Federal transfers, for the rule as a whole (i.e., compared to current regulations and with the cost of CVV included) and also for the rule absent the CVV cost impact (i.e., the cost of the rule compared to the current WIC food packages as enacted in FY 2022 through FY 2024).

On November 21, 2022, USDA published the proposed rule, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages.”³⁴ Based on comments received on the proposed rule, USDA revised this final rule to improve Program access, participant choice, equity, and operational and administrative efficiency.

³⁴ USDA, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages,” RIN 0584-AE82, 87 FR 71090, available online at <https://www.federalregister.gov/documents/2022/11/21/2022-24705/special-supplemental-nutrition-program-for-women-infants-and-children-wic-revisions-in-the-wic-food>.

The revisions finalized in this rule align the WIC food packages with the 2020-2025 DGA and largely reflect the recommendations in the 2017 NASEM Report with modifications the Department deemed necessary for program administration considerations. This final rule maintains the supplemental nature of the WIC food package while prioritizing changes that support nutrition security.

In its 2017 report, NASEM included an impact analysis of its recommended revisions. The regulatory impact analysis published with the proposed rule built on NASEM's analysis to update cost estimates for the provisions outlined in the rule and calculated new or revised estimates for provisions that expand or modify those recommended by NASEM to align with the 2020-2025 DGA and/or accommodate program administration considerations.

This analysis of the final rule follows the methodology of the proposed rule analysis, using the most recent possible participation data, inflation data, and price data, as well as accounting for minor changes made between the proposed and final rules that affected the estimated cost (or savings) of the rule. Updating these input data resulted in changes in both the baseline cost estimate and the cost of the final rule relative to the estimates published with the proposed rule; the revised estimates are presented below in their entirety.

III. Public Comments on the Regulatory Impact Analysis of the Proposed Rule

On November 21, 2022, the Department published a proposed rule to revise the WIC food packages (87 FR 71090). There were no comments addressing the regulatory impact analysis (RIA) or the validity of USDA's cost estimates of the proposed rule. The Department received 15,028 comments addressing the proposed increases to the CVV and 20 comments addressing the CVV annual inflation adjustment. Comments suggesting alternative implementations of the

CVV are analyzed in the Alternatives section below. Other comments relating to the provisions of the rule are described in the preamble text accompanying the rule, and the impacts of those are described in the analysis that follows.

IV. Summary of Provisions

Table 1 summarizes the revisions to regulations governing the WIC food packages, alongside current requirements as described in Federal Regulations, absent the temporary CVV increase enacted in FY 2022 (Pub. L. 117-103) and FY 2023 (Pub. L. 117-328).

Table 1: Current Food Package Requirements and Key Revisions under Rule

Revisions Under Rule	Current Food Package Requirements
<p><u>Cash-Value Voucher</u></p> <p>Increase the value of the cash-value voucher (CVV) <u>Revised amounts (beginning in FY 2024):</u> Children 1 through 4 years: \$26 Pregnant: \$47 Postpartum: \$47 Partially BF: \$52 Fully BF: \$52</p> <p>Expand what can be purchased with CVV Permit CVV eligible items to include fresh herbs and permit larger sizes of packaged fresh fruits and vegetables. Dried herbs and any packaged fruits and vegetables with added sugars, fats, or oils (including as dips, sauces, or glazes) remain prohibited. This change also codifies the eligibility of white potatoes into regulations, but this does not represent a program change as white potatoes are currently eligible under Pub. L. 113-235.</p>	<p><u>Current regulations (beginning in FY 2024):</u> Children 1 through 4 years: \$10 Pregnant: \$12 Postpartum: \$12 Partially BF: \$12 Fully BF: \$12</p> <p>Current regulations do not permit CVV purchases of fresh herbs and do not allow for packaged fresh fruits and vegetables under the term “party trays.”</p>
<p><u>Canned Fish</u></p> <p>Add canned fish for children 1 through 4 years and for pregnant, partially (mostly) breastfeeding, and postpartum individuals; reduce fish amounts for fully breastfeeding individuals; and revise WIC-eligible varieties</p>	

Revisions Under Rule	Current Food Package Requirements
<p><u>Revised amounts:</u> 12 through 23 months: 6 oz. 2 through 4 years: 6 oz. Pregnant: 10 oz. Postpartum: 10 oz. Partially BF: 15 oz. Fully BF: 20 oz.</p>	<p><u>Current amounts:</u> 12 through 23 months: none 2 through 4 years: none Pregnant: none Postpartum: none Partially BF: none Fully BF: 30 oz.</p>
<p><u>Infant Fruits and Vegetables</u></p> <p>Reduce infant jarred fruit and vegetable amounts for fully breastfed infants</p> <p><u>Revised amounts:</u> Fully BF: 128 oz. Partially BF: 128 oz. Fully Formula-Fed: 128 oz.</p> <p>Expand allowable age range to substitute CVV for infant fruits and vegetables and increase substitution amounts*</p> <p>Infants ages 6-11 months may receive a CVV to purchase any form of fruits and vegetables for half or all the jarred infant fruits and vegetables.</p> <p>Revised amounts and CVV value allowed: Fully BF, Partially BF and Fully Formula-Fed: \$10 CVV and 64 oz., or \$20 CVV and no jarred infant fruits and vegetables.</p>	<p><u>Current amounts:</u> Fully BF: 256 oz. Partially BF: 128 oz. Fully Formula-Fed: 128 oz.</p> <p>Currently, only infants ages 9-11 months may receive a CVV to purchase fresh fruits and vegetables as a substitute for half of the jarred infant fruits and vegetables.</p> <p>Current amounts and CVV value allowed: Fully BF: \$9 CVV and 128 oz. jarred infant fruits and vegetables. Partially BF and Fully Formula-Fed: \$4 CVV and 64 oz. jarred infant fruits and vegetables.</p>
<p><u>Legumes and Eggs</u></p> <p>Require both dry and canned legumes be authorized</p> <p>Require State agencies offer both dry and canned legumes.</p> <p>Add required and optional substitution options for eggs</p> <p>Require legumes and peanut butter be available to substitute for eggs if a participant has an egg allergy or is vegan. Give State agencies the option to also allow tofu* as a substitution for eggs.</p> <p>Add optional substitution options for peanut butter</p> <p>Allow State agencies the option to authorize nut and seed butters as an alternative to peanut butter when individually tailoring food</p>	<p>Current legume food category specifies “dry”; State agencies have the option to allow canned.</p> <p>Current regulations do not allow substitutions for eggs.</p> <p>Current regulations do not allow for other nut and seed butter substitutions for peanut butter.</p>

Revisions Under Rule	Current Food Package Requirements
<p>packages for children and women for nutrition reasons (e.g., food allergy, underweight and cultural food preferences.)</p>	
<p><u>Infant Meats</u></p> <p>Reduce infant meats amounts</p> <p><u>Revised amounts:</u></p> <p>Fully BF: 40 oz. Partially BF: none Fully Formula-Fed: none</p>	<p><u>Current amounts:</u></p> <p>Fully BF: 77.5 oz. Partially BF: none Fully Formula-Fed: none</p>
<p><u>Breakfast Cereal</u></p> <p>Change whole grain criteria for breakfast cereals and require 75 percent of approved breakfast cereals to be whole grain</p> <p>Require WIC-eligible whole grain breakfast cereals to contain whole grain as the first ingredient and require that <u>75 percent of all</u> cereals authorized by a State agency be whole grain using this revised criteria.</p>	<p>Currently, WIC-eligible whole grain breakfast cereals must have whole grain as the primary ingredient by weight and meet the FDA labeling requirements for making a health claim as a “whole grain food with moderate fat content” and at least 50 percent of cereals authorized by a State agency must be whole grain.</p>
<p><u>Infant Formula</u></p> <p>Increase infant formula amounts in the first month for partially (mostly) breastfed infants</p> <p>Increase amount of formula in first month to up to 364 fl. oz.</p> <p>Allow all prescribed infant formula quantities to be considered “up to” amounts</p> <p>The change to “up to” amounts emphasizes the importance of assessing, by WIC staff, the actual need for formula of the breastfeeding mother-infant dyad</p>	<p>Currently, partially breastfed infants may receive up to 104 fl. oz.</p> <p>Currently in regulations there are only maximum monthly allowances and minimum or “full nutrition benefit” amounts.</p>
<p><u>Cheese</u></p> <p>Remove cheese as a food category for fully breastfeeding participants</p> <p>Remove cheese as a food category for fully breastfeeding participants. Retain cheese as a partial milk substitution option for child, pregnant, postpartum, and breastfeeding participants.</p>	<p>Currently, cheese is a food category for fully breastfeeding participants (1 lb./month). Cheese is also a partial milk substitution option for child, pregnant, postpartum, and breastfeeding participants.</p>

Revisions Under Rule	Current Food Package Requirements
<p><u>Whole Wheat/Whole Grain Bread and Other Whole Grain options</u></p> <p>Increase whole wheat/whole grain bread and other whole grain option amounts for pregnant, postpartum, and breastfeeding participants, reduce amounts for child participants, revise specifications for package sizes, and change criteria for whole grain bread.</p> <p><u>Revised amounts:</u> Children: 24 oz. Pregnant, postpartum, and breastfeeding individuals: 48 oz.</p> <p>A State agency must provide package sizes that equal or add up the full amount (24 oz. or 48 oz.) but may also allow package sizes that do not.</p> <p>Require whole grain bread contain at least 50 percent whole grains.</p> <p>Expand whole grain options* In addition to current options, also allow: quinoa; wild rice; millet; triticale; amaranth; kamut; sorghum; wheat berries; whole wheat: pita, English muffins, bagels, naan; tortillas made with folic acid-fortified corn masa flour; cornmeal meeting FDA SOI 21 CFR 137.260; teff; and buckwheat.</p> <p>State agencies have the option to authorize other intact whole grain options without added sugars, fats, oils, or salt (i.e., sodium).</p>	<p><u>Current amounts:</u> Children: 32 oz. Pregnant, postpartum, and breastfeeding individuals: 16 oz.</p> <p>A State agency must provide package size(s) that equal or add up to exactly the full amount.</p> <p>Currently, WIC regulations require whole grain bread have a whole grain as the primary ingredient by weight and meet the FDA labeling requirements for making a health claim as a “whole grain food with moderate fat content.”</p> <p>Current whole grain options include brown rice, bulgur, oats, whole-grain barley, and whole wheat macaroni products without added sugars, fats, oils, or salt, and soft corn (made from ground masa flour) or whole wheat tortillas.</p>
<p><u>Milk</u></p> <p>Reduce milk amounts for women and children</p> <p><u>Revised amounts:</u> 12 through 23 months: 12 qt. 2 through 4 years: 14 qt. Pregnant: 16 qt. Partially BF: 16 qt. Postpartum: 16 qt.</p>	<p><u>Current amounts:</u> 1 through 4 years: 16 qt. Pregnant: 22 qt. Partially BF: 22 qt. Postpartum: 16 qt. Fully BF: 24 qt.</p>

Revisions Under Rule	Current Food Package Requirements
<p>Fully BF: 16 qt.</p> <p>Require authorization of lactose-free milk</p> <p>No longer allowing option for flavored milk Only permit unflavored milk.</p> <p>Increase amount of yogurt available to substitute for milk, allow reduced-fat yogurt for 1-year-old children without restrictions, and revise specifications for package sizes* Revised State agency option: up to 2 qt. (64 oz.) yogurt may be substituted for 2 qt. milk for child, pregnant, postpartum, and breastfeeding participants.</p> <p>Allow reduced-fat yogurt to be issued to children 12 through 23 months of age without the need for consultation with the participant's health care provider.</p> <p>Require State agencies provide package sizes that equal or add up the full amount (32 oz. or 64 oz.) but may also allow package sizes that do not.</p> <p>Add additional milk substitution options* and milk substitution specifications Revised milk substitution specifications: <u>Yogurt:</u></p> <ul style="list-style-type: none"> • Reduce the added sugar limit for yogurt to 16 grams of added sugars per 8 ounce serving. • Add vitamin D requirement of 106 IU (2.67 mcg) per 1 cup. • Add plant-based yogurt option with the criteria that it must contain less than 16 grams of added sugars per 8 ounce serving and at least 250 mg of calcium, 6.5 grams of protein, and 106 IU (2.67 mcg) vitamin D per 8 ounce serving. <p><u>Tofu:</u></p> <ul style="list-style-type: none"> • Tofu must provide a minimum of 100 mg of calcium per 100 grams of tofu. <p><u>Plant-based milk alternative:</u></p> <ul style="list-style-type: none"> • May not exceed 10 grams of added sugars per 8 ounces serving. <p><u>Plant-based cheese:</u></p>	<p>Currently State agency option to authorize lactose-free milk.</p> <p>Currently State agency option to authorize flavored milk.</p> <p>Current State agency option: 1 qt. (32 oz.) yogurt may be substituted for 1 qt. milk for child, pregnant, postpartum, and breastfeeding participants.</p> <p>Currently, low-fat or nonfat yogurt may be issued (at State agency option) to children 12 through 23 months of age with consultation with the child's health care provider, if necessary, per State agency policy.</p> <p>Currently, State agencies must provide package size(s) that equal or add up to exactly 1 qt. (32 oz.).</p> <p>Current milk substitution specifications: <u>Yogurt:</u></p> <ul style="list-style-type: none"> • Total sugar limit for yogurt is ≤ 40 grams per 1 cup. • No vitamin D requirements. • Only allow cow's milk yogurt. <p><u>Tofu:</u></p> <ul style="list-style-type: none"> • Must be calcium-set prepared with calcium salts. <p><u>Soy-based beverage:</u></p> <ul style="list-style-type: none"> • No sugar limits for soy-based beverage. <p><u>Soy-based cheese:</u></p> <ul style="list-style-type: none"> • No soy-based cheese option.

Revisions Under Rule	Current Food Package Requirements																				
<ul style="list-style-type: none"> • Add plant-based cheese option with the criteria that it must contain at least 250 mg of calcium and 6.5 grams of protein per 1.5-ounce serving. 																					
<p><u>Infant Cereal</u></p> <p>Reduce infant cereal amounts for all infants</p> <p><u>Revised amounts:</u></p> <table border="0"> <tr> <td>Fully BF:</td> <td>16 oz.</td> </tr> <tr> <td>Partially BF:</td> <td>8 oz.</td> </tr> <tr> <td>Fully Formula-Fed:</td> <td>8 oz.</td> </tr> </table>	Fully BF:	16 oz.	Partially BF:	8 oz.	Fully Formula-Fed:	8 oz.	<p><u>Current amounts:</u></p> <table border="0"> <tr> <td>Fully BF:</td> <td>24 oz.</td> </tr> <tr> <td>Partially BF:</td> <td>24 oz.</td> </tr> <tr> <td>Fully Formula-Fed:</td> <td>24 oz.</td> </tr> </table>	Fully BF:	24 oz.	Partially BF:	24 oz.	Fully Formula-Fed:	24 oz.								
Fully BF:	16 oz.																				
Partially BF:	8 oz.																				
Fully Formula-Fed:	8 oz.																				
Fully BF:	24 oz.																				
Partially BF:	24 oz.																				
Fully Formula-Fed:	24 oz.																				
<p><u>Juice</u></p> <p>Reduce juice amounts for children and pregnant, postpartum, and breastfeeding individuals</p> <p><u>Revised amounts:</u></p> <table border="0"> <tr> <td>Children 1 through 4 years:</td> <td>64 fl. oz.</td> </tr> <tr> <td>Pregnant:</td> <td>64 fl. oz.</td> </tr> <tr> <td>Postpartum:</td> <td>64 fl. oz.</td> </tr> <tr> <td>Partially BF:</td> <td>64 fl. oz.</td> </tr> <tr> <td>Fully BF:</td> <td>64 fl. oz.</td> </tr> </table> <p>Allow \$3 CVV juice substitution</p> <p>Allow participants to substitute a \$3 CVV for 64 fl. oz. of juice.</p>	Children 1 through 4 years:	64 fl. oz.	Pregnant:	64 fl. oz.	Postpartum:	64 fl. oz.	Partially BF:	64 fl. oz.	Fully BF:	64 fl. oz.	<p><u>Current amounts:</u></p> <table border="0"> <tr> <td>Children 1 through 4 years:</td> <td>128 fl. oz.</td> </tr> <tr> <td>Pregnant:</td> <td>144 fl. oz.</td> </tr> <tr> <td>Postpartum:</td> <td>96 fl. oz.</td> </tr> <tr> <td>Partially BF:</td> <td>144 fl. oz.</td> </tr> <tr> <td>Fully BF:</td> <td>144 fl. oz.</td> </tr> </table> <p>Currently no option for State agencies to authorize substituting a CVV in place of juice.</p>	Children 1 through 4 years:	128 fl. oz.	Pregnant:	144 fl. oz.	Postpartum:	96 fl. oz.	Partially BF:	144 fl. oz.	Fully BF:	144 fl. oz.
Children 1 through 4 years:	64 fl. oz.																				
Pregnant:	64 fl. oz.																				
Postpartum:	64 fl. oz.																				
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Partially BF:	144 fl. oz.																				
Fully BF:	144 fl. oz.																				
<p><u>Fruit and Vegetables Forms and Varieties</u></p> <p>State agencies required to authorize an additional form of fruits and vegetables</p> <p>Require State agencies to authorize fresh and at least one other form (frozen, canned, or dried) of fruits and vegetables for children, pregnant, postpartum and breastfeeding individuals, and infants 6-11 months. Dried will not be authorized for infants.</p> <p>Require vendors to stock at least 3 different vegetables</p> <p>Require vendors to stock at least 3 different vegetables.</p>	<p>Currently, State agencies are only required to authorize fresh fruits and fresh vegetables and have the option to authorize other forms (e.g., canned, frozen, and/or dried).</p> <p>Under current minimum stocking requirements, vendors must stock at least 2 different vegetables.</p>																				

Notes:

BF = fully breastfeeding; CVV = Cash Value Voucher; IU = international units; mcg = micrograms; mg = milligrams; lb. = pound; qt. = quarts; oz. = ounces

*Revision is a State agency option.

V. Impacts

A. Summary of Impacts

The following analysis describes the estimated impacts of the rule on the Federal WIC spending, accounted for in terms of Federal transfer payments projected between FY 2025 and FY 2029, as well as the key health and nutrition benefits for WIC participants expected as a result of the changes. An overview of the cost impacts on Federal transfers and on State and local administrative costs is followed by a detailed description of impacts on Federal transfers by food item and the concomitant participant health benefits by food item. The analysis concludes with an in-depth discussion of impacts on State agency administrative burden and costs, participation, and specific food markets.

The Department estimates that the rule to revise regulations governing the WIC food packages will result in a net increase in Federal WIC spending of \$4.9 billion over five years from FY 2025 through FY 2029, which includes the CVV increase as enacted in FY 2022, FY 2023, and FY 2024. Excluding the CVV increases as currently implemented, the provisions of this rule result in a net decrease in Federal spending of \$617 million over five years between FY 2025 and FY 2029. These cost changes only reflect changes in overall Federal transfers for WIC food expenditures. In addition to the change in food expenditures accounted for in terms of Federal transfers, the Department also estimates that WIC State agencies and local agencies will incur an increase in administrative burden of about \$179 million in additional labor costs associated with the required State and local agency staff time over five years between FY 2025 and FY 2029.

Table 2a: Summary of Transfer and Cost Impacts of the Final Rule

	Fiscal Year (\$ millions)					
	2025	2026	2027	2028	2029	Total
Nominal Federal Transfer Payment Stream	\$1,045.8	\$937.7	\$961.1	\$996.1	\$1,006.5	\$4,947.2
Nominal State Agency Cost Stream	\$59.7	\$28.7	\$29.4	\$30.1	\$30.7	\$178.6

Applying 3 percent and 7 percent discount rates to these nominal streams gives present values (in 2024 dollars):³⁵

Table 2b: Discounted Transfer and Cost Streams

	Fiscal Year (\$ millions, 2024 dollars)					
	2025	2026	2027	2028	2029	Total
Discounted Federal Transfer Payment Stream						
3 percent	\$992.4	\$845.8	\$823.2	\$810.3	\$777.5	\$4,249.2
7 percent	\$956.1	\$785.1	\$736.0	\$698.1	\$645.2	\$3,820.5
Discounted State Agency Cost Stream						
3 percent	\$56.6	\$25.9	\$25.2	\$24.4	\$23.7	\$155.9
7 percent	\$54.6	\$24.0	\$22.5	\$21.1	\$19.7	\$141.9

As required by OMB Circular A-4, the Department has prepared an accounting statement showing the annualized estimates of benefits and transfers associated with the provisions of this rule, in Table 2c below. Table 2c takes the discounted streams from Table 2b and computes annualized values in FY 2024 dollars.

³⁵ Note that the discounted streams include both a real 3 and 7 percent discount component, as well as an additional 2.3-3 percent (depending on the year) discount component to undo the inflation built into the nominal estimate streams, in order to calculate the costs in Table 2b in constant 2024 dollars.

Table 2c: Accounting Statement

Benefits	Range	Estimate	Year Dollar	Discount Rate	Period Covered
Qualitative: Better alignment of the WIC food packages with the latest available science as described by NASEM, the DGA, and AAP, and increased choice and flexibility for WIC participants.					
Program participants, farmers, food processors, food distributors, food retailers					
Annualized Monetized (\$millions/year)	n.a.	n.a.	n.a.	n.a.	FY2025-2029
Transfers	Range	Estimate	Year Dollar	Discount Rate	Period Covered
Quantitative: Net cost of proposed changes to the food packages.					
Federal Government					
Annualized Monetized (\$millions/year)	n.a.	\$764.1	2024	7%	FY2025-2029
		\$849.8	2024	3%	
Costs	Range	Estimate	Year Dollar	Discount Rate	Period Covered
Quantitative: Net increase in State and local WIC agency administrative costs associated with increased State agency and local agency administrative burden required to implement the changes to the food packages.					
State and Local WIC Agencies					
Annualized Monetized (\$millions/year)	n.a.	\$28.4	2024	7%	FY2025-2029
		\$31.2	2024	3%	

WIC food expenditures are a function of the number of participants receiving each food package, the cost of WIC-eligible food items, the quantity of WIC foods issued to each participant, and the percentage of WIC foods redeemed by participants (known as the “redemption rate”). These estimates are summarized at the food category level in Table 2d, where all changes under a given food category (e.g., changes to quantity issued, expanded substitution options, and flexibility in package sizes) are collectively considered for their impacts on quantities redeemed and unit costs.

The Department is allowing for an extended implementation window for most of the provisions in this final rule; for the purposes of these estimates, the Department assumes that the CVV provision will be fully in effect in FY 2025 and that the other provisions will be fully in effect beginning in FY 2026. The exact implementation schedule of the various provisions (except the

CVV increase) is somewhat left to the discretion of the State agencies; it is possible that some State agencies will implement some provisions prior to FY 2026 while other State agencies will not implement at least some provisions until later in FY 2026 or FY 2027, but the Department expects these assumptions to provide an accurate estimate of costs across the five-year estimation period. All dollar amounts in all tables and text are adjusted for annual inflation, except for the values in Tables 2b and 2c above.

This increase in Federal WIC food expenditures is driven by the increase in the CVV, which is estimated to increase WIC food expenditures by \$5.6 billion over five years when compared to current CVV levels as outlined in 7 CFR 246.10. As explained above, however, the CVV levels proposed in this rule were recently enacted on a temporary basis for FY 2022, FY 2023, and FY 2024. As a result, when compared to the FY 2022 - FY 2024 enacted food packages, the CVV increase made permanent in this rule would not impact Federal WIC expenditures. With the CVV impact zeroed out of the overall cost estimate for the rule, the remaining provisions are expected to result in a net *decrease* in Federal WIC food spending of \$617 million over five years when compared to the food packages as enacted in FY 2023.

Table 2d – Summary of Estimated Food Costs and Savings of Rule by Food Category, FY 2025 through FY 2029

	Fiscal Year (millions)					
	2025	2026	2027	2028	2029	5 Year Total
Cash Value Voucher (CVV)	\$ 1,045.8	\$ 1,076.4	\$ 1,116.9	\$ 1,155.3	\$ 1,169.4	\$ 5,563.8
Fish	\$ 0.0	\$ 52.1	\$ 54.1	\$ 55.4	\$ 56.6	\$ 218.2
Infant Fruits and Vegetables	\$ 0.0	\$ 28.3	\$ 29.4	\$ 30.1	\$ 30.8	\$ 118.5
Legumes	\$ 0.0	\$ 3.8	\$ 4.0	\$ 4.1	\$ 4.2	\$ 16.1
Breakfast Cereal	\$ 0.0	-\$ 2.1	-\$ 2.2	-\$ 2.3	-\$ 2.3	-\$ 9.0
Infant Meats	\$ 0.0	-\$ 3.8	-\$ 4.0	-\$ 4.1	-\$ 4.1	-\$ 16.0
Whole Grains	\$ 0.0	-\$ 5.2	-\$ 5.4	-\$ 5.6	-\$ 5.7	-\$ 21.9
Infant Formula ^a	\$ 0.0	\$ 1.5	-\$ 11.4	-\$ 11.7	-\$ 11.9	-\$ 33.5
Cheese	\$ 0.0	-\$ 8.7	-\$ 9.1	-\$ 9.3	-\$ 9.5	-\$ 36.6
Infant Cereal	\$ 0.0	-\$ 23.7	-\$ 24.6	-\$ 25.2	-\$ 25.8	-\$ 99.3
Milk	\$ 0.0	-\$ 28.1	-\$ 29.2	-\$ 29.9	-\$ 30.6	-\$ 117.7
Juice	\$ 0.0	-\$ 152.7	-\$ 158.8	-\$ 162.4	-\$ 166.2	-\$ 640.1
<i>Interaction of Infant Formula Change Across Food Packages ^a</i>	\$ 0.0	\$ 0.0	\$ 1.5	\$ 1.7	\$ 1.7	\$ 4.8
Eggs	**	**	**	**	**	**
Fruit and Vegetables Forms and Varieties	**	**	**	**	**	**
Total projected cost: compared to food packages in	\$ 1,045.8	\$ 937.7	\$ 961.1	\$ 996.1	\$ 1,006.5	\$ 4,947.2

current Federal Regulations (includes cost of CVV)^b						
Total projected cost: compared to food packages with CVV increase as enacted in FY 2022, FY 2023 and FY 2024 (no cost impact of CVV)^b	\$ 0.0	-\$ 138.7	-\$ 155.8	-\$ 159.2	-\$ 162.9	-\$ 616.5

Notes:

^a The revisions to the amount of infant formula allowed in the partially (mostly) breastfed infant food package is estimated, by NASEM, to shift 5 percent of infant-mother dyads from fully formula fed to partially (mostly) breastfed food packages one year after implementation. The cost impact directly on infant formula spending is provided in the “Infant Formula” row. The overall cost impact of shifting infant-mother dyads into the partially breastfeeding food package is displayed separately as the “*Interaction of Infant Formula Change Across Food Packages.*” This interaction estimate reflects the increase in costs related to shifting postpartum participants into the more expensive partially breastfeeding food package. More details are provided in the cost impacts section of this analysis.

^b FY 2022, FY 2023, and FY 2024 appropriations bills authorized USDA to increase the CVV to a level consistent with NASEM recommendations, adjusted for inflation. The CVV values temporarily authorized and enacted for FY 2022, FY 2023, and FY 2024, are the same CVV values codified in this final rule. This table provides overall cost estimates for the rule when comparing to the value of the permanent WIC food packages in the current Federal Regulations (i.e., cost of CVV included) as well as the cost estimates when comparing to the food packages as enacted in FY 2022, FY 2023, and FY 2024 (i.e., cost of CVV excluded).

** Provisions not estimated to have a meaningful impact on overall WIC food spending.

The overall change in total Federal spending on WIC is summarized in Table 3. The Department estimates the total five-year Federal spending on WIC under the current food packages to be \$34.9 billion from FY 2025 through FY 2029; this estimate does not include the cost of the temporary increase in the CVV authorized in FY 2022, FY 2023, and FY 2024 (see Table 4 for comparisons to FY 2022 through FY 2024 enacted expenditures). The additional food costs of \$4.9 billion estimated under this rule will bring total Federal WIC spending, in terms of Federal transfers, up to \$39.9 billion in total from FY 2025 through FY 2029.

Table 3: Total Projected Federal WIC Expenditures, FY 2025-2029

	Fiscal Year (millions)					Total
	2025	2026	2027	2028	2029	
Total Food Expenditures	\$ 4,985.8	\$ 5,029.0	\$ 5,233.2	\$ 5,363.7	\$ 5,460.4	\$ 26,072.1

<i>Cost of Current Food Packages^a</i>	\$ 3,940.1	\$ 4,091.2	\$ 4,272.1	\$ 4,367.5	\$ 4,453.9	\$ 21,124.8
<i>Cost of CVV Increase as enacted in FY 2022, FY 2023, and FY 2024.^b</i>	\$ 1,045.8	\$ 1,076.4	\$ 1,116.9	\$ 1,155.3	\$ 1,169.4	\$ 5,563.8
<i>Incremental Cost of Rule Other than CVV Increase^c</i>	\$ 0.0	-\$ 138.7	-\$ 155.8	-\$ 159.2	-\$ 162.9	-\$ 616.5
Total Nutrition Services & Administration Costs	\$ 2,542.7	\$ 2,666.7	\$ 2,796.7	\$ 2,886.5	\$ 2,927.2	\$ 13,819.7
Total Federal Expenditures	\$ 7,528.5	\$ 7,695.6	\$ 8,029.9	\$ 8,250.2	\$ 8,387.6	\$ 39,891.7

^a Cost of current food packages reflects total annual cost attributable to spending on foods as currently described in 7 CFR 246.10 – which, absent any legislative adjustments to the CVV, would set CVV levels at \$10 for children and \$12 for women in FY 2025.

^b Cost of CVV increase reflects the added cost of the CVV increase in this rule, which is equal to the CVV increase temporarily enacted in FY 2022, FY 2023, and FY 2024.

^c Incremental cost of the rule other than CVV increase reflects the net impact on Federal WIC expenditures of all other provisions in this rule absent the CVV increase to demonstrate how the costs would differ from the food packages as enacted in FY 2022, FY 2023, and FY 2024.

In addition to the above increase in food expenditures accounted for in terms of Federal transfers, USDA also estimates that WIC State agencies and local agencies will incur an increase in administrative burden associated with administering and explaining the changes to participants (including estimated burden for State and local agency staff training). This additional administrative burden is expected to account for about \$179 million in additional labor costs associated with the required State and local agency staff time over five years between FY 2025 and FY 2029. These administrative costs are considered allowable expenses for State agencies under their annually awarded Nutrition Services and Administration (NSA) grants. In general, USDA expects that State agencies will be able to absorb the costs associated with implementing the provisions under this rule with current NSA funds.

The changes to the WIC food packages are expected to improve dietary quality by increasing intake of foods currently under-consumed by WIC participants, specifically fruits and

vegetables, whole grains, and seafood.³⁶ Increased consumption of these foods is expected to increase intakes of key nutrients, including dietary fiber, potassium, vitamin D, vitamin A, vitamin C, folate, and polyunsaturated fatty acids. Dietary fiber, potassium, and vitamin D, considered nutrients of public health concern in the general U.S. population, are currently also under-consumed by WIC participants.^{37, 38} The changes are also expected to improve dietary balance by reducing amounts of foods that are currently provided in quantities that exceed a moderate proportion of an individual's requirement for a nutrient or recommended amount of a food group. Although not quantified in this RIA, improved nutrition has the potential to improve infant, child, and maternal health outcomes, thereby possibly decreasing federal and societal health care spending and improving long-term life outcomes for participants.³⁹

B. Baseline for Estimate of Program Expenditures

The total projected baseline Federal cost of WIC under the current food package for FY 2025 through 2029 is shown in Table 4 below. At the Federal level, WIC expenditures are broadly split between grants to State agencies to fund food benefits (“food costs”) and Nutrition Service and Administration (NSA) grants to fund all approved non-food expenses (“NSA costs”). As described later in this analysis, the Department estimates that the changes under this rule will result in a net increase to WIC food costs but will not affect the NSA costs of the Program. Table

³⁶ Gleason, S., Hansen, D., & Wakar, B. (2021). Indicators of diet quality, nutrition, and health for Americans by program participation status, 2011–2016: WIC report. Prepared by Insight Policy Research, Contract No. GS-10F-0136X. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Michael Burke. <https://www.fns.usda.gov/wic/indicators-diet-quality-nutrition-and-health-americans-program-participation-status-2011>.

³⁷ Ibid.

³⁸ Borger, C., Zimmerman, T., Vericker, T., et al. (2020). WIC Infant and Toddler Feeding Practices Study 2: Fourth Year Report. Prepared by Westat, Contract No. AG-3198-K-15-0033 and AG-3198-K-15-0050. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Courtney Paolicelli. Available online at: www.fns.usda.gov/research-and-analysis.

³⁹ See, for example, *The U.S. Playbook to Address Social Determinates of Health* by the Domestic Policy Council, Office of Science and Technology Policy (November 2023, available online at <https://www.whitehouse.gov/wp-content/uploads/2023/11/SDOH-Playbook-3.pdf>), and “Review of Evidence for Health-Related Social Needs Interventions” by M. Tsega et al. (July 2019, available online at https://www.commonwealthfund.org/sites/default/files/2019-07/COMBINED_ROI_EVIDENCE_REVIEW_7.15.19.pdf).

4 provides the total cost of the current WIC food packages both with and without the CVV increase enacted in FY 2022, FY 2023, and FY 2024.

WIC food costs are a function of the number of participants receiving each food package, the retail prices of WIC-eligible food items, the quantity of WIC foods issued to each participant, and the percentage of WIC foods issued that are redeemed by participants (known as the “redemption rate”). The following describes how each of these factors are estimated for FYs 2025 through 2029 in this analysis.

Table 4: Total Projected Baseline Federal WIC Expenditures, Current Food Packages

	Fiscal Year (millions)					Total
	2025	2026	2027	2028	2029	
Total Food Expenditures	\$ 4,985.8	\$ 5,167.7	\$ 5,389.0	\$ 5,522.9	\$ 5,623.3	\$ 26,688.6
<i>Cost of Current Food Packages^a</i>	<i>\$ 3,940.1</i>	<i>\$ 4,091.2</i>	<i>\$ 4,272.1</i>	<i>\$ 4,367.5</i>	<i>\$ 4,453.9</i>	<i>\$ 21,124.8</i>
<i>Cost of CVV Increase as enacted in FY 2022, FY 2023, and FY 2024^b</i>	<i>\$ 1,045.8</i>	<i>\$ 1,076.4</i>	<i>\$ 1,116.9</i>	<i>\$ 1,155.3</i>	<i>\$ 1,169.4</i>	<i>\$ 5,563.8</i>
Total Nutrition Services & Administration Costs	\$ 2,542.7	\$ 2,666.7	\$ 2,796.7	\$ 2,886.5	\$ 2,927.2	\$ 13,819.7
Total Federal Expenditures	\$ 7,528.5	\$ 7,834.4	\$ 8,185.7	\$ 8,409.3	\$ 8,550.4	\$ 40,508.3

Note: Figures may not sum due to rounding.

^a Cost of current food packages reflects total annual cost attributable to spending on foods as currently described in 7 CFR 246.10 – which, absent any legislative adjustments to the CVV, would have set CVV levels at \$10 for children and \$12 for women in FY 2025.

^b Cost of CVV increase reflects the added cost of the CVV increase proposed in this rule, which is equal to the CVV increase enacted in FY 2022, FY 2023, and FY 2024.

Participation

This analysis bases WIC participation projections on the latest trends observed through data available in November 2023. After over a decade of gradual declines, WIC participation increased slightly in FY 2022. Increases in participation have accelerated through FY 2023; average monthly WIC participation grew to 6.57 million by the end of FY 2023 – a 5 percent increase over the prior year. While it is difficult to attribute this growth to any single factor, increased birth rates, alongside recent investments in outreach, modernization, and an improved, higher valued food package, may all be contributing to the rise in participation.^{40,41} Participation

⁴⁰ As described earlier in this analysis, Congress authorized an increase in the Cash Value Benefit through appropriations bills in FY 2022, FY 2023, and FY 2024, which significantly increased the value of the food package for many participants. Prior to this, under the American Rescue Plan Act (ARPA) in FY 2021 (Pub. L. 117-2), the Department received additional funding and direction to modernize WIC and improve outreach.

⁴¹ A recent qualitative study published by the American Academy of Pediatrics found that former WIC participants who left the program early cited insufficient fruit/vegetable benefits and inflexibility of the food benefits (regarding allergens, cultural appropriateness, and individual preference) as reasons for their exit, suggesting that this rule could help sustain the higher levels of participation in WIC that has been recently observed. See Cristina M. Gago,

growth is expected to continue over the next few years before generally leveling off beginning in FY 2027 (see Table 5). Within each participant category, this analysis uses data from the WIC Participant and Program Characteristics 2018 Food Packages and Costs Report (WIC PC 2018 Food Costs Report) to estimate the distribution across specific WIC food packages, shown in Table 5.⁴²

Table 5. WIC Participation Estimates by Category and Food Package, FY 2025 – 2029

	Food Package	Fiscal Year Participants				
		2025	2026	2027	2028	2029
Infants		1,555,711	1,580,980	1,606,659	1,606,819	1,606,980
FF 0 – 4 months	I-FF-A	236,529	240,371	244,275	244,299	244,324
FF 4 – 6 months	I-FF-B	167,751	170,476	173,245	173,262	173,279
BF/FF 0 – 1 months	I-BF/FF-A	8,388	8,524	8,662	8,663	8,664
BF/FF 1 – 4 months	I-BF/FF-B	72,133	73,305	74,495	74,503	74,510
BF/FF 4 – 6 months	I-BF/FF-C	45,293	46,028	46,776	46,781	46,785
BF 0 – 4 months	I-BF-A	63,745	64,781	65,833	65,840	65,846
BF 4 – 6 months	I-BF-B	33,550	34,095	34,649	34,652	34,656
FF 6 – 11 months	II-FF	580,419	589,846	599,427	599,487	599,546
BF/FF 6 – 11 months	II-BF/FF	107,361	109,104	110,877	110,888	110,899
BF 6 – 11 months	II-BF	98,973	100,581	102,214	102,225	102,235
FP III	III – I	141,570	143,869	146,206	146,221	146,235
Children		3,829,645	3,891,847	3,955,060	3,955,456	3,955,852
12 – 23 months	IV-A	1,099,108	1,116,960	1,135,102	1,135,216	1,135,329
2 – 4 years	IV-B	2,665,433	2,708,726	2,752,722	2,752,997	2,753,273
FP III	III – IV	65,104	66,161	67,236	67,243	67,249
Women		1,573,019	1,598,569	1,624,534	1,624,696	1,624,859
Pregnant	V-A*	563,298	572,448	581,746	581,804	581,862
BF/FF	V-B*	346,379	352,005	357,722	357,758	357,794
Postpartum	VI	455,232	462,626	470,140	470,187	470,234
BF	VII	205,279	208,613	212,002	212,023	212,044
FP III	III – V/VI/VII	2,831	2,877	2,924	2,924	2,925
Total Participants		6,958,375	7,071,396	7,186,253	7,186,971	7,187,690

FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; FP = food package

Source: Internal USDA Estimates

Jhordan O. Wynne, Maggie J. Moore, Alejandra Cantu-Aldana, Kelsey Vercammen, Laura Y. Zatz, Kelley May, Tina Andrade, Terri Mendoza, Sarah L. Stone, Josiemer Mattei, Kirsten K. Davison, Eric B. Rimm, Rachel Colchamiro, Erica L. Kenney; Caregiver Perspectives on Underutilization of WIC: A Qualitative Study. *Pediatrics* February 2022; 149 (2): e2021053889. 10.1542/peds.2021-053889.

⁴² U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Participant and Program Characteristics 2018 Food Packages and Costs Report, by Nicole Kline, Kevin Meyers Mathieu, and Jeff Marr. Project Officer: Grant Lovellette. Alexandria, VA., November 2020. Available online at: <https://www.fns.usda.gov/wic/participant-program-characteristics-2018-food-packages-costs-report>.

Prices of WIC Foods

Baseline unit costs for WIC food categories are estimated using average national retail unit cost data calculated from the Information Resources, Inc. (IRI) Infoscan retail dataset.⁴³ Average per-unit costs were calculated using FY 2018 IRI Infoscan retail data on food categories that include WIC-eligible foods. The FY 2018 unit cost data are adjusted to account for inflation using the U.S. Bureau of Labor Statistics Consumer Price Index for Urban Consumers (CPI-U) with food-specific forecasts estimated by the USDA Economic Research Service (ERS) for FY 2019 through FY 2024.⁴⁴ Inflation for all food categories is estimated for FY 2025 through FY 2029 using the forecast for the Thrifty Food Plan index for food inflation in the most recent President's Budget request.⁴⁵

Quantities of WIC Foods Purchased by Program Participants

The quantity of WIC foods purchased, or redeemed, by participants is estimated as the product of the Maximum Monthly Allowance (MMA) of each food item multiplied by the estimated redemption rate for that item. Baseline estimates use the MMAs under the current food packages while the projections for redemption under the food package revisions use the MMAs defined under the rule. Key changes to MMAs by food item under this rule are summarized above in Table 1. Baseline redemption rates are estimated by food category using 2020 redemption data that FNS collected from 48 State agencies (see the appendix to the RIA, Tables A-1 through A-12 for redemption rate estimates by food category).⁴⁶

⁴³ More information about this dataset is available here: <https://www.ers.usda.gov/topics/food-markets-prices/food-prices-expenditures-and-establishments/using-scanner-data/>.

⁴⁴ ERS food-specific inflation estimates are current as of June 26, 2022.

⁴⁵ As of July 2023, OMB projects annual Thrifty Food Plan inflation to be around 2.30 percent annually for FY 2025-FY 2029. For more information, see <https://www.whitehouse.gov/omb/briefing-room/2023/07/28/the-2024-mid-session-review/>.

⁴⁶ According to internal USDA data collected in March 2021 covering monthly WIC redemptions for all months in calendar year 2020. Data were requested from all State agencies, but only full year data for 2020 were provided by 48 State agencies. While redemption data may not be nationally representative, the 48 State agencies that reported data serve about 3.48 million WIC participants (or around 56 percent of all WIC participants in 2020).

C. Food Costs and Benefits of Rule by Food Category

The following section describes the benefits to WIC participants and the estimated impact on the cost of the food packages of the changes for each WIC food category. As described previously, all cost estimates are adjusted for annual inflation. Apart from the CVV, USDA applies NASEM's estimates of the relative impacts of the revisions under each food category on redemption rates and unit costs, where applicable. NASEM's estimates of the impacts on redemption rates are based on several factors, including changes to the amount of a food category prescribed, changes to the substitution options available, and changes to nutrient requirements that may affect participant preferences.

In general, the most consistent impact on redemption rates was driven by changes in the amount of a food item prescribed in the revised food packages. To consider this impact, NASEM first used EBT data from three State agencies (Kentucky, Michigan, and Nevada) from a 2014 report to understand three different types of WIC redemption patterns: (1) full redemption, (2) partial redemption, and (3) non-redemption.⁴⁷ The effect of a decrease in the MMA for an item is not computed equally for all three groups, because one would expect less of a change, if any, in the redemption rate among the share of full redeemers and those not redeeming the food item at all. Therefore, NASEM used the EBT data collected in the 2014 report to compute what they call an "implied redemption rate" based on the relative share of partial redeemers unique to each food item and the amount of the MMA being reduced.⁴⁸ Beyond the implied redemption rates calculated based on changes to the MMA amounts, in order to account for other behavioral changes, NASEM made upward or downward adjustments to the implied redemption rates based

⁴⁷ Phillips, D., Bell, L., Morgan, R., & Pooler, J. (2014). Transition to EBT in WIC: Review of impact and examination of participant redemption patterns: Final report. Retrieved from <https://altatum.org/publications/transition-ebt-wic-review-impact-and-examination-participant-redemption-patterns>.

⁴⁸ That is, redemption rate changes for foods were estimated differently depending on whether a food had a larger percentage of participants redeeming that food fully or partially.

on changes in substitution options (such as allowing more yogurt to be substituted for milk) and product specifications (including package size flexibilities or whole-grain requirements). Explicit details on any calculations behind these adjustments are limited in NASEM's report, but they are generally based on assumptions of expected consumer behavior based on the changes – e.g., increasing substitution options would expand options in a particular food category and, therefore, is expected to make that food category more popular and increase redemption rates. NASEM applied these changes to redemption data provided by FNS for 5 unidentified State agencies, as well as to redemption data NASEM collected directly from 6 State agencies, in order to expand the representativeness of the estimates.⁴⁹

NASEM's approach poses a few limitations. Without much of a precedent for such changes and without the opportunity to conduct a viable pilot, NASEM had limited data upon which to base their redemption rate adjustments. Another limitation is that these estimates do not account for variations based on demographic groups because of a lack of availability of EBT redemption data matched with participant characteristics. While USDA acknowledges these limitations, the Department finds NASEM's approach to be reasonable and sufficient for these estimates given the lack of available data. While this analysis relies on NASEM's methodology to estimate the relative impact of the rule on redemption rates for each food item, the Department applies these relative impacts to a larger set of redemption data collected from 48 State agencies in 2020, as well as using the best available WIC participation, food inflation, and food price data as of August 2023.

Although the food costs presented here are updated with the best available information and to reflect the food package revisions as defined in this rule, including where the Department's provisions differ from NASEM's recommendations, NASEM's impact analysis provides

⁴⁹ For a description of these data, see p. 933-939 of the NASEM report.

additional background information, analyses, and discussion of rationales (see Appendix U of the 2017 NASEM report, p. 869-988).

Cash Value Voucher (CVV)⁵⁰

Summary of Changes:

- Increase CVV maximum monthly allowances for child, pregnant, postpartum, and breastfeeding participants.

Consistent with the proposed rule and as supported by most public comments,⁵¹ this final rule increases to the CVV maximum monthly amounts reflect the amounts recommended by NASEM to provide approximately half of the recommended daily amounts of fruits and vegetables for adults and children. This change is also consistent with the temporary increase in the CVV that has been in place since October 1, 2021 as a result of appropriations legislation (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2022, Pub. L. 117-103; the Consolidated Appropriations Act, 2023, Pub. L. 117-328; and the Consolidated Appropriations Act, 2024, Pub. L. 118-42). The increases also reflect 2020-2025 DGA recommendations for the applicable life stages of WIC adult participants (postpartum, pregnant, and lactating) based on the average caloric needs of these various groups (2,000 kcal, 2,200 kcal, and 2,400 kcal, respectively).

Context, Behavior Change, and Benefits:

⁵⁰ The change in terminology from “CVV” to cash-value benefit, or “CVB,” is not included in this final rule; however, USDA proposed this change in the rule titled: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program (88 FR 11516). The proposal would update the definition of cash-value voucher to remove the clause, “cash-value voucher is also known as cash-value benefit, or CVB, in an EBT environment,” and create an independent definition of CVB as a type of electronic benefit that is a fixed-dollar amount used to obtain authorized fruits and vegetables.

⁵¹ The only public comments that did not fully support the increase advocated for even higher CVV amounts than proposed by the Department; there were no comments opposed to the increase.

Fruits and vegetables are nutrient dense and associated with a reduced risk of chronic diseases,⁵² including high blood pressure,⁵³ stroke,⁵⁴ heart disease,⁵⁵ diabetes,⁵⁶ and specific types of cancer.⁵⁷ A recent study found that adult consumption of 5 servings of fruits and vegetables per day (and specifically 3 servings of vegetables and 2 servings of fruit) is associated with a decrease in the risk of premature death and death due to cardiovascular disease, cancer, and respiratory disease.⁵⁸ In addition, studies suggest that increasing fruit and vegetable intakes or replacing foods of high energy density with foods of lower energy density, such as fruits and vegetables, can help with management of body weight.^{59,60,61} Despite the importance of fruits and vegetables to a healthy dietary pattern, nearly 90 percent of the U.S. population does not meet the daily recommended intake of vegetables, and around 80 percent do not meet recommendations for fruit.⁶² A recent FNS study using 2011-2016 National Health and Nutrition

⁵² While the publications cited in this section employ a variety of study designs, many lean on the data available in a few large prospective cohort studies. These prospective cohort studies, such as the well-known Nurses' Health Study, are often limited to a predominately White and socioeconomically homogenous sample – while this limitation has the benefit of controlling confounding factors for this reason, it may also limit the generalizability of findings. Moreover, it is relatively rare for the cited studies to control for income (which presumably matters because fruits and vegetables can be more expensive than many other foods); as such, concern about omitted variable bias may be warranted. We request comment on these methodological issues, as well as the extent to which the relevant literature appropriately sets null hypotheses prior to performing statistical tests.

⁵³ Appel LJ, Moore TJ, Obarzanek E, Vollmer WM, Svetkey LP, Sacks FM, Bray GA, Vogt TM, Cutler JA, Windhauser MM, Lin PH. A clinical trial of the effects of dietary patterns on blood pressure. *New England Journal of Medicine*. 1997 Apr 17;336(16):1117-24.

⁵⁴ He FJ, Nowson CA, MacGregor GA. Fruit and vegetable consumption and stroke: meta-analysis of cohort studies. *The Lancet*. 2006 Jan 28;367(9507):320-6.

⁵⁵ Hung HC, Joshupura KJ, Jiang R, Hu FB, Hunter D, Smith-Warner SA, Colditz GA, Rosner B, Spiegelman D, Willett WC. Fruit and vegetable intake and risk of major chronic disease. *Journal of the National Cancer Institute*. 2004 Nov 3;96(21):1577-84.

⁵⁶ Muraki I, Imamura F, Manson JE, Hu FB, Willett WC, van Dam RM, Sun Q. Fruit consumption and risk of type 2 diabetes: results from three prospective longitudinal cohort studies. *BMJ*. 2013 Aug 29;347:f5001.

⁵⁷ Wiseman M. The Second World Cancer Research Fund/American Institute for Cancer Research Expert Report. Food, Nutrition, Physical Activity, and the Prevention of Cancer: A Global Perspective: Nutrition Society and BAPEN Medical Symposium on 'Nutrition support in cancer therapy'. *Proceedings of the Nutrition Society*. 2008 Aug;67(3):253-6.

⁵⁸ Dong D, Wang, Yanping Li, Shilpa N. Bhupathiraju, Bernard A. Rosner, Qi Sun, Edward L. Giovannucci, Eric B. Rimm, JoAnn E. Manson, Walter C. Willett, Meir J. Stampfer, Frank B. Hu. Fruit and Vegetable Intake and Mortality: Results From 2 Prospective Cohort Studies of U.S. Men and Women and a Meta-Analysis of 26 Cohort Studies. *Circulation*, 2021; DOI: 10.1161/CIRCULATIONAHA.120.048996.

⁵⁹ Tohill BC, Seymour J, Serdula M, Kettel-Khan L, Rolls BJ. What epidemiologic studies tell us about the relationship between fruit and vegetable consumption and body weight. *Nutr Rev*. 2004;62:365-374.

⁶⁰ Rolls BJ, Ello-Martin JA, Tohill BC. What can intervention studies tell us about the relationship between fruit and vegetable consumption and weight management? *Nutr Rev*. 2004;62(1):1-17.

⁶¹ Bertolio ML, Mukamal KJ, Cahill LE, Hou T, Ludwig DS, Mozaffarian D, Willett WC, Hu FB, Rimm EB. Changes in intake of fruits and vegetables and weight change in United States men and women followed for up to 24 years: analysis from three prospective cohort studies. *PLoS medicine*. 2015 Sep 22;12(9):e1001878.

⁶² See 2020-2025 DGA, p. 30-32.

Examination Survey (NHANES) data found that children participating in WIC under the current regulatory food package reported overall inadequate intake levels for vegetables.⁶³ The same study also found that children participating in WIC were less likely to consume any amount of whole fruits on a given day than higher income children (73 compared to 93 percent). The DGA emphasize the importance of building a healthy dietary pattern in early childhood when taste preferences are acquired and maintaining a health dietary pattern across the lifespan. WIC can play an important role in supporting families to establish and maintain healthy dietary patterns that are rich in nutrient-dense fruits and vegetables.

The changes to regulations governing the CVV are expected to increase fruit and vegetable consumption among WIC participants by supporting the purchase of a greater amount and variety of fruits and vegetables that align with individual and cultural preferences.⁶⁴ Increasing fruit and vegetable consumption would also increase intake of potassium and fiber, both of which USDA identifies in the 2020-2025 DGA as dietary components of public health concern for underconsumption. An increase in fruit and vegetable consumption would also increase intakes of vitamin A, vitamin C, and folate, all of which NASEM reported at inadequate levels among pregnant, postpartum, and breastfeeding participants.

NASEM estimated that WIC participants would need to spend \$24, \$43, or \$47 (adjusted for inflation to FY 2022), depending on participant category, to meet 50 percent of the DGA-

⁶³ Gleason, S., Hansen, D., & Wakar, B. (2021). Indicators of diet quality, nutrition, and health for Americans by program participation status, 2011–2016: WIC report. Prepared by Insight Policy Research, Contract No. GS-10F-0136X. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Michael Burke. <https://www.fns.usda.gov/wic/indicators-diet-quality-nutrition-and-health-americans-program-participation-status-2011>.

⁶⁴ A number of state-level and/or qualitative studies point to increased food security and/or increased participant satisfaction since the increase in CVV benefits beginning under ARPA, which suggest a positive impact of larger CVV allowances. See, for example, the following studies: “Multi-State WIC Participant Satisfaction Survey: Cash Value Benefit Increase During COVID” (<https://thewichub.org/multi-state-wic-participant-satisfaction-survey-cash-value-benefit-increasing-during-covid/>); “Increased WIC Benefits for Fruits and Vegetables Increases Food Security and Satisfaction Among California Households with Young Children” (<https://doi.org/10.1016/j.jand.2023.05.018>); and “California WIC Participants Report Favorable Impacts of the COVID-Related Increase to the WIC Cash Value Benefit” (<https://doi.org/10.3390/ijerph191710604>).

recommended intakes for vegetables and fruits.⁶⁵ This suggests that the current regulatory CVV levels (which would have been \$9 for children and \$11 for pregnant, postpartum, and breastfeeding individuals in FY 2022) only provide enough for around 19 percent and 12 percent of recommended fruit and vegetable intakes for these groups, respectively. Increasing the value of the CVV to the levels recommended by NASEM to meet 50 percent of the recommended fruit and vegetable intake is likely to increase fruit and vegetable purchases and consumption among WIC participants.

Congress temporarily authorized a four month increase in CVV benefits under the American Rescue Plan Act (ARPA) of 2021 (Pub. L. 117-2).⁶⁶ Under ARPA authority, State agencies increased the CVV for all food packages for child, pregnant, postpartum, and breastfeeding participants to \$35. Following this increase, Congress then authorized temporary increases to the NASEM recommended CVV amounts in FY 2022, in FY 2023, and in FY 2024, as described above. Public comments received in response to the proposed rule cited evidence of the initial, positive impacts of these temporary changes, providing a preview of the likely impacts of the CVV increases that would be made final in this rule. A large survey of WIC participants across five State agencies (including one Indian Tribal Organization [ITO]) found that fruit and vegetable consumption among children participating in WIC increased by about 0.27 cup equivalents per day (after excluding juice, legumes, and fried potatoes).⁶⁷ The same survey found that 84 percent of respondents reported the CVV benefit level was inadequate before the temporary increase under ARPA, compared to only 25 percent after the increase. Several other

⁶⁵ USDA notes that, although the CVV should be enough to provide approximately 50 percent of the DGA recommended intakes for fruits and vegetables on average, the exact percentage of the DGA that will be met for an individual participant will vary, due to differences in the purchasing power of the CVV in lower and higher food price areas.

⁶⁶ WIC Policy Memorandum #2021-3: Implementation of the American Rescue Plan Act of 2021 (Pub. L. 117-2), “State Agency Option to Temporarily Increase the Cash-Value Voucher/Benefit for Fruit and Vegetable Purchases.” March 24, 2021. Available at: <https://www.fns.usda.gov/wic/policy-memorandum-2021-3>.

⁶⁷ Ritchie L, Lee D, Felix C, Sallack L, Chauvenet C, Machel G, Whaley SE. *Multi-State WIC Participant Survey: Cash Value Benefit Increase During COVID*. The National WIC Association and Nutrition Policy Institute, University of California Division of Agriculture and Natural Resources. March 2022.

commenters provided similar evidence from California, Colorado, Delaware, and North Carolina finding that the increase to the CVV was very well received by participants and was associated with an increase in the amount and/or variety of fruits and vegetables consumed.

Federal Budgetary Costs:

The increase in value of the CVV accounts for most of the increased Federal spending under the rule, adding around \$5.6 billion in costs over five years compared to the CVV levels as currently established in WIC regulations at 7 CFR 246.10. This estimate assumes that the redemption rate of the increased CVV will continue at the 2020 level (71.6 percent) and accounts for annual inflation adjustments.⁶⁸ Table 6 compares the projected CVV values for the current and revised food packages for child, pregnant, postpartum, and breastfeeding participants between FY 2025 through 2029, accounting for annual inflation and rounding down to the nearest whole dollar.⁶⁹ As described earlier in this analysis, the CVV levels finalized in this rule were temporarily enacted in FY 2022, FY 2023, and FY 2024. Therefore, compared to WIC food packages as enacted in FY 2022 through FY 2024, the changes described in this section would have no impact on Federal spending, but would instead simply codify these as the new permanent CVV levels in WIC regulations.

The CVV cost estimates only include costs associated with the changes to the CVV for child, pregnant, postpartum, and breastfeeding participants described above. Any costs associated with the CVV substitution option for infants is accounted for under the infant fruit and vegetable estimates. Similarly, costs associated with the \$3 CVV substitution option for juice are accounted for in the juice cost estimates.

⁶⁸ See the Uncertainties section for an analysis of the cost impact of higher or lower redemption rates on the cost of the CVV increase.

⁶⁹ This is consistent with the requirements for inflating the WIC CVV as described in 7 CFR 246.16(j).

Table 6: Estimated Changes to CVV Amount by Participant Category, FY 2025 through FY 2029

Participant Category (Food package)	2025		2026		2027		2028		2029	
	Cur.	Rev.	Cur.	Rev.	Cur.	Rev.	Cur.	Rev.	Cur.	Rev.
Children (IV)	\$10	\$27	\$10	\$27	\$11	\$28	\$11	\$29	\$11	\$29
Pregnant (V-A)	\$13	\$48	\$13	\$49	\$13	\$51	\$14	\$52	\$14	\$53
Partially BF (V-B)	\$13	\$53	\$13	\$54	\$13	\$55	\$14	\$57	\$14	\$58
Postpartum (VI)	\$13	\$48	\$13	\$49	\$13	\$51	\$14	\$52	\$14	\$53
Fully BF (VII)	\$13	\$53	\$13	\$54	\$13	\$55	\$14	\$57	\$14	\$58

Notes:

CVV = Cash-value voucher; Cur. = Current food packages; Rev. = Revised food packages

CVV values are set using a specific rounding methodology described in 7 CFR 246.16(j) where, after adjusting for inflation annually, the benefit level is always rounded down to the nearest whole dollar (e.g., \$24.99 would be rounded down to \$24). In this analysis, the benefit levels before rounding down for the current food package begin in at \$9.74 for children and \$12.18 for pregnant, postpartum and breastfeeding individuals in FY 2024 to be consistent with current budget projections. The benefit levels for the revised food package begin in FY 2022 at \$24, \$43, and \$47 and begin adjusting for inflation in FY 2023. Current food packages reflect the permanent CVV levels as currently set in 7 CFR 246.10. Revised food packages reflect the CVV levels codified in this rule, which are equal to and make permanent the temporary levels enacted starting in FY 2022, adjusted for inflation.

To better understand how the increase to the CVV may impact CVV redemption rates, USDA collected CVV redemption data from nine large State agencies covering the period from April to August 2021, during the implementation of a temporary increase to CVV levels authorized under the American Rescue Plan Act (ARPA) of 2021 (Pub. L. 117-2).⁷⁰ Under ARPA authority, these State agencies increased the CVV for all food packages for child, pregnant, postpartum, and breastfeeding participants to \$35. Redemption data during the months the increase was implemented indicate only about a 2-percentage point decrease in the CVV redemption rate following the increase.⁷¹ The Department assumes that this 2-percentage point gap would further narrow as participants become more accustomed to the increased CVV and as WIC staff continue to promote use of the increased CVV through nutrition education. Based on these assumptions, the Department assumes there will be no change in CVV redemption rates under

⁷⁰ WIC Policy Memorandum #2021-3: Implementation of the American Rescue Plan Act of 2021 (Pub. L. 117-2), State Agency Option to Temporarily Increase the Cash-Value Voucher/Benefit for Fruit and Vegetable Purchases. March 24, 2021. Available at: <https://www.fns.usda.gov/wic/policy-memorandum-2021-3>.

⁷¹ Data collected from 9 State agencies indicated a 68.4 percent CVV redemption rate during July and August 2021 under the temporary increase to \$35 authorized by ARPA. The redemption rate for these months was expected to be around 70.5 percent if the CVV increase had not occurred, based on CVV redemption data trends in 2020 and earlier in 2021 for these State agencies. Therefore, we attributed approximately a 2-percentage point decrease in CVV redemption rates under the \$35 CVV.

the CVV levels in this rule. The Uncertainties section below includes an analysis of the cost impacts of either higher or lower CVV redemption rates.

Canned Fish

Summary of Changes:

- Add canned fish to food packages for children (ages 1 through 4 years).
- Add canned fish in food packages for pregnant, partially (mostly) breastfeeding and postpartum participants not currently receiving canned fish, revise amounts for fully breastfeeding participants, and revise WIC-eligible varieties.

Context, Behavior Change, and Benefits:

The revisions add select varieties of canned fish (salmon, sardines, Atlantic mackerel, Chub mackerel, and light tuna) to food packages for children ages 1 through 4 years and for pregnant, postpartum and breastfeeding participants to better align the WIC food packages with the DGA and NASEM recommendations. The amount of fish offered in the revised food packages provides a supplemental quantity of between 17 to 69 percent of the DGA-recommended amounts, depending on participant category. This change represents an improvement over the current packages, which do not offer fish to child, pregnant, postpartum, or partially breastfeeding participants, and are consistent with the EPA-FDA advice about eating fish.

Fish is an important dietary source of polyunsaturated fatty acids and other key nutrients; nutrition education will be important in encouraging WIC participants to redeem this under-consumed food, choose lower sodium varieties and amounts that limit methylmercury exposure, preserve unused portions of canned fish safely, and, for child participants, select boneless canned fish or remove bones prior to consumption to prevent choking.

Federal Budgetary Costs:

The changes to the quantities of canned fish are expected to increase WIC food spending by an estimated \$218 million over five years compared to the cost of canned fish in the current food packages. This estimate is based on NASEM's assumption that the current redemption rate for fish in the food package for fully breastfeeding participants, just under 44 percent in 2020, will be slightly lower for all food packages receiving fish under the revised food package. The Department estimates the redemption rate for fish will be around 43 percent across all food packages under the revisions.

Infant Fruits and Vegetables

Summary of Changes:

- Reduce infant jarred fruit and vegetable amounts for fully breastfed infants.
- Expand allowable age range to substitute CVV for infant fruits and vegetables and increase substitution amounts.

The amounts of jarred fruits and vegetables currently provided for fully breastfed infants far exceed what is nutritionally appropriate for infants. Further, fully breastfed infants do not have a greater need for fruits and vegetables compared to other infants. Thus, the reduced amounts of jarred fruits and vegetables for fully breastfed infants will be the same amounts currently provided to partially (mostly) breastfed or fully formula fed infants.

Context, Behavior Change, and Benefits:

NASEM found that the current food package for fully breastfed infants provides an excessive amount of jarred fruits and vegetables per day—more than one cup-equivalent, which is an amount difficult for infants 6 through 11 months old to consume daily. Furthermore, the more generous amount for fully breastfed infants was not based on a nutritional rationale (the DGA and the American Academy of Pediatrics (AAP) do not have specific recommendations for the

quantity of fruit and vegetable consumption for this age group) but was recommended by the 2006 Institute of Medicine (IOM, now known as the National Academies of Science, Engineering, and Medicine (NASEM)) committee to promote full breastfeeding.⁷²

Reducing the amount of jarred infant fruits and vegetables provided to fully breastfeeding infants better aligns this food package with the concept of supplemental, particularly since fully breastfed infants do not have a greater need for fruits and vegetables than infants fed infant formula or a combination of infant formula and human milk.

Expanding the age range at which infants are eligible to substitute CVV for infant fruits and vegetables (specifically, by lowering the eligible age from 9 months old to 6 months old) and increasing substitution amounts will provide additional choice to WIC participants to accommodate special dietary needs, cultural preferences, and personal preferences without compromising the nutritional integrity of the infant food packages. In addition, by permitting the purchase of more fruits and vegetables through the CVV, a parent or caretaker has the opportunity to introduce a wider variety and texture of fruits and vegetables (compared to the jarred variety) to the infant according to the infant's developmental readiness for textures.⁷³ NASEM expects that allowing additional CVV substitutions for this age group will increase redemption and consumption of fruits and vegetables among this group of WIC participants.

Federal Budgetary Costs:

Although this rule decreases the maximum monthly allowance of jarred infant fruits and vegetables issued to fully breastfed infants, the Department estimates that the changes to infant

⁷² Institute of Medicine. 2006. *WIC Food Packages: Time for a Change*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/11280>. P. 103.

⁷³ See the DGA recommendations for infants regarding developmental readiness for solid foods on p. 57 of the DGA 2020-2025.

fruits and vegetables under this rule will result in a net increase of \$119 million in Federal WIC spending over five years. These costs are the cumulative costs associated with both infant jarred fruit and vegetable redemptions and the infant CVV substitution option (i.e., the infant CVV costs are reflected here and are separate from the costs associated with the CVV increase for child, pregnant, postpartum, and breastfeeding participants described above). This estimated increase in costs is driven by the expansion of the age range and amounts allowed for the CVV substitution option for jarred fruits and vegetables. In its report, NASEM estimates that this expansion of the infant CVV substitution option, coupled with the decrease in jarred fruits and vegetables issued to fully breastfed infants, will increase the redemption rate by slightly more than 27 percent (approximately 15 percentage points, given the 53 percentage point baseline rate).⁷⁴ By applying NASEM's analysis to current redemption rates, the Department estimates that the redemption rate for jarred infant fruits and vegetables will increase from just over 53 percent in 2020 to around 68 percent under the rule.

Breakfast Cereal

Summary of Changes:

- Change whole grain criteria for breakfast cereals.
- Require that 75 percent of approved breakfast cereals in each State agency meet whole grain criteria.
- Modify existing breakfast cereal specifications to establish an added sugar limit rather than a total sugar limit.

This final rule will change the criteria for whole grain breakfast cereals and require that 75 percent of breakfast cereals on a State agency's authorized food list meet the criteria for whole

⁷⁴ This estimate is based on a combined redemption rate for both redemption of infant jarred fruit and vegetables and redemption of the infant CVV substitution.

grain. This is a change from the proposed rule recommendation that 100 percent of breakfast cereals meet the whole grain criteria. The provisions in this final rule are designed to promote whole grain consumption and to improve consistency with the Child Nutrition Programs (the Child and Adult Care Food Program (CACFP), the National School Lunch Program, and the National School Breakfast Program) while maintaining more flexibility than the proposed rule in response to concerns raised in public comments. Comments from WIC State agencies cited the increased burden on small vendors and the reduction in participant choice as primary concerns. This rule also finalizes a new provision based on comments regarding sugar specifications for breakfast cereals.

To address inadequate consumption of whole grains and excess consumption of refined grains among WIC participants, NASEM recommended that all WIC-eligible breakfast cereals meet the criteria for whole grain cereal. This is also consistent with the DGA recommendation to shift intake from refined to whole-grain versions of foods to increase whole grain intake.

Consequently, the proposed rule required all WIC-authorized breakfast cereals be whole grain. The Department then specifically requested public comment to better understand the impact of the provision requiring all breakfast cereals to meet the whole grain criteria.

Many stakeholders (including many State agencies) supported the goal of increasing whole grain consumption but cited concerns with the requirement that all cereals be whole grain. Some commenters highlighted the overall nutrients cereals provide (e.g., iron and folate) and hypothesized that the changes would negatively impact consumers who prefer refined grain rice- and corn-based breakfast cereals. Other commenters expressed the view that this change will better serve participants with high rates of diet-related diseases, including obesity and diabetes, and low levels of whole grain consumption. Commenters also noted that this change could reduce participant choice for individuals with wheat or other grain allergies. Additionally, the

Department values consistency across Federal nutrition programs and recognizes that in the Child Nutrition Programs, the majority of, but not all, grains offered in a school week must be whole grain rich.⁷⁵ Therefore, recognizing that a healthy dietary pattern can include whole and refined grains in nutrient-dense forms and to support consistency across Federal nutrition programs, this rule codifies that 75 percent of cereals on a WIC State agency’s authorized food list meet the whole grain requirement – a level recommended by public comment.

The Department is also switching the nutrient specifications for breakfast cereals in WIC food packages to be based on an *added* sugar limit, rather than a total sugar limit. This change is also consistent with the added sugar limits proposed for breakfast cereals in the Child Nutrition Programs.

Context, Behavior Change, and Benefits:

These provisions are expected to help address inadequate consumption of whole grains (and excess consumption of refined grains) among WIC participants. NASEM’s analysis of NHANES data concluded that the consumption of whole grains by WIC participants was poor and that consumption of refined grains by WIC participants was excessive. An updated analysis of NHANES data for years 2011-2016 confirms low intakes of whole grains among young children participating in WIC. On a given day, 48 percent of WIC participants ages 1 through 4 years consumed whole grains, whereas 82 percent consumed refined grains. On average, less than half of grains consumed were whole grains.⁷⁶

⁷⁵ See the proposed rule, “Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans,” available online at <https://www.federalregister.gov/documents/2023/02/07/2023-02102/child-nutrition-programs-revisions-to-meal-patterns-consistent-with-the-2020-dietary-guidelines-for>.

⁷⁶ Gleason, S., Hansen, D., & Wakar, B. (2021). Indicators of diet quality, nutrition, and health for Americans by program participation status, 2011–2016: WIC report. Prepared by Insight Policy Research, Contract No. GS-10F-0136X. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Michael Burke. <https://www.fns.usda.gov/wic/indicators-diet-quality-nutrition-and-health-americans-program-participation-status-2011>.

The DGA recommend that at least half of grain intake consist of whole grains, as whole grains are nutrient-dense and contribute more fiber to a healthy diet than refined grains, but according to the DGA, 98 percent of Americans fail to eat enough whole grains, and 74 percent of Americans consume too many refined grains.

Although the final rule does not fully implement NASEM's recommendation that all breakfast cereals meet the whole grain criteria, the final provision is still expected to promote whole grain consumption, while continuing to provide access to other key nutrients (e.g., iron, folate) in forms that accommodate special dietary needs and allow for participant choice.

Federal Budgetary Costs:

While the maximum monthly allowances for breakfast cereal will not change under the rule, the Department estimates that the revisions to whole grain requirements for cereal will decrease costs by approximately \$9 million over five years. The decrease in cost is driven by the estimated impact of these changes on redemption rates. NASEM estimated that the originally proposed changes (i.e., to require that 100 percent of breakfast cereals meet the whole grain criteria) would decrease redemption rates by 10 percent, based on the reduction in allowable cereal options and its analysis showing that whole grain cereals are slightly less preferred by participants in some States.⁷⁷ By applying NASEM's findings, and reducing NASEM's projected impact on redemption rates in half to reflect the final provision of requiring 75 percent of cereals meet the whole grain requirements rather than 100 percent as NASEM proposed, the Department estimates that the redemption rates across all food packages for breakfast cereals will decrease by 5 percent -- which represents about a 2 percentage point decrease from the baseline of 48 percent

⁷⁷ While the NASEM Report acknowledges the increasing market availability of allowable cereal options, the actual impact on redemption rates of breakfast cereals may vary slightly as the market has continued to evolve in the years since NASEM's analysis.

to 46 percent under the revised food packages. This estimate also accounts for a slight increase in unit costs. NASEM estimates that the changes will increase the unit cost of breakfast cereals in the WIC food packages by about 9 percent. Again, reducing NASEM's projection in half to reflect the final rule, the Department estimates that, starting in FY 2025, unit costs for cereal under the rule will rise by \$0.01 per ounce (from \$0.24 to \$0.25 per ounce), after adjusting for inflation.

Infant Formula

Summary of Changes:

- Increase infant formula amounts in the first month for partially breastfed infants.
- Allow all prescribed infant formula quantities to be considered “up to” amounts.

As recommended by NASEM, the rule increases maximum monthly infant formula amounts in the first month for partially (mostly) breastfed infants from 104 fluid ounces to up to 364 fluid ounces. Consistent with current requirements, the amount of formula provided would be tailored based on an individual nutrition and breastfeeding assessment and would not exceed the maximum 364 fluid ounces per month. Tailored issuance of formula in the first month, and nutrition and breastfeeding education and support from WIC staff, not only maximizes the potential for women to achieve exclusive breastfeeding goals, but also to achieve successful partial breastfeeding when exclusive breastfeeding is not possible or desired.

Context, Behavior Change, and Benefits:

This provision increases the maximum monthly infant formula amount in the first month of life for partially (mostly) breastfed infants, consistent with NASEM's recommendations. As NASEM notes, while current regulations intend to encourage participants who initiate breastfeeding to do so exclusively, the current approach may cause infants who need more than 104 fluid ounces of

formula in the first month to be prematurely categorized as fully formula fed (and the mother as “postpartum”) in order to obtain additional formula from the Program.

Breastfeeding is associated with several improved health outcomes for both infants and breastfeeding mothers. Individuals who breastfeed have a reduced risk of breast and ovarian cancer, hypertension, and type 2 diabetes, and their infants have a lower risk of asthma, Type-1 diabetes, sudden infant death syndrome (SIDS), and gastrointestinal, ear, and lower respiratory infections.⁷⁸

The change will increase participant flexibility and provide better support for any amount of breastfeeding during the first month by providing partially (mostly) breastfeeding infants any amount of formula (up to the maximum 364 fluid ounces allowed) to support the participant’s desired level of breastfeeding. It is possible that this provision may extend the duration of breastfeeding for some mothers who were previously categorized as “postpartum” prematurely and discontinued breastfeeding. NASEM specifically estimates that this increase to the infant formula amounts allowed during the first month of an infant’s life will result in a 5 percent shift in infant-mother dyads moving from the fully formula feeding to partially (mostly) breastfeeding food packages after the first year of implementation. Public comments echoed this assessment, noting that this change would encourage breastfeeding and help participants achieve their breastfeeding goals.

The change to consider all formula quantities to be issued as “up to” amounts will encourage and enable WIC staff to assess the actual formula needs of participants and tailor the quantities of

⁷⁸ For a review of recent scientific literature on breastfeeding and maternal health outcomes, see <https://effectivehealthcare.ahrq.gov/sites/default/files/cer-210-breastfeeding-summary.pdf>. For evidence on breastfeeding and infant outcomes, see Ip S, Chung M, Raman G, et al; Tufts-New England Medical Center Evidence-based Practice Center. Breastfeeding and maternal and infant health outcomes in developed countries. *Evid Rep Technol Assess (Full Rep)*. 2007;153(153):1–186 and American Academy of Pediatrics. Breastfeeding and the Use of Human Milk. *Pediatrics* 2017;129(3):e827-e841.

infant formula provided accordingly. This change, as recommended by NASEM, is intended to reduce interference with the successful establishment of the mother's desired breastfeeding behavior while appropriately issuing formula amounts that meet infants' nutritional needs.

Federal Budgetary Costs:

By increasing the amount of infant formula allowed in the first month of life for partially breastfed infants, the Department assumes a shift of 5 percent of fully formula fed infants into the partially breastfed infant category after one full year of implementation, based on NASEM's analysis.⁷⁹ Because the partially breastfed infant food packages are less costly than the fully breastfed infant food packages, this shift will result in an estimated decrease of around \$34 million in total Federal spending on infant formula in the WIC food packages over five years.

The revised amounts of infant formula prescribed under this rule are also estimated to impact spending in other food categories. As described above, NASEM estimates these changes will result in a 5 percent shift of fully formula fed infants into the partially breastfed infant category. This corresponds with a shift of 5 percent of participants from the postpartum food package (VI) category into the partially breastfeeding category (V-B). In this analysis, the Department estimates the impact of this shift in participant categories separately from the other food-specific cost estimates (e.g., the cost estimate provided in Table 2d for the CVV does not take this interaction into account), to account for the discrete impacts of each. In total, the shift of 5 percent of participants from the postpartum food package to the partially breastfeeding food package is estimated to increase WIC food costs by \$5 million over five years. These changes are accounted for by calculating the difference in spending between the slightly more expensive

⁷⁹ From the NASEM RIA (p. 973): "A key assumption of the primary analysis is that, under the proposed revisions, 5 percent of fully formula-fed mother-infant dyads will shift to corresponding fully (mostly) breastfeeding food packages. The committee considered the 5 percent shift conservative, given evidence that the 2009 food package, which allowed women to either choose between formula-feeding or fully breastfeeding in the infant's first month of life, resulted in an approximately 7 to 11 percent shift of dyads from breastfeeding to formula-feeding."

food package V-B compared to food package VI resulting from the 5 percent shift in participants from the postpartum to partially breastfeeding category.

Revising the regulatory language to permit formula quantities prescribed as “up to” amounts rather than only setting a minimum amount for full nutrition benefit is not projected by NASEM to have a significant impact on the cost of the food packages. While the effect on cost is expected to be minimal, the impact of this provision will ultimately depend upon the extent to which it is used—both in terms of how frequently formula quantities are tailored and the extent to which tailoring formula amounts changes the quantities prescribed.

Whole Wheat/Whole Grain Bread and Other Whole Grain Options

Summary of Changes:

- Increase whole wheat/whole grain bread and other whole grain option amounts for pregnant, postpartum and breastfeeding individuals, reduce amounts for children, and revise specifications for package sizes.
- Require that whole grain breads contain at least 50 percent whole grains.
- Expand whole grain options.

Context, Behavior Change, and Benefits:

The revisions largely reflect NASEM’s recommendations and will provide whole wheat bread, whole grain bread, and whole grain options in supplemental amounts that better align with the DGA, particularly for women. The DGA recommend that at least half of grain intake consist of whole grains, as whole grains are nutrient-dense and contribute more fiber to a healthy diet than refined grains, but according to the DGA, 98 percent of Americans fail to eat enough whole grains, and 74 percent of Americans consume too many refined grains.

The reduced amount for children represents the upper end of NASEM's recommended range of 16 to 24 ounces and will provide 27 to 53 percent of DGA recommended amounts, better aligning the children's food packages with the supplemental nature of the food packages.

The increased amount for pregnant, postpartum, and breastfeeding participants exceeds NASEM's recommended amount (24 ounces). Specifically, the Department's amount will provide 40 to 53 percent of the DGA recommended whole grain amounts, while the amount recommended by NASEM would provide 13 to 27 percent. The increased amount will provide and encourage consumption of whole grains, consistent with the DGA and in quantities closer to NASEM's definition of a supplemental amount. The changes also better align the Program with common package sizes found in the marketplace.

Changing the allowable package sizes will increase the whole wheat/whole grain bread choices available for State agencies to authorize as WIC-eligible, thereby increasing choice for participants. When WIC adopted the 16-ounce bread size, very few products on the market adhered to this specification, which required manufacturers to produce a relatively limited number of products sized specifically for WIC; consequently, WIC participants had relatively few choices among different types of WIC-approved breads. Although this availability has become less of a problem since the implementation of the 2009 WIC food package revisions, far more whole wheat/whole grain breads available in the marketplace still come in either a 20-ounce or 24-ounce package size as compared to a 16-ounce package size.⁸⁰ Therefore, allowing State agencies to authorize 20- and 24-ounce bread package sizes will decrease burden on participants, increase product availability, and likely promote intake of whole grains, if

⁸⁰ According to an ERS analysis, in 2015, 16 oz whole grain bread packages had a market share of 17 percent, while 20 and 24 oz whole grain bread package had market shares of 29 and 28 percent, respectively. For more information, see: <https://www.ers.usda.gov/amber-waves/2020/april/usda-approved-whole-wheat-bread-package-size-is-now-more-common-and-less-costly-for-the-special-supplemental-nutrition-program-for-women-infants-and-children-wic/>.

participants are able to select whole grain products that more closely align with their personal or cultural preferences. This change may also decrease burden on small vendors who have experienced difficulty stocking the 16-ounce package size currently required by WIC.

Finally, the expansion of whole grain options is responsive to participant requests for more choices for bread substitutions, while still providing priority nutrients, and is intended to increase whole grain consumption by offering a greater variety of grains to WIC participants.

Federal Budgetary Costs:

The revisions under the whole wheat bread, whole grain bread, and other whole grain options contribute to both costs and savings under the rule. Overall, these changes result in an estimated decrease of about \$22 million in food costs over five years.

NASEM estimates that expanding the number of allowable substitution options and providing greater flexibility in package sizes would increase the overall redemption rate for whole grains by around 13 percent. The rule differs from NASEM's recommendation to allow a specific range of package sizes under this category and instead allows State agencies to authorize a greater variety of package sizes to increase variety and choice, while still providing participants with package sizes that ensure they can receive the full benefit amount. Despite this variation, the effect on redemption rates is expected to be consistent with NASEM's projections. By applying NASEM's projections to current rates, the Department estimates the rule will increase redemption rates for whole wheat bread, whole grain bread, and other whole grain options from 44 percent in 2020 to nearly 50 percent after implementation of the rule. The increase in the maximum monthly allowance for pregnant, postpartum, and breastfeeding participants from 16 ounces to 48 ounces is also expected to increase overall food costs associated with whole grains in the pregnant, postpartum, and breastfeeding food packages.

The increases in costs described above are more than offset by the estimated decrease in unit costs for whole grain products in all food packages and the decrease in the maximum monthly allowance of whole grains in the food packages for children from 32 ounces to 24 ounces. In its report, NASEM estimates the cost of 16 ounces of whole wheat bread to be \$2.35 under the current food package. To account for allowing 24-ounce package sizes in the revised food package and the addition of alternative whole grain substitutions, NASEM computes a composite cost of \$2.67 for 24 ounces of whole grain products under the revised food package.⁸¹ On a per ounce basis, NASEM's projections amount to a 24.4 percent decrease in the unit cost of whole grains in the revised food package (from \$0.147 per ounce in 16-ounce packages to \$0.111 per ounce in 24-ounce packages). Allowing State agencies the option to authorize other intact whole grain options that meet specifications defined in regulations, in response to public comment, is not expected to significantly impact redemption or costs beyond the impacts described above associated with the list of products already considered in the proposed rule.

Cheese

Summary of Changes:

- Remove cheese as a food category for fully breastfeeding participants to better align with the DGA.

As recommended by NASEM, this rule removes cheese as a separate food category for fully breastfeeding participants (Food Package VII). This change aligns with the DGA recommendation for reducing saturated fat consumption.

⁸¹ NASEM's composite cost for whole grain products is weighted to 0.76 for whole wheat bread, 0.19 for corn tortillas, and 0.06 for oatmeal based on available redemption data from selected States.

Context, Behavior Change, and Benefits:

Removing cheese as a separate food category for fully breastfeeding participants aligns with the DGA recommendation for reducing saturated fat consumption. However, cheese remains a milk substitution option in the food packages for child, pregnant, postpartum, and breastfeeding participants, meaning that cheese can be substituted for a portion of the maximum monthly allowance of milk. Even with the removal of the standalone cheese category, fully breastfeeding participants would still be able to receive two pounds of cheese as a partial substitute for milk.

Federal Budgetary Costs:

Removing cheese as a standalone food category is estimated to decrease WIC food costs by \$37 million over five years.

Infant Meats

Summary of Changes:

- Reduce infant meats amounts to better align with AAP recommendations.

Context, Behavior Change, and Benefits:

This provision reduces the maximum monthly allowance of infant meat for fully breastfed infants from 77.5 to 40.0 ounces. The NASEM committee found that the current food package II-BF provides fully breastfed infants with approximately 130 percent of the maximum amount of infant meat recommended by the AAP. The Committee also found that the redemption rate for infant meat, an important source of heme iron and zinc for fully breastfed infants, was only about 20 percent. The rule reduces the amount of infant meat provided to a level representing approximately 65 percent of the AAP recommended maximum amount. This revision better aligns with the concept of providing a supplemental amount of infant meat to fully breastfeeding infants.

Federal Budgetary Costs:

Reducing the maximum monthly allowance of infant meats in the fully breastfed 6 through 11-month-old infant food package is estimated to reduce WIC food costs by \$16 million over 5 years. NASEM estimates that reducing the quantity of infant meats prescribed to fully breastfed infants will increase the overall redemption rate—this is largely based on the assumption that when a smaller amount is prescribed, a larger proportion of that amount will be redeemed by partial redeemers. Applying NASEM’s estimates, this cost savings assumes a 39 percent increase in the redemption rate of infant meats—increasing from around 23 percent in 2020 to 32 percent under the rule.

Infant Cereal

Summary of Changes:

- Reduce infant cereal amounts for all infants to better align with AAP recommendations.

Context, Behavior Change, and Benefits:

This provision reduces the maximum monthly allowance of infant cereal to fully breastfed infants from 24 to 16 ounces. For partially breastfed and fully formula fed infants, the amount is reduced from 24 to 8 ounces. The NASEM committee found that the current food packages provide approximately 150 percent of the maximum amount of infant cereal recommended by the AAP. The revisions better align with AAP recommendations for fully breastfed infants and with the Program’s intent to provide supplemental amounts of food for all other infants. The revised infant cereal quantities will provide approximately 100 percent of the AAP-recommended amount for fully breastfeeding infants because fortified infant cereal is an important source of the iron and zinc that fully breastfed infants need from a complementary food

source starting at age 6 months. The revised quantities will provide 50 percent of the AAP recommended amount for partially (mostly) breastfed and fully formula fed infants.

Federal Budgetary Costs:

Reducing infant cereals in all infant food packages is estimated to reduce WIC food costs by around \$99 million over five years. NASEM estimates the reduction in the maximum monthly allowance of infant cereals will result in a 21 percent increase in the redemption rate. Applying NASEM's projections, the Department estimates that the redemption rate for infant cereals across all infant food packages will increase from 43 percent in 2020 to 53 percent under the rule.

Milk

Summary of Changes:

- Reduce the amount of milk provided in all child, pregnant, postpartum, and breastfeeding participant food packages to better align with the DGA.
- Require authorization of unflavored lactose-free milk.
- Permit only unflavored milk and reduce the added sugars allowed in yogurt and plant-based milk alternatives and substitutes.
- Add calcium specifications for tofu and vitamin D specifications for yogurt.
- Increase yogurt substitution amounts.
- Add plant-based substitution options for milk.
- Update the FDA standards of identity citations for yogurt.
- Allow reduced-fat yogurts for 1 year-old children without restrictions.

The revised quantities reflect NASEM recommendations, are more consistent with the supplemental nature of the Program and are consistent with nutrition education messages to

consume a balanced diet that meets, but does not exceed, recommended amounts of foods and nutrients to prevent overweight/obesity and/or displace other healthy and important food groups and nutrients.

Context, Behavior Change, and Benefits:

The revisions to reduce the amount of milk prescribed to WIC participants, as recommended by NASEM, will better align the food packages with the supplemental nature of the Program. The current food packages provide 85 to 128 percent of the DGA recommendations for dairy products. The revision recommended by NASEM and finalized in this rule will provide 71 to 96 percent of the amounts recommended by DGA. Furthermore, the revised quantities are more consistent with nutrition education messages to consume a balanced diet that meets, but does not exceed, recommended amounts of food to prevent excess weight gain and displacement of other foods that provide key nutrients.

The revisions to the substitution options improve participant choice and promote equity in accessing key WIC benefits for participants with dietary restrictions and allergies, while ensuring that substitution options meet key nutrient specifications. The option for substitution of 2 quarts of yogurt in place of 2 quarts of milk may improve intakes for participants who prefer dairy in this form.

The final rule will require that all State agencies authorize lactose-free milk as a substitution available to participants.⁸² In addition, the rule allows State agencies the option to authorize additional fortified plant-based milk alternative options (other than soy, e.g., oat, almond). The rule will also allow State agencies the option to permit plant-based yogurt and cheese

⁸² Although currently an option (not a requirement), all States and most ITOs already authorize some kind of lactose-free milk, and, therefore, the Department does not estimate an additional cost attributable to this requirement.

substitution options that meet the established nutrient specifications. These options are intended to provide participants with flexibility to select substitutions that better accommodate special dietary needs as well as cultural and personal preferences while still providing critical nutrients.

The rule allows only unflavored milk and specifies limits on added sugar for yogurt and plant-based milk alternatives to better align the WIC food package with the DGA, which emphasize nutrient dense foods and beverages that provide vitamins, minerals, and other health-promoting components with little or no added sugars. As noted in the DGA, nutrient dense foods are particularly important during the first two years of life when nutrient requirements are high relative to body size, leaving virtually no room for added sugars in the diet. The DGA also recommend that beverages with no added sugars be the primary choice for children to assist in the establishment of healthy food choices early in life. The revisions align with CACFP provision of milks to children less than 5 years of age.

Federal Budgetary Costs:

Reducing the maximum monthly allowance of milk and making the other policy changes as described is estimated to reduce WIC food costs by \$118 million over five years, representing a 2 percent decrease of the estimated \$4.94 billion that would have been spent from FY 2025-2029 on milk products in the absence of this rule (milk spending is now estimated to be \$4.82 billion from FY 2025-2029 under this rule).

The decrease in costs is driven by the decrease in the maximum monthly allowance for milk in most food packages under the rule. The savings associated with the reduction in milk quantities are expected to be partially offset by the changes to milk substitution options (including the increase in the amount of yogurt available for substitution), which are expected to increase both redemption rates and the composite unit cost of milk and milk alternatives. To estimate a

composite unit cost for milk redemptions that considers the combined costs of redeeming milk amounts for fluid milk, cheese, and yogurt, this analysis derives a composite unit cost for milk redemptions using the same approach that NASEM applies in its report and updates NASEM's model with WIC unit cost data for whole and reduced-fat milk (accounting for lactose-free and plant-based substitutions, see Table 7 notes below), cheese, and yogurt from the WIC PC 2018 Food Costs Report. NASEM's composite milk cost model represents "high-cost" substitution scenarios, within allowable substitution limits for cheese and yogurt, across food packages for child, pregnant, postpartum, and breastfeeding participants. The Department applies current unit cost estimates to this model, maintaining NASEM's substitution scenarios, and finds that, consistent with NASEM, revisions under the rule are expected to increase the composite unit cost for the milk category across all food packages, as shown below in Table 7. The increase in this composite unit cost reflects an expected shift towards an increase in the proportion of milk that is substituted for yogurt. The increase in yogurt redemptions, relative to milk, is the combined result of three factors: (1) reduction in quantity of milk in most food packages, (2) an increase in the amount of yogurt that participants are allowed to substitute for milk, and (3) increased flexibility in allowable yogurt package sizes.

Cost estimates for milk also apply NASEM's assumptions about the impact of the revisions on redemption rates. NASEM estimates that the revisions under their proposal, particularly the additional amount of yogurt authorized for substitution, is expected to increase redemption rates across all food packages (see the appendix to the RIA, Table A-10 for detailed redemption rates).

Table 7: Composite Unit Price for Milk and Milk Alternatives in Current and Revised Food Packages

Food Package	Current			Revised		
	MMA	Substitution Scheme	Composite Cost (\$/qt)	MMA	Substitution Scheme	Composite Cost (\$/qt)
IV-A	16 qt	12 qt milk + 1 lb cheese + 1 qt yogurt	1.13	12 qt	8 qt milk + 1 lb cheese + 1 qt yogurt	1.21
IV-B	16 qt	12 qt milk + 1 lb cheese + 1 qt yogurt	1.08	14 qt	11 qt milk + 0.5 lb cheese + 1.5 qt yogurt	1.11
V-A	22 qt	18 qt milk + 1 lb cheese + 1 qt yogurt	1.01	16 qt	13 qt milk + 0.5 lb cheese + 1.5 qt yogurt	1.08
V-B	22 qt	18 qt milk + 1 lb cheese + 1 qt yogurt	1.01	16 qt	13 qt milk + 0.5 lb cheese + 1.5 qt yogurt	1.08
VI	16 qt	12 qt milk + 1 lb cheese + 1 qt yogurt	1.08	16 qt	13 qt milk + 0.5 lb cheese + 1.5 qt yogurt	1.07
VII	24 qt	19 qt milk + 1 lb cheese + 1 qt yogurt	1.00	16 qt	12 qt milk + 1 lb cheese + 1 qt yogurt	1.09

Notes:

Unit costs for milk come from the FY 2018 IRI Infoscans retail dataset and already account for the price of lactose-free milk. Adjustments to the unit cost for milk are also adjusted to account for substitutions of soy beverages based on data published in the 2018 WIC PC Food Costs report, applying weights of 0.979 to whole milk and 0.021 to soy beverages for food package IV-A, 0.971 to reduced fat milk and 0.029 to soy beverages in food package IV-B, 0.966 for milk and 0.034 for soy in food package V, 0.972 for milk and 0.028 for soy in food package VI, and 0.959 for milk and 0.041 for soy in food package VII. Baseline, unweighted unit costs in 2018 (per ounce) were \$0.027 for whole milk, \$0.025 for reduced-fat milk, \$0.053 for soy beverages, \$0.088 for yogurt, and \$0.292 for cheese (Source: IRI Infoscans dataset analysis). Weighted unit costs for lactose-free milk are incorporated into the unit cost estimates for whole milk and reduced-fat milk.

Table adapted from NASEM Report (Appendix U, p. 950-955).

As of FY 2015 (the most recent data available), flavored milk was only authorized by three States and 14 Indian Tribal Organizations – collectively covering only around 3 percent of total WIC participants. As a result, the provision to no longer allow flavored milk is not expected to have a significant impact on overall costs or redemptions because this only represents a policy change for a small proportion of participants.

While this final rule adds additional plant-based milk substitution options, these options are not expected to have a significant impact on costs. It is expected that the vast majority of participants

opting for the newly added plant-based milk alternatives (such as oat and almond milk) would have otherwise elected for the existing, similarly priced soy-based beverage or lactose-free milk options under the current food packages. While these options do importantly provide a new pathway for participants with concurrent soy and dairy allergies to access their full WIC benefits in this category, the coexistence of soy and dairy allergies is relatively rare, and any additional redemption of benefits under this accommodation would not be significant from a cost perspective.⁸³

Juice

Summary of Changes:

- Reduce juice amounts for child, pregnant, postpartum, and breastfeeding participants.
- Allow CVV juice substitution.

Context, Behavior Change, and Benefits:

The reduction of juice in food packages for child, pregnant, postpartum, and breastfeeding participants better aligns the food packages with the latest dietary guidance and with the supplemental intent of the Program. The current food packages provide between 96 and 144 fluid ounces (depending on participant category), or 40 to 107 percent of DGA-recommended limits for juice. The reduced quantities will provide approximately 26 to 53 percent of DGA-recommended limits.

⁸³ Prevalence of soy allergy alone is estimated to be about 0.27 percent of the general population. See: Katz, Y., Gutierrez-Castrellon, P., González, M. G., Rivas, R., Lee, B. W., & Alarcon, P. (2014). A comprehensive review of sensitization and allergy to soy-based products. *Clinical reviews in allergy & immunology*, 46(3), 272–281. <https://doi.org/10.1007/s12016-013-8404-9>.

The DGA emphasize the consumption of whole forms of fruits and vegetables over juice. While the DGA include 100 percent juice as part of the fruit and vegetable food category, it emphasizes whole fruit and a variety of vegetables from all subgroups, it places limits on juice amounts that should contribute towards an overall dietary pattern, and juice is not a recommended food. Also, juice is neither a separate food category nor a subgroup (like dark-green vegetables) in the dietary patterns that Americans should consume each day.

As noted by the NASEM committee, the AAP recommends that most fruit intake should be from whole fruit because whole fruit also contributes fiber and other important plant-based compounds that are removed during fruit juice processing.

The option for CVV substitution of juice aligns with both the AAP and DGA recommendations and provides additional flexibility to WIC participants by allowing them to select from options that may better meet their special dietary needs, cultural needs, and personal preferences. These changes will likely increase the consumption of whole fruits and vegetables among participants that prefer this substitution over juice.

All juice offered through the WIC food packages will be 64 fluid ounces, potentially decreasing vendor burden by streamlining options across food packages.

Federal Budgetary Costs:

The reduction of juice in all food packages accounts for an estimated net decrease of \$640 million in WIC food costs over five years. This estimate also accounts for an expected increase in the redemption rate of the juice benefit as a result of the added \$3 CVV juice substitution option, which slightly offsets cost savings. Specifically, NASEM estimates that the CVV substitution, combined with the overall decrease in amounts of juice issued, will increase the

redemption rate of juice by about 13 percent. Applying NASEM's estimate to current rates, the Department estimates that redemption rates for juice, including the \$3 CVV juice substitution, will increase from 63 percent in 2020 to 71 percent under the rule. Like the estimates for infant jarred fruit and vegetable redemptions, the estimated redemption rate for juice in the revised food packages accounts for both redemption of juice and redemption of the \$3 CVV substitution for juice.

Legumes and Eggs

Summary of Changes:

- Require both dry and canned legumes be allowed.
- Add required and optional substitution options for eggs.
- Add optional substitution options for peanut butter.

Context, Behavior Change, and Benefits:

As recommended by NASEM, this rule will require State agencies to authorize dried and canned legumes. Currently only dried legumes are required, and it is a State agency option to allow canned legumes. The NASEM committee noted that consumption of legumes, a source of fiber, protein, B vitamins, iron, zinc, and other nutrients, was below recommended amounts across WIC participant subgroups. To help address under-consumption of this nutrient-rich food, this provision will require State agencies to authorize both dried and canned legumes for WIC participants. State agencies are currently only required to authorize dried legumes, and allowing canned legumes is a State agency option.⁸⁴ Requiring canned legumes will reduce burden for

⁸⁴ According to the 2015 WIC Food Packages Policy Options report, 85 percent of State agencies authorized canned legumes in FY 2015. For more information, see: Thorn, B., Huret, N., Bellows, D., Ayo, E., Myers, R., & Wilcox-Cook, E. (2015). WIC Food Packages Policy Options Study II. Project Officer: Grant Lovellette. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support. Available online at: <https://www.fns.usda.gov/wic/wic-food-package-policy-options-ii>.

those participants who currently do not have access to canned legumes and who do not have the time or ability to prepare dried legumes.

Based on NASEM's recommendations, with modification, the final rule requires that State agencies allow the substitution of eggs with legumes or peanut butter when individually tailoring food packages. The rule also allows State agencies the option to authorize tofu as a substitute for eggs. Like eggs, legumes and peanut butter (to a lesser extent) are sources of choline, and both are sources of iron. Given iron's role in growth and development, the prevalence of inadequate intake among the WIC population, and the health consequences of inadequate intake, offering foods with iron is critical to WIC participants' health.

In addition, peanut butter and legumes are required foods in the food packages; therefore, the Department anticipates no additional administrative effort related to identifying and authorizing these foods as substitutes for eggs. Requiring peanut butter and legumes as substitutes for eggs is nutritionally appropriate, will not result in increased administrative burden, and increases equity in program delivery.

The rule also allows State agencies the option to authorize tofu as a substitute for eggs. Similar to eggs, tofu is a source of choline. Appropriate food package tailoring and nutrition education will need to address other food sources of iron, especially for participants determined to have low iron levels.

A new provision in the final rule allows State agencies the option to authorize nut and seed butters as an alternative to peanut butter when individually tailoring food packages for children and women for nutrition reasons (e.g., special dietary needs, underweight, and cultural food preferences). While NASEM did not recommend alternative nut and seed butter substitutions,

comments overwhelmingly supported allowing nut and seed butters as alternatives to peanut butter. This added choice will allow participants with peanut allergies the ability to receive nutritionally appropriate alternatives to peanut butter in their food package.

Federal Budgetary Costs:

Requiring all State agencies to authorize canned legumes is expected to increase food costs by around \$16 million over five years. This increase in costs is the result of both an estimated increase in the composite unit cost of legumes and a slight increase in redemption rates. The Department estimates that requiring State agencies to authorize canned legumes will slightly increase redemption rates from 38 percent in 2020 up to 39 percent under the rule. This increase is less than the increase that NASEM projects because NASEM's estimate also considers the effect of reducing the amounts of legumes issued—which is not changed in this rule. The estimated increase in redemption rates for legumes is also small because this provision only represents a policy change for an estimated 15 percent of WIC participants.⁸⁵ Similarly, the expanded availability of canned legumes to this group of participants is also estimated to slightly increase the composite unit price of legumes from \$2.57 in the current food package to \$2.62 under the rule as canned legumes are generally more expensive than dry legumes.⁸⁶

Requiring that State agencies offer legumes or peanut butter as a substitution for eggs is not projected to have a significant impact on food costs. Currently, participants are prescribed legumes or peanut butter in amounts that exceed the DGA recommended amounts for the food

⁸⁵ Thorn, B., Huret, N., Bellows, D., Ayo, E., Myers, R., & Wilcox-Cook, E. (2015). WIC Food Packages Policy Options Study II. Project Officer: Grant Lovellette. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support. Available online at: <https://www.fns.usda.gov/wic/wic-food-package-policy-options-ii>.

⁸⁶ Composite unit price of legumes represents the weighted average price per “allotment” – either 16 ounces of dry beans, 64 ounces of canned beans, or 18 ounces of peanut butter. Replicating NASEM's analysis, weights of 0.5, 0.31, and 0.19 were applied to peanut butter, dry beans, and canned beans, respectively, in the composite unit cost for legumes in the current food packages. To account for an increase in canned bean purchasing, weights of 0.5, 0.29, and 0.21 are applied to peanut butter, dry beans, and canned beans, respectively, under the revised food packages.

subgroups these items are within, and redemption rates for legumes and peanut butter are some of the lowest redemption rates among WIC food categories. Substitutions are limited to participants with an egg allergy, vegan participants, or for other nutritional reasons determined by the State agency. In 2018, only 1 percent of WIC participants in a study sample representative of 12 State agencies reported having an egg allergy.⁸⁷ The same study found only around 2 percent of participants reported being vegetarian—although USDA does not have data on prevalence of vegan diets among WIC participants, data on the general U.S. population suggest that vegan diets are even less common than vegetarian diets.⁸⁸ Therefore, while these policy changes provide important substitution options, their use is expected to be rare.

Allowing State agencies to offer other nut and seed butters as substitutions for peanut butter is also not projected to have a significant impact on food costs. In 2018, only 1 percent of WIC participants in a study sample representative of 12 State agencies reported having a peanut allergy.⁸⁹ Furthermore, an internal USDA analysis of NHANES 24-Hour Dietary Recall Data from 2017-2020 found that, among individuals who report consuming any kind of nut butter, 94 percent of nut butter consumption is peanut butter, 6 percent is almond butter, and all other kinds of nut and seed butters combined account for less than 1 percent of nut and seed butter consumption. These data points suggest that use of the nut and seed butter substitution would be rare, even when extended to participant preference and, therefore, likely would not have a meaningful impact on WIC food costs.

Fruit and Vegetables Forms and Varieties

⁸⁷ Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., & Bellows, D. (2021). WIC Food Cost-Containment Practices Study: Final report. U.S. Department of Agriculture, Food and Nutrition Service. Available at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>.

⁸⁸ Gallup. "Snapshot: Few Americans Vegetarian or Vegan." August 1, 2018. Available at: <https://news.gallup.com/poll/238328/snapshot-few-americans-vegetarian-vegan.aspx>.

⁸⁹ Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., & Bellows, D. (2021). WIC Food Cost-Containment Practices Study: Final report. U.S. Department of Agriculture, Food and Nutrition Service. Available at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>.

Summary of Changes:

- State agencies required to authorize an additional form of fruits and vegetables.
- Require vendors to stock at least 3 different vegetables.
- Expand what can be purchased with the CVV.

Context, Behavior Change, and Benefits:

As recommended by NASEM, the rule requires State agencies to authorize fresh and at least one other form (frozen, canned, and/or dried) of both fruits and vegetables for the food packages for child, pregnant, postpartum, and breastfeeding participants and require fresh and at least one other form (frozen or canned) for the CVV substitution for infant (ages 6 through 11 months) food packages.

Currently, WIC State agencies are not required, but may choose, to authorize other forms of fruits and vegetables in addition to fresh for child, pregnant, postpartum, and breastfeeding participants. In 2021, only eight of 89 State agencies did not authorize a form other than fresh. Therefore, the Department anticipates that the change will have minimal impact on most State agencies, while ensuring greater participant choice in those State agencies currently not authorizing other forms of fruits and vegetables. Additionally, with the increase in the CVV, having the option to buy other forms that are not as perishable as fresh may encourage fuller redemption and consumption of the fruits and vegetables benefit.

As recommended by NASEM, the rule also requires vendors to stock at least three varieties of vegetables. Currently, vendors are required to stock two varieties of vegetables. NASEM recommended the requirement for stocking a greater variety of vegetables as opposed to fruits because its review noted higher redemption of fruits compared to vegetables in two State

agencies.⁹⁰ NASEM also cited the lower intake of vegetables (particularly in contrast to fruits) in all WIC participant categories and recommended increased stocking requirements for vegetables.

Thus, the change is intended to increase the purchase and consumption of vegetables among WIC participants, particularly given the increase to the value of the CVV, by requiring vendors to offer more variety for participants to select from. If participants have more vegetables from which to select, they may redeem their CVV for more vegetables and increase their vegetable consumption. In addition, the change is intended to promote equity by ensuring all participants, regardless of where they redeem benefits, have access to a variety of vegetables, while incurring minimal additional burden on small vendors.

This revision could also have the spillover effect of increasing general availability of different types of vegetables in areas served by small WIC vendors, as those additional vegetable types will be available for retail purchase by the general public.

This rule also finalizes the provision to allow fresh herbs, to codify that State agencies cannot exclude white potatoes from purchase with the CVV, and to allow larger sizes of packaged fresh fruits and vegetables. The WIC CVV provides participants with flexibility to purchase fruits and vegetables that meet their dietary, taste, and cultural preferences. Expanding CVV-eligible items further to include fresh herbs and larger packages of fruits and vegetables is intended to encourage healthier dietary patterns and support increased convenience. Increased use of fresh herbs in diets can help enhance the flavor of foods in place of added sugar, fats, and sodium. Packaged fruits and vegetables provide a more convenient option for participants who see preparation time as a barrier to consumption.

⁹⁰ Other data sources (e.g., *WIC Infant and Toddler Feeding Practices Study 2*, available at <https://www.fns.usda.gov/wic/infant-and-toddler-feeding-practices-study-2-fourth-year-report>) also find that intake of vegetables among WIC participants is lower than the intake of fruits.

Federal Budgetary Costs:

The requirement for State agencies to authorize at least one additional form of fruits and vegetables other than fresh, the requirement that vendors stock at least three varieties of vegetables, and expanding what can be purchased with the CVV are not expected to increase food costs in WIC. Both provisions may incur some initial administrative burden on State agencies and vendors (as discussed in the Administrative Impacts section below); however, these administrative impacts are expected to be minimal and short-lived. Furthermore, because 81 out of 89 State agencies already authorize at least one form of fruits and vegetables other than fresh, the impact of this provision will only impact a small number of State agencies.

D. Impacts on Amounts of Food Groups Issued

As described above, the changes to the WIC food packages will improve the balance of nutritious foods to align with recommendations from NASEM, the 2020-2025 DGA, and the AAP. The changes also better reflect the supplemental nature of the WIC food package. Table 8 and Table 9 below summarize the estimated proportions of DGA daily recommended intakes for child (ages 2 through 4 years) and for pregnant participants, respectively, to provide examples of the impacts of the rule on the food package contents.

The 2020-2025 DGA identified average daily food group intakes of vegetables, seafood, and whole grains as falling below the recommended intake ranges for women and children across the general population. The DGA and the AAP⁹¹ also emphasize the consumption of whole fruits and vegetables over juice. A recent FNS study using 2011-2016 NHANES data found that

⁹¹ Heyman MB, Abrams SA, AAP SECTION ON GASTROENTEROLOGY, HEPATOLOGY, AND NUTRITION, AAP COMMITTEE ON NUTRITION. Fruit Juice in Infants, Children, and Adolescents: Current Recommendations. *Pediatrics*. 2017;139(6):e20170967

children participating in WIC under the current food package report overall inadequate intake levels for vegetables, seafood, and whole grains.⁹² The same study also found that children participating in WIC are less likely to consume any amount of whole fruits on a given day than higher income children (73 compared to 93 percent), but are also significantly more likely to consume 100 percent fruit juice (73 compared to 47 percent). As described in the previous section, and illustrated in Table 8 and Table 9 below, this rule will help WIC participants narrow these gaps in intake by improving the ratio of whole grain relative to refined grains and increasing the amounts of fish, whole fruits, and vegetables available in the WIC food packages.

To estimate the level of fruits relative to vegetables that should be accounted for when considering the proportion of DGA recommendations provided in the WIC food packages, NASEM based its estimates on the assumption that 67 percent of the CVV is typically spent on fruits while 33 percent is spent on vegetables—based on data collected from Wyoming and Texas at the time of NASEM’s analysis. This ratio of CVV redemption for fruits relative to vegetables is consistent with more recent internal USDA data collected from Ohio, Wyoming, and Texas in 2018 as part of a forthcoming study on CVV redemption patterns. Therefore, USDA maintains NASEM’s assumptions on relative CVV redemptions to the calculations for fruit and vegetable coverage under the current food packages in Table 8 and Table 9. However, USDA projects that the share of vegetables to fruits purchased with the CVV will even out at the increased CVV levels in this rule.⁹³ USDA estimates that 50 percent of CVV spending will be used to purchase fruits and 50 percent used to purchase vegetables at the revised benefit levels.

⁹² Gleason, S., Hansen, D., & Wakar, B. (2021). Indicators of diet quality, nutrition, and health for Americans by program participation status, 2011–2016: WIC report. Prepared by Insight Policy Research, Contract No. GS-10F-0136X. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Michael Burke. <https://www.fns.usda.gov/wic/indicators-diet-quality-nutrition-and-health-americans-program-participation-status-2011>.

⁹³ USDA expects that fruit and vegetable purchasing will be redeemed at closer to 50/50 split at the revised CVV level. This projection is based on the DGA coverage level for fruit in the current food package and the expectation that participants would not exceed DGA recommended fruit intakes under the higher CVV level (as would be the case if fruit continued to account for 67 percent of CVV redemption). If participants continued to use 67 percent of the increased CVV towards fruit and 33 percent towards vegetables, then children ages 2 to 4 years would receive 109 percent of the DGA recommended intake for fruits.

The rule will decrease the amount of total dairy and refined grains in the food packages for child, pregnant, postpartum, and breastfeeding participants. The decrease in the proportion of refined grains is the result of the revised whole grain breakfast cereal requirements described above. This change improves the balance between whole and refined grains and aligns with DGA guidelines that emphasize that at least half of total grain intake should be in the form of whole grains. The decrease in total dairy, as described in the previous section, will better align the food packages with the supplemental nature of WIC. Although the maximum monthly allowance for legumes exceeds the DGA daily recommended intakes for children and the allowance for peanut butter exceeds daily recommended intakes for children and women, USDA chose not to decrease the amounts provided for either food. This decision was made partly due to market availability, as it is more difficult to find package sizes for beans or peanut butter that fall below the current maximum allowances.

Table 8: Proportion of 2020-2025 DGA-Recommended Daily Amounts of Food Groups in the Current and Revised Food Packages for Children Ages 2 through 4 Years Assuming Full Redemption: Food Package IV-B

WIC Food Category	DGA Food Group	Units /day	DGA Daily Intake ^a	Current		Revised		Change in % of DGA met ^c
				WIC MMA ^b	% of DGA	WIC MMA	% of DGA	
Total fruit	Total Fruit	c-eq	1.25	0.90	72%	0.95	76%	4%
Juice, 100%		c-eq	0.63	0.53	85%	0.27	43%	-43%
Fruit (CVV) ^c		c-eq	0.63	0.37	58%	0.68	109%	51%
Total vegetables	Total Vegetables	c-eq	1.50	0.31	20%	0.81	54%	34%
Vegetables (CVV) ^d	Vegetables (CVV)	c-eq	1.50	0.18	12%	0.68	46%	34%
Legumes	Legumes	c-eq	0.07	0.13	177%	0.13	177%	0%
Total dairy	Total dairy	c-eq	2.50	2.13	85%	1.87	75%	-10%
Total grains	Total grains	oz-eq	4.50	2.27	50%	2.00	44%	-6%
Breakfast cereal	Refined grains	oz-eq	2.25	0.97	43%	0.78	35%	-9%

Breakfast cereal	Whole grains	oz-eq	2.25	0.23	58%	0.42	54%	-3%
Bread	Whole grains	oz-eq		1.07		0.80		
Total protein foods	Total protein foods	oz-eq	3.50	1.00	28%	1.20	33%	6%
	Nuts, seeds, and	oz-eq						
Peanut butter	soy		0.36	0.60	167%	0.60	167%	0%
Eggs	Meat, poultry, eggs	oz-eq	2.36	0.40	17%	0.40	17%	0%
Fish	Seafood	oz-eq	0.71	0.00	0%	0.20	28%	28%

Notes:

DGA = *Dietary Guidelines for Americans*; MMA = Maximum monthly allowance; c-eq = cup-equivalent; oz-eq = ounce equivalent

^a DGA daily intake recommendations based on a 1,300 calorie diet.

^b For alignment with DGA daily intake recommendations, WIC MMA represented in terms of daily amounts rather than monthly.

^c Change in % of DGA met is displayed as percentage point change.

^d CVV MMA in current food package assumes 67 percent redeemed on fruits and 33 percent redeemed on vegetables; CVV MMA in revised food package assume 50 percent redeemed on fruits and 50 percent redeemed on vegetables.

CVV intake estimates are based on assumption of fruit and vegetable unit cost of \$0.55/cup-equivalent and \$9 CVV in FY 2018, around the time of NASEM's estimates, under current food package compared to unit cost of \$0.61/cup-equivalent, accounting for inflation, and \$25 CVV in revised package in FY 2024.

Table 9: Proportion of 2020-2025 DGA-Recommended Amounts of Food Groups in the Current and Revised Food Packages for Pregnant Participants Assuming Full Redemption: Food Package V-A

WIC Food Category	DGA Food Group	Units /day	DGA Daily Intake ^a	Current		Revised		Change in % of DGA met ^c
				WIC MMA ^b	% of DGA	WIC MMA	% of DGA	
Total fruit	Total Fruit	c-eq	2.00	1.05	52%	1.50	75%	22%
Juice, 100%		c-eq	1.00	0.60	60%	0.27	27%	-33%
Fruit (CVV) ^c		c-eq	1.00	0.45	45%	1.23	123%	78%
Total vegetables	Total Vegetables	c-eq	3.00	0.47	16%	1.48	49%	34%
Vegetables (CVV) ^d	Vegetables (CVV)	c-eq	3.00	0.22	7%	1.23	41%	34%
Legumes	Legumes	c-eq	0.29	0.25	88%	0.25	88%	0%
Total dairy	Total dairy	c-eq	3.00	2.93	98%	2.13	75%	-23%
Total grains	Total grains	oz-eq	7.00	1.73	25%	2.80	40%	15%
Breakfast cereal	Refined grains	oz-eq	3.50	0.97	28%	0.78	22%	-5%
Breakfast cereal	Whole grains	oz-eq	3.50	0.23	22%	0.42	58%	36%
Bread	Whole grains	oz-eq		0.53		1.60		
Total protein foods	Total protein foods	oz-eq	6.00	1.60	27%	1.93	32%	6%
	Nuts, seeds, and soy	oz-eq						
Peanut butter			0.71	1.20	168%	1.20	168%	0%
Eggs	Meat, poultry, eggs	oz-eq	4.43	0.40	9%	0.40	9%	0%
Fish	Seafood	oz-eq	1.29	0.00	0%	0.33	26%	26%

Notes:

DGA = *Dietary Guidelines for Americans*; MMA = Maximum monthly allowance; c-eq = cup-equivalent; oz-eq = ounce equivalent

^a DGA daily intake recommendations based on a 2,200 calorie diet.

^b For alignment with DGA daily intake recommendations, WIC MMA represented in terms of daily amounts rather than monthly.

^c Change in % of DGA met is displayed as percentage point change.

^d CVV MMA in current food package assumes 67 percent redeemed on fruits and 33 percent redeemed on vegetables; CVV MMA in revised food package assume 50 percent redeemed on fruits and 50 percent redeemed on vegetables. CVV intake estimates are based on assumption of fruit and vegetable unit cost of \$0.55/cup-equivalent and \$11 CVV in FY 2018, around the time of NASEM's estimates, under current food package compared to unit cost of \$0.61/cup-equivalent, accounting for inflation, and \$45 CVV in revised package in FY 2024.

E. Administrative Impacts

Participant Burden

The rule is not expected to substantially change the administrative burden on participants. The general benefits and requirements of the Program are not changing. There will be a one-time burden on participants, estimated to account for an additional 5 minutes per participant, to become familiar with the new food packages and with new foods (e.g., nutrition education around canned fish consumption). In addition, the Department expects the revised food packages may take longer to explain than the current food packages on an ongoing basis because it may take longer to explain the expanded substitution options and package size flexibilities – to account for this, the Department estimates participants will spend an additional 3 minutes learning about the food package options at each certification appointment.

WIC Local Agency Burden

The rule is not expected to substantially change the long-term administrative burden on local WIC agencies. The general benefits and requirements of the Program are not changing. The Department estimates there will be a one-time 1-hour burden for local agencies to attend State Agency provided training on the food package changes. The food package changes are also expected to have both a short-term and ongoing impact on the length of WIC appointments. There will be a one-time burden on local WIC agencies for helping WIC participants become familiar with the new food package and with new foods, which is estimated to take local agencies about 5 minutes per participant in the first year the food package revisions are implemented (estimated to be FY 2026). In addition, the Department expects the revised food packages may take longer to explain than the current food packages on an ongoing basis because of the additional food package size flexibilities and additional substitution options – to account for this, USDA estimates local agencies will spend an additional 3 minutes explaining the food packages at each WIC certification appointment. The Department sought input from FNS

Regional Office staff in making these estimates. The Department notes that comments on this assumption were requested in the proposed regulatory impact analysis, but no comments on the specifics of the burden assumptions or calculations were received.

WIC State Agency Burden

The general benefits and requirements of the Program are not changing. However, the rule includes additional requirements and options for WIC-authorized foods that will impact State agencies' identification of foods, substitutions, brands, and packaging acceptable for use in the Program. The Department estimates a slight increase (5 to 10% increase, or about 3 hours per State agency) in the amount of time it takes annually for State agencies to identify foods that are acceptable for use in the Program in their State. In addition, the Department estimates 5 hours of training activities added to the burden in the first year related to the food package changes (this includes attending FNS training, developing guidance materials and providing other technical assistance to local agencies). Also, there may be a one-time burden on State WIC agencies for programming the new food packages into their MIS, but the Department expects that these activities can be absorbed into existing State WIC agency administrative processes for system maintenance and program administration, and the Department expects that the long-term administrative burden on State WIC agencies to be minimal. The Department notes that comments on this assumption were requested in the proposed regulatory impact analysis, and none were received.

Vendor Burden

The rule is not expected to change the administrative burden on most vendors. The general benefits and requirements of the Program are not changing. There may be a small one-time burden on small vendors if they currently only stock two varieties of vegetables, as the rule would require them to stock at least three varieties of vegetables, but the Department expects that

the long-term administrative burden on vendors will remain substantially unchanged. The Department notes that other provisions of the rule may decrease burden, at least on some vendors – for example, allowing 20 or 24 ounce package sizes for whole grain breads may lessen the burden on small vendors that have difficulty stocking the less common 16 ounce package size currently required by WIC, or allowing canned legumes to be stocked instead of dry legumes. Therefore, the total burden change to the average vendor will likely be minimal, though the burden changes may vary from vendor to vendor. The Department estimates that, as a result of the one-time burden on vendors to stock three varieties of vegetables, approximately 150 vendors will decide to discontinue participation in the Program (out of approximately 40,000 total vendors). This estimate assumes that among vendors with WIC redemptions in the bottom 10 percent nationwide, those such as small convenience stores that offer limited grocery items may have the greatest difficulty stocking an additional vegetable, and therefore would be most likely to be impacted. The Department notes that comments on this assumption were requested in the proposed regulatory impact analysis, and none were received.

Food Manufacturer Burden

The changes to the food packages were selected to align with products currently available on the market, so the Department expects that the new food package implementation to have exceedingly minimal effects on food manufacturers' need to reformulate products or create new products or package sizes. The Department expects that most manufacturers will not have to reformulate any products to meet the requirements of this rule; in those rare cases where minor reformulation or repackaging may be necessary, USDA does not expect this burden to be more pronounced than the burden of regularly reviewing and reformulating products within a competitive marketplace, so USDA expects the long-term administrative burden on food manufacturers to remain substantially unchanged. The Department notes that comments on this assumption were requested in the proposed regulatory impact analysis, and none were received.

Administrative Costs

As described above, USDA expects most administrative burden and costs associated with this rule to be highly localized, most to be one-time and minimal, and/or to be absorbed within current programmatic overhead. Specifically, USDA only expects measurable administrative cost increases for State agencies and local agencies to account for the added time for the identification of authorized foods and for the explanation of the food package changes to WIC participants. USDA estimates total administrative costs to State agencies and local agencies to a one-time amount of about \$31.6 million in FY 2025.

A detailed accounting of the State agency and local agency burden (OMB 0584-0043) is provided in the annual burden adjustment estimates published with this rule. Information provided by FNS Regional Office staff (with direct, routine contact with State agencies) was used to determine the burden estimates. In total, USDA estimates that each of the 89 State agencies will spend an additional 3 hours identifying acceptable foods in the first year the provisions are implemented, or about 267 total hours across all State agencies. This increase in burden is estimated to increase State agency administrative costs by around \$16,000 in FY 2025.

As described above, State and local WIC agencies are also expected to incur some burden for training activities related to the changes. The 5 hours estimated for State agency training activities is estimated to increase administrative costs by around \$27,000 while the 1 hour of training for each of the 1,808 local agencies is estimated to increase administrative costs by around \$99,000. USDA also estimates that in the first year following the food package changes, WIC staff at the local agency level will take an additional 5 minutes per participant to explain the food package changes to all participants. Multiplying this time by the over 6 million annual WIC participants, accounts for approximately 572,000 add burden hours at a cost of \$31.4 million in FY 2025. As described above, the Department also expects local agency staff will take an

additional 3 minutes to explain the options in the revised food packages at each WIC certification appointment on an ongoing basis. While this is a small change at the individual level, when applied to all approximately 10 million WIC certifications estimated per year, this additional staff time is estimated to account for an additional \$147 million in administrative costs over five years. Taken together, the administrative burden for State and local agency staff is estimated to amount to 1,085,018 hours at a total cost of \$179 million over five years from FY 2025 through FY 2029.

Table 10: Administrative Costs Associated with Staff Burden

	Additional Burden Hours	Fiscal Year					Total
		2025	2026	2027	2028	2029	
State Agency Staff Burden							
Identifying acceptable foods	267	\$ 0.016	n/a	n/a	n/a	n/a	\$ 0.016
State agency training activities	445	\$ 0.027	n/a	n/a	n/a	n/a	\$ 0.027
Local Agency Staff Burden							
Local agency training activities	1,808	\$ 0.099	n/a	n/a	n/a	n/a	\$ 0.099
Explaining food package changes (one-time)	572,282	\$ 31.485	n/a	n/a	n/a	n/a	\$ 31.485
Explaining revised food package options (ongoing)	510,216	\$ 28.070	\$ 28.716	\$ 29.376	\$ 30.052	\$ 30.743	\$ 146.956
Total:	1,085,018	\$ 59.698	\$ 28.716	\$ 29.376	\$ 30.052	\$ 30.743	\$ 178.584

Notes:

Hourly labor costs are based on Bureau of Labor and Statistics (BLS) estimates for total compensation for FY2022 and inflated to FY 2025 – FY 2029 according to the CPI-W projections in OMB’s economic assumptions for the FY2024 President’s Budget request.

State agency staff labor costs use BLS Hourly Total Cost of Compensation for all State and Local workers, series CMU301000000000D, available at: <https://data.bls.gov/timeseries/CMU301000000000D>.

Local agency staff labor costs use BLS Hourly Total Cost of Compensation for state and local workers in healthcare and social assistance industries, series CMU301620000000D, available at: <https://beta.bls.gov/dataViewer/view/timeseries/CMU301620000000D>.

F. Participation Impacts

As noted in the above analysis, the Department’s primary estimate includes a shift of 5 percent of fully formula-fed infant-mother dyads to partially breastfeeding dyads, similar to the assumptions made in the NASEM cost analysis. Other than the shift towards increased breastfeeding under the revised food packages (as described above), NASEM projects the rest of their cost neutral food package changes will not have a meaningful impact on participation. This final rule goes beyond NASEM’s cost neutral recommendations for the CVV, so it is reasonable

to consider an additional participation impact from this provision. The Department expects that much of the potential participation impact of the CVV on participation will have already been realized in FY 2022 through FY 2024, however, due to the implementation of the higher CVV amounts in those years. Nevertheless, it is possible that this rule could have a modest, conceptual participation impact by sustaining the levels of participation seen in FY 2022 – FY 2023 and thus far in FY 2024 if compared to a hypothetical future in which CVV values return to pre-2021 CVV levels.

Beyond FY 2023, the baseline and revised costs presented in this analysis also both assume increases in WIC participation as a result of ongoing efforts supported by the \$390 million in additional WIC funding made available in the American Rescue Plan Act of 2021 (ARPA, Pub. L. 117-2) to carry out outreach, innovation, and program modernization. Therefore, as described in the baseline section above, it is difficult to attempt to disentangle any single, potential participation impact from several concurrent factors that may be affecting WIC participation.

The Department acknowledges that, because the rule goes beyond NASEM’s cost neutral recommendations (particularly in the increases to the CVV), the rule may be more likely to have an impact on participation. Given planned efforts to increase participation and retention under ARPA, as described above, however, as well as the fact that the CVV increases have already been implemented in FY 2022, FY 2023, and FY 2024, the Department is uncertain at this time how much of an increase in participation may be attributable solely to the rule. The Department presents additional cost estimates in the Uncertainties section below, which demonstrate how the cost of the rule would be affected if participation remains flat or increases compared to our primary estimate.

G. Market Impacts

Generally, the changes made by this rule attempt to align with products widely available in the current marketplace and to provide WIC participants with additional choices to meet their cultural and personal preferences, and special dietary needs, while at the same time providing food packages that supply appropriate, supplemental amounts of key nutrient-dense foods. For example, the package size flexibilities, and the addition of canned legumes, milk substitutions, forms of fruit and vegetables, etc. are all designed to increase product choice in line with products currently available in the U.S. food marketplace and should not result in additional burden on food manufacturers. The Department anticipates that the general impact of this rule on the wider U.S. food market will be small and easily absorbed by the competitive marketplace. The Department notes that comments on this assumption were requested in the proposed regulatory impact analysis, and none were received.

The dollar impacts of the rule on the different food categories are presented in our primary estimate in Table 2d. For all food categories, the Department expects that the change in food purchases attributable to the rule will comprise only a small fraction of the total market for each food category in the United States. For example, the Department estimates that the total net change to the U.S. baby food market will be less than \$100 million over 5 years; however, the baby food market in the United States was estimated to be approximately \$13 billion in 2018, growing to \$17 billion by 2026,⁹⁴ so the changes represent less than 0.2 percent of the total U.S. baby food market over the estimate period. Similarly, the U.S. canned fish market was estimated to be approximately \$5 billion in 2021, so the increase in fish represents approximately 0.5 percent of the total U.S. canned fish market. The changes will cause even smaller impacts to the breakfast cereal, grain, cheese, and fluid milk markets – for example, an internal USDA market analysis using IRI retail scanner data estimates that the decrease in milk spending represents 0.1 percent of the U.S. fluid milk market; the decrease in cheese spending represents

⁹⁴ For more information, see <https://www.alliedmarketresearch.com/us-baby-food-market>.

0.04 percent of the U.S. cheese market; and the decrease in cereal spending represents 0.02 percent of the U.S. cereal market. The Department expects that the competitive marketplaces for the various food items will easily absorb the changes in purchasing patterns attributable to this rule without disruption or significant price changes.

The two biggest cost provisions affect the juice market (the decrease in juice) and the fruit and vegetable market (the increase in CVV value). Even in these instances, the Department expects the competitive marketplaces to absorb these changes with minimal disruption. The U.S. juice market was estimated to be \$24 billion in 2021, growing to \$27 billion by 2026.⁹⁵ Even though the decrease in juice attributable to WIC may seem substantial, it accounts for only about 0.5 percent of the total U.S. juice market over the estimate period; a separate, internal USDA market analysis using IRI scanner data estimated that the decrease in juice spending will account for 0.8 percent of the U.S. juice market. Furthermore, many fruit juice manufacturers produce alternate products that will be purchasable with the CVV in many States (e.g., frozen fruits, canned fruits, dried fruits, etc.), so many fruit juice manufacturers will have the opportunity to substitute at least some of the decrease in spending on their juice products with increased spending on other products.

Similarly, the Department anticipates that the U.S. fruit and vegetable market is large and varied enough to absorb the increased purchasing power of the CVV with minimal disruption (in reality, the U.S. fruit and vegetable market has already absorbed the increased purchasing power of the CVV with minimal disruption, as the increase has been in effect since FY 2022). The total size of the U.S. fruit and vegetable market is more difficult to estimate with non-proprietary data sources (the Department did not have access to the necessary proprietary data sources on the U.S. fruit and vegetable market when preparing this analysis); however, ERS estimates that farm

⁹⁵ For more information, see <https://www.statista.com/outlook/cmo/non-alcoholic-drinks/juices/united-states>.

cash receipts for “vegetables and melons,” “fruits and nuts,” and “mushrooms” combined was approximately \$47 billion in 2020.⁹⁶ The value of the processed fruit and vegetable market in North America may have been approximately \$90 billion in 2020.⁹⁷ Just as examples, the increase in the CVV value would account, separately, for less than 2 percent of the value of farm cash receipts, and for less than 1 percent of the processed fruit and vegetable market.

The increase in economic activity attributable to the rule will also increase revenues to farmers, farmers’ markets (to the extent that WIC participants choose to redeem their additional CVV benefits at farmers’ markets), food processors, food distributors, and food retailers. The Department does not attempt to estimate separate direct or indirect effects for each of these economic sectors, such an estimate would be too complex and too uncertain to estimate with precision.

H. Uncertainties

WIC Participation Trends

As stated above and outlined in Table 5, the primary analysis assumes WIC participation growth is consistent with current projections. These estimates assume an increase in participation through FY 2027 with slowing participation growth through FY 2028 and FY 2029. Table 11, below, compares the cost of the rule under current participation projections compared to a model that assumes flat WIC participation across all categories between FY 2025 to FY 2029 (remaining flat at projected FY 2024 average participation of 6.85 million). As shown below, the projected increase in participation accounts for \$187 million of the food cost of the rule over five years. An additional 1 percent participation growth each year above our primary estimate would increase food costs by an additional \$148 million over five years.

Table 11: Projected Food Cost of Rule by Participation Change

⁹⁶ See <https://data.ers.usda.gov/reports.aspx?ID=17845>.

⁹⁷ For more information, see <https://www.gminsights.com/industry-analysis/processed-fruits-and-vegetables-market>.

	Fiscal Year (millions)					Total
	2025	2026	2027	2028	2029	
Additional Growth:						
Primary Analysis + 1% additional annual growth per year between FY 2025 and FY 2029	\$1,056.04	\$956.25	\$989.80	\$1,036.10	\$1,057.33	\$5,095.5
Primary Analysis:	\$1,045.75	\$937.70	\$961.14	\$996.15	\$1,006.49	\$4,947.2
No Growth: Flat WIC participation among all participant categories, FY 2025-2029	\$1,029.04	\$907.97	\$915.79	\$949.05	\$958.81	\$4,760.7

Cash-Value Voucher Redemption Rate

Compared to the current food packages outlined in 7 CFR 246.10, the increase to the CVV accounts for the largest share of the costs associated with the rule, and as such, even small variations in the model for the CVV cost estimates can result in large changes to the cost of the rule. Redemption rates for all WIC-eligible foods, including the CVV, vary by State agency and by month or season. Redemption rate data is also relatively new, as many States have only fully implemented electronic benefits transfer (EBT) in WIC over the past few years.⁹⁸ USDA does not yet have a routine process in place for collecting EBT data on an ongoing basis. There also remains some uncertainty around how such a large increase to the CVV amount will impact CVV redemption rates. Preliminary data, described earlier in this analysis, suggest that CVV redemption rates in selected States have remained close to typical levels even under the temporary increase to a \$35 CVV for all participants authorized under ARPA. Based on the data collected during the ARPA temporary CVV increase, the Department estimates in this analysis assume CVV redemption rates will maintain at 71.6 percent in both the current and revised food

⁹⁸ EBT redemption data allows for analysis of redemptions at the food item level. Prior to the onset of EBT, data on redemption of paper WIC food vouchers were generally limited to overall redemption of WIC benefit values.

packages. Table 12, below, illustrates the impact on the food cost of the rule if the actual CVV redemption rate is just 3 percentage points higher or 3 percentage points lower than the current projections. A 3-percentage point change in the CVV redemption rate under this model is estimated to account for a \$233 million change in the cost of the revised CVV benefit amounts under this rule.

Table 12: Projected Food Cost of CVV Increase at Different Redemption Rates

	Fiscal Year (millions)					Total
	2024	2025	2026	2027	2028	
Higher (+3): 74.6 percent	\$ 1,089.6	\$ 982.8	\$ 1,008.0	\$ 1,044.6	\$ 1,055.5	\$ 5,180.5
Current: 71.6 percent	\$ 1,045.8	\$ 937.7	\$ 961.1	\$ 996.1	\$ 1,006.5	\$ 4,947.2
Lower (-3): 68.6 percent	\$ 1,001.9	\$ 892.6	\$ 914.3	\$ 947.7	\$ 957.5	\$ 4,714.0

VI. Alternatives

Additional CVV Increase for Pregnant Participants

Some public comments requested that USDA further increase the CVV for pregnant participants to match the CVV for breastfeeding participants. The amounts in this rule reflect NASEM’s evidence-based recommendations to provide approximately half of the recommended daily amounts of fruits and vegetables for each participant group and are consistent with supplemental amounts relative to the 2020-2025 DGA recommendations for the applicable life stages of WIC adult participants (postpartum, pregnant, and lactating) based on the average caloric needs of these various groups (2,000 kcal, 2,200 kcal, and 2,400 kcal, respectively). Therefore, the Department does not make the requested change in this final rule. If the CVV value for pregnant participants were increased to match the levels for breastfeeding participants, then the final rule

would increase Federal spending by an additional \$119 million over five years between FY 2025 and FY 2029.

Rounding CVV Up

USDA received public comments calling for a change to the rounding procedure used when adjusting the CVV for inflation as described in § 246.16(j)(5). The commenters suggested that the CVV be rounded up to the nearest multiple of \$1 instead of rounded down as currently defined in regulations. In their report, NASEM made no recommendations regarding the rounding procedures. The proposed rule did not include any changes to the current rounding procedures or request public comment. The approach selected by FNS aligns with the one used in the Supplemental Nutrition Assistance Program (SNAP), which also rounds inflation adjustments down to the next multiple of \$1 (7 CFR 273.10), as well as the National School Lunch Program's national average payment rates, which are rounded down to the nearest cent (7 CFR 210.4(b)). Therefore, the Department is not making this change in this rule. If the CVV were to be rounded up instead of rounded down, beginning in FY 2025, this change would increase the cost of the CVV changes in this rule by a total of \$234 million over five years between FY 2025 and FY 2029.

NASEM's Proposed Fish and Legumes Rotation

NASEM recommended adding canned fish to the child, pregnant, postpartum, and partially breastfeeding participant food packages on a three-month rotation, alternating with peanut butter and legumes. The Department decided to reject this alternative in favor of providing canned fish to all pregnant, postpartum and breastfeeding participants and most child participants while keeping the existing peanut butter and legume benefits.

In evaluating the three-month rotation recommendation, the Department determined that this would be too confusing to participants and would be administratively challenging to implement. There are currently no WIC foods provided on a three-month rotation. In addition, the cost neutrality constraints that NASEM applied in making its recommendations are outweighed by the Department's goals of promoting nutrition security and equitable access to foods.

Appendix: Detailed Cost Estimates

Table A-1: Cash-Value Voucher (CVV), Detailed Cost Estimate

Food Package	Baseline vs. Revised	MMA (\$)		RR	Redeemed	Cost by Food Package (\$, millions)					Cost Difference, Revised vs. Baseline (\$, millions)					
						2025	2026	2027	2028	2029	2025	2026	2027	2028	2029	Total
I-FF-A	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-FF-B	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-A	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-B	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-C	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF-A	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF-B	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-FF	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-BF/FF	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-BF	Baseline				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised				0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
IV-A	Baseline	10	71.6%		7.16	94.4	96.0	107.3	107.3	107.3	160.5	163.1	165.8	175.6	175.6	840.6
	Revised	27	71.6%		19.33	255.0	259.1	273.1	282.9	282.9						
IV-B	Baseline	10	71.6%		7.16	229.0	232.7	260.2	260.2	260.2	389.3	395.6	402.1	425.8	425.8	2,038.6
	Revised	27	71.6%		19.33	618.3	628.4	662.2	686.0	686.0						
V-A	Baseline	13	71.6%		9.31	62.9	63.9	65.0	70.0	70.0	169.4	177.1	189.9	190.0	195.0	921.3
	Revised	48	71.6%		34.37	232.3	241.0	254.9	259.9	265.0						
V-B	Baseline	13	71.6%		9.31	38.7	39.3	40.0	43.0	43.0	119.0	124.0	129.1	132.2	135.3	639.6
	Revised	53	71.6%		37.95	157.7	163.3	169.0	175.2	178.3						
VI	Baseline	13	71.6%		9.31	50.8	51.7	52.5	56.6	56.6	136.9	143.1	153.5	153.5	157.6	744.6
	Revised	48	71.6%		34.37	187.7	194.8	206.0	210.1	214.1						
VII	Baseline	13	71.6%		9.31	22.9	23.3	23.7	25.5	25.5	70.6	73.5	76.5	78.3	80.2	379.0
	Revised	53	71.6%		37.95	93.5	96.8	100.2	103.8	105.7						
Total:						\$ 1,045.8	\$ 1,076.4	\$ 1,116.9	\$ 1,155.3	\$ 1,169.4	\$ 5,563.8					

Notes: FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; MMA = maximum monthly allowance; RR = redemption rate
 Figures may not sum due to rounding.

Table A-2: Canned Fish, Detailed Cost Estimate

Cost by Food Package (\$, millions) **Cost Difference, Revised vs. Baseline (\$, millions)**

	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
II-FF	Baseline	624	80.8%	504.19	1,052	1,093	1,137	1,163	1,190	0.0	0.0	-56.8	-58.1	-59.5	-174.4
	Revised	624	80.8%	504.19	1,052	1,093	1,080	1,105	1,130						
II-BF/FF	Baseline	312	80.8%	252.10	97.3	101.1	105.1	107.5	110.0	0.0	0.0	28.4	29.1	29.7	87.2
	Revised	312	80.8%	252.10	97.3	101.1	133.5	136.6	139.8						
II-BF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
IV-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
IV-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
V-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
V-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
VI	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
VII	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
Total (pre-rebate):										\$ 0.0	\$ 6.6	-\$ 49.6	-\$ 50.8	-\$ 51.9	-\$ 145.7
Total (post-rebate):										\$ 0.0	\$ 1.5	-\$ 11.4	-\$ 11.7	-\$ 11.9	-\$ 33.5

Notes: FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; MMA = maximum monthly allowance; RR = redemption rate. Figures may not sum due to rounding. Formula costs reflect shift of 5 percent of infant-mother dyads from fully formula fed to partially breastfed food packages one year after implementation.

Table A-8: Cheese, Detailed Cost Estimate

Food Package	Baseline vs. Revised	MMA (oz.)	RR	Redeemed	Cost by Food Package (\$, millions)					Cost Difference, Revised vs. Baseline (\$, millions)					
					2025	2026	2027	2028	2029	2025	2026	2027	2028	2029	Total
I-FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF/FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF/FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF/FF-C	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
II-FF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						

	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
IV-A	Baseline	32	44.0%	14.08	47.2	49.1	51.1	52.2	53.4	0.0	-17.6	-18.3	-18.7	-19.1	-73.7
	Revised	24	49.8%	11.95	47.2	31.5	32.8	33.5	34.3						
IV-B	Baseline	32	44.0%	14.08	114.6	119.1	123.8	126.7	129.6	0.0	-42.6	-44.3	-45.4	-46.4	-178.7
	Revised	24	49.8%	11.95	114.6	76.5	79.5	81.3	83.2						
V-A	Baseline	16	44.0%	7.04	12.1	12.6	13.1	13.4	13.7	0.0	19.7	20.5	21.0	21.5	82.7
	Revised	48	49.8%	23.91	12.1	32.3	33.6	34.4	35.2						
V-B	Baseline	16	44.0%	7.04	7.4	7.7	8.0	8.2	8.4	0.0	12.1	12.6	12.9	13.2	50.9
	Revised	48	49.8%	23.91	7.4	19.9	20.7	21.1	21.6						
VI	Baseline	16	44.0%	7.04	9.8	10.2	10.6	10.8	11.1	0.0	15.9	16.6	17.0	17.4	66.8
	Revised	48	49.8%	23.91	9.8	26.1	27.1	27.8	28.4						
VII	Baseline	16	44.0%	7.04	4.4	4.6	4.8	4.9	5.0	0.0	7.2	7.5	7.6	7.8	30.1
	Revised	48	49.8%	23.91	4.4	11.8	12.2	12.5	12.8						
Total:										\$ 0.0	-\$ 5.2	-\$ 5.4	-\$ 5.6	-\$ 5.7	-\$ 21.9

Notes: FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; MMA = maximum monthly allowance; RR = redemption rate
 Figures may not sum due to rounding.

Table A-10: Milk and Milk Alternatives, Detailed Cost Estimate

Food Package	Baseline vs. Revised	MMA (qt.)	RR	Redeemed	Cost by Food Package (\$, millions)					Cost Difference, Revised vs. Baseline (\$, millions)					
					2025	2026	2027	2028	2029	2025	2026	2027	2028	2029	Total
I-FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-C	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-FF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-BF/FF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-BF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
IV-A	Baseline	16	70.6%	11.30	222.3	231.1	240.2	245.8	251.5	0.0	-15.2	-15.8	-16.2	-16.6	-63.8
	Revised	12	81.9%	9.83	222.3	215.9	224.4	229.6	234.9						

IV-B	Baseline	16	56.1%	8.98	407.6	423.7	440.5	450.7	461.1	0.0	5.6	5.9	6.0	6.1	23.6
	Revised	14	63.2%	8.85	407.6	429.4	446.4	456.7	467.2						
V-A	Baseline	22	56.1%	12.34	110.9	115.3	119.9	122.6	125.5	0.0	-10.1	-10.5	-10.7	-11.0	-42.2
	Revised	16	66.1%	10.58	110.9	105.2	109.4	111.9	114.5						
V-B	Baseline	22	56.1%	12.34	68.2	70.9	73.7	75.4	77.1	0.0	-6.2	-6.4	-6.6	-6.7	-26.0
	Revised	16	66.1%	10.58	68.2	64.7	67.3	68.8	70.4						
VI	Baseline	16	56.1%	8.98	69.6	72.3	75.2	76.9	78.7	0.0	3.4	3.5	3.6	3.7	14.2
	Revised	16	59.1%	9.46	69.6	75.7	78.7	80.5	82.4						
VII	Baseline	24	56.1%	13.46	43.8	45.5	47.3	48.4	49.6	0.0	-5.6	-5.8	-6.0	-6.1	-23.5
	Revised	16	68.1%	10.90	43.8	39.9	41.5	42.5	43.5						
Total:										\$ 0.0	-\$ 28.1	-\$ 29.2	-\$ 29.9	-\$ 30.6	-\$ 117.7

Notes: FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; MMA = maximum monthly allowance; RR = redemption rate

Table A-11: Infant Cereals, Detailed Cost Estimate

Food Package	Baseline vs. Revised	MMA			Cost by Food Package (\$, millions)					Cost Difference, Revised vs. Baseline (\$, millions)					
		(oz.)	RR	Redeemed	2025	2026	2027	2028	2029	2025	2026	2027	2028	2029	Total
I-FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF/FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF/FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF/FF-C	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
I-BF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
II-FF	Baseline	24	43.4%	10.42	30.9	32.1	33.3	34.1	34.9	0.0	-19.1	-19.9	-20.3	-20.8	-80.1
	Revised	8	52.6%	4.21	30.9	13.0	13.5	13.8	14.1						
II-BF/FF	Baseline	24	43.4%	10.42	5.7	5.9	6.2	6.3	6.5	0.0	-3.5	-3.7	-3.8	-3.8	-14.8
	Revised	8	52.6%	4.21	5.7	2.4	2.5	2.6	2.6						
II-BF	Baseline	24	43.4%	10.42	5.3	5.5	5.7	5.8	6.0	0.0	-1.0	-1.1	-1.1	-1.1	-4.4
	Revised	16	52.6%	8.42	5.3	4.4	4.6	4.7	4.8						
IV-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
IV-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						
V-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0						

	Revised	0.00	0.0	0.0	0.0	0.0	0.0	0.0							
	Baseline	0.00	0.0	0.0	0.0	0.0	0.0	0.0							
V-B	Revised	0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Baseline	0.00	0.0	0.0	0.0	0.0	0.0	0.0							
VI	Revised	0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Baseline	0.00	0.0	0.0	0.0	0.0	0.0	0.0							
VII	Revised	0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total:									\$ 0.0	-\$ 23.7	-\$ 24.6	-\$ 25.2	-\$ 25.8	-\$ 99.3	

Notes: FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; MMA = maximum monthly allowance; RR = redemption rate
 Figures may not sum due to rounding.

Table A-12: Juice, Detailed Cost Estimate

Food Package	Baseline vs. Revised	MMA (oz.)	RR	Redeemed	Cost by Food Package (\$, millions)					Cost Difference, Revised vs. Baseline (\$, millions)					
					2025	2026	2027	2028	2029	2025	2026	2027	2028	2029	Total
I-FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF/FF-C	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF-A	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
I-BF-B	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-FF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-BF/FF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
II-BF	Baseline			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Revised			0.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
IV-A	Baseline	128	63.2%	80.90	68.7	71.4	74.3	76.0	77.7	0.0	-31.1	-32.4	-33.1	-33.9	-130.5
	Revised	64	71.3%	45.65	68.7	40.3	41.9	42.9	43.9						
IV-B	Baseline	128	63.2%	80.90	166.6	173.2	180.1	184.2	188.5	0.0	-75.5	-78.5	-80.3	-82.1	-316.4
	Revised	64	71.3%	45.65	166.6	97.8	101.6	104.0	106.4						
V-A	Baseline	144	63.2%	91.01	39.6	41.2	42.8	43.8	44.8	0.0	-20.5	-21.3	-21.8	-22.3	-86.0
	Revised	64	71.3%	45.65	39.6	20.7	21.5	22.0	22.5						
V-B	Baseline	144	63.2%	91.01	24.4	25.3	26.3	26.9	27.6	0.0	-12.6	-13.1	-13.4	-13.7	-52.9
	Revised	64	71.3%	45.65	24.4	12.7	13.2	13.5	13.8						

VI	Baseline	96	63.2%	60.67	21.3	22.2	23.1	23.6	24.1	0.0	-5.5	-5.7	-5.8	-6.0	-23.0
	Revised	64	71.3%	45.65	21.3	16.7	17.4	17.8	18.2						
VII	Baseline	144	63.2%	91.01	14.4	15.0	15.6	16.0	16.3	0.0	-7.5	-7.8	-8.0	-8.1	-31.4
	Revised	64	71.3%	45.65	14.4	7.5	7.8	8.0	8.2						
Total:										\$ 0.0	-\$ 152.7	-\$ 158.8	-\$ 162.4	-\$ 166.2	-\$ 640.1

Notes: FF = formula fed; BF/FF = partially (mostly) breastfeeding; BF = fully breastfeeding; MMA = maximum monthly allowance; RR = redemption rate
 Figures may not sum due to rounding.

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