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level is pending. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.

(4) The State and local agency shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.

(1) *Judicial review.* If a State level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21236, June 4, 1987; 59 FR 11503, Mar. 11, 1994; 71 FR 56730, Sept. 27, 2006; 73 FR 11312, Mar. 3, 2008]

Subpart D—Participant Benefits

§ 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 of 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.

(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. 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 of paragraphs (e)(9) through (e)(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, and abide by the authorized substitution rates for WIC food substitutions as specified in Tables 1 through 3 of paragraphs (e)(9) through (e)(11) of this section;

(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

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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 (m)(2).

(c) *Nutrition tailoring.* The full maximum monthly allowances of all supplemental foods in all food packages must be made available to participants if 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 cannot be made for categories, groups or subgroups of WIC participants. 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

(3) The quantities necessary to supplement another programs' 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;

(iii) Any exempt infant formula;

(iv) Any WIC-eligible nutritional;

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

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

(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 of 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 program, 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 (e)(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 (d)(4)(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 (e)(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, by facsimile or by 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 week's 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 breastfed infants 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 infant participants from birth through age 5 months who do not have a condition qualifying them to receive Food Package III. 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 of 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*—(A) *Birth to one month*. Two infant food packages are available during the first month after birth—fully breastfeeding and fully formula-feeding. State agencies also have the option to make

available a third food package containing not more than one can of powder infant formula in the container size that provides closest to 104 reconstituted fluid ounces to breastfed infants on a case-by-case basis. The infant receiving this food package is considered partially breastfeeding. State agencies choosing to make available a partially breastfeeding package in the first month may not standardize issuance of this food package. Infant formula may not be routinely provided during the first month after birth to breastfed infants in order to support the successful establishment of breastfeeding.

(B) *One through 5 months.* Three infant food packages are available from 1 month 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 of 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 of 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 require-

ments described in paragraph (d) of this section.

(iv) *Physical forms.* Local agencies must issue all WIC formulas (WIC formulas mean all 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. The maximum monthly allowances, allowed options and substitution rates of supplemental foods for infants in Food Packages I are stated in Table 1 of 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 infant participants from 6 through 11 months of age who do not have a condition qualifying them to receive Food Package III.

(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 (e)(1)(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 of 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 child participants 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–VII); 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 apparatus 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, cheese, eggs, canned fish, fresh fruits and vegetables, breakfast cereal, whole wheat/whole grain bread, juice, 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 of 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 of 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 nutritionals 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 nutritionals 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 nutritionals under Food Package III in situations where reimbursement is not provided by another entity.

(4) *Food Package IV—Children 1 through 4 years—(i) Participant category served.* This food package is designed for issuance to participants 1 through 4 years of age who do not have a condition qualifying them to receive Food Package III.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fresh fruits and vegetables, whole wheat/whole grain bread, eggs, and legumes or peanut butter are the categories of supplemental foods authorized in this food package. The maximum monthly allowances, allowed options and substitution rates of supplemental foods for children in Food Package IV are stated in Table 2 of paragraph (e)(10) of this section.

(5) *Food Package V—Pregnant and partially (mostly) breastfeeding women—(i) Participant category served.* This food package is designed for issuance to women participants with singleton pregnancies who do not have a condition qualifying them to receive Food Package III. This food package is also designed for issuance to partially (mostly) breastfeeding women participants, up to 1 year postpartum, who do not have a condition qualifying them to receive Food Package III and whose partially (mostly) breastfed infants receive formula from the WIC program in amounts that do not exceed the maximum allowances described in Table 1 of paragraph (e)(9) of this section. Women participants partially (mostly) breastfeeding more than one infant from the same pregnancy, pregnant women fully or partially breastfeeding singleton infants, and women participants pregnant with two or more fetuses, 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 fruits and vegetables, whole wheat/whole grain bread, eggs, legumes and peanut butter 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 V are stated in Table 2 of paragraph (e)(10) of this section.

(6) *Food Package VI—Postpartum women—(i) Participant category 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 of paragraph (e)(9) of this section, and who do not have a condition qualifying them to receive Food Package III.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fresh fruits and vegetables, eggs, and legumes or peanut butter 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 of paragraph (e)(10) of this section.

(7) *Food Package VII—Fully breastfeeding—(i) Participant category 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. This food package is also designed for issuance to women participants pregnant with two or more fetuses, women participants 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 participants fully breastfeeding multiple infants from the

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same pregnancy receive 1.5 times the supplemental foods provided in Food Package VII.

(ii) *Authorized categories of supplemental foods.* Milk, cheese, breakfast cereal, juice, fresh fruits and vegetables, whole wheat/whole grain bread, eggs, legumes, 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 of paragraph (e)(10) of this section.

(8) *Supplemental Foods—Maximum monthly allowances, options and substi-*

tution rates, and minimum requirements. Tables 1 through 3 of paragraphs (e)(9) through (e)(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 of 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, options and substitution rates of supplemental foods for infants in Food Packages I, II and III are stated in Table 1 as follows:

TABLE 1—FULL NUTRITION BENEFIT (FNB) AND MAXIMUM MONTHLY ALLOWANCES (MMA) OF SUPPLEMENTAL FOODS FOR INFANTS IN FOOD PACKAGES I, II AND III

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 I-BF/FF & III BF/FF (A: 0 to 1 month ^{2 3}) B: 1 through 3 months C: 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 ^{4 5 6 7 8}	A: FNB = 806 fl oz, MMA = 823 fl oz, reconstituted liquid concentrate or 832 fl. oz. RTF or 870 fl oz reconstituted powder. B: FNB = 884 fl oz, MMA = 896 fl oz, reconstituted liquid concentrate or 913 fl oz RTF or 960 fl oz reconstituted powder.	FNB = 624 fl oz, MMA = 630 fl oz, reconstituted liquid concentrate. or 643 fl. oz RTF or 696 fl oz reconstituted powder.	A: 104 fl oz reconstituted powder. B: FNB = 364 fl oz, MMA = 388 fl oz, reconstituted liquid concentrate or 384 fl oz RTF or 435 fl oz reconstituted powder. C: FNB = 442 fl oz, MMA = 460 fl oz, reconstituted liquid concentrate or 474 fl oz RTF or 522 fl oz reconstituted powder.	FNB = 312 fl oz, MMA = 315 fl oz, reconstituted liquid concentrate or 338 fl oz RTF or 384 fl oz reconstituted powder.		
Infant Cereal ^{9 11}		24 oz		24 oz		24 oz.
Infant food fruits and vegetables ^{9 10 11 12 13}		128 oz		128 oz		256 oz.
Infant food meat ⁹ ..						77.5 oz.

Table 1 footnotes: (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 = the supplemental food is not authorized in the corresponding food package.

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¹Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods. The competent professional authority (CPA) is authorized to determine nutritional risk and prescribe supplemental foods as established by State agency policy in Food Packages I and II. In Food Package III, the CPA, as established by State agency policy, is authorized to determine nutritional risk and prescribe supplemental foods per medical documentation.

²State agencies have the option to issue not more than one can of powder infant formula in the container size that provides closest to 104 reconstituted fluid ounces to breastfed infants on a case-by-case basis.

³Liquid concentrate and ready-to-feed (RTF) may be substituted at rates that provide comparable nutritive value.

⁴WIC 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 infant formula, exempt infant formula, WIC-eligible nutritionals, and other supplemental foods in Food Package III. Only infant formula may be issued for infants in Food Packages I and II.

⁵The full nutrition benefit is 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 (e.g., Food Package IA-fully formula fed).

⁶The maximum monthly allowance 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.

⁷State agencies must provide at least the full nutrition benefit authorized to non-breastfed infants up to the maximum monthly allowance for the physical form of the product specified for each food package category. State agencies must issue whole containers that are all the same size of the same physical form. Infant formula amounts for breastfed infants, even those in the fully formula fed category should be individually tailored to the amounts that meet their nutritional needs.

⁸State agencies may round up and disperse whole containers of infant formula over the food package timeframe to allow participants to receive the full nutrition benefit. State agencies must use the methodology described in accordance with paragraph (h)(1) of this section.

⁹State agencies may round up and disperse 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.

¹⁰At State agency option, for infants 6–12 months of age, fresh banana may replace up to 16 ounces of infant food fruit at a rate of 1 pound of bananas per 8 ounces of infant food fruit. State agencies may also substitute fresh bananas at a rate of 1 banana per 4 ounces of jarred infant food fruit, up to a maximum of 16 ounces.

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

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

¹³State agencies may not categorically issue cash-value vouchers for infants 9 months through 11 months. The cash-value voucher is to be provided to the participant only after an individual nutrition assessment, as established by State agency policy, and is optional for the participant, i.e., the mother may choose to receive either the maximum allowance of jarred foods or a combination of jarred foods and a fruit and vegetable cash-value voucher for her infant. State agencies must ensure that appropriate nutrition education is provided to the caregiver addressing 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 Package IV through VII are stated in Table 2 as follows:

TABLE 2—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGES IV, V, VI AND VII

Foods ¹	Children	Women		
	Food Package IV: 1 through 4 years	Food Package V: Pregnant and 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	128 fl oz	144 fl oz	96 fl oz	144 fl oz.
Milk, fluid	16 qt ^{7 8 9 10 11}	22 qt ^{7 8 9 10 12}	16 qt ^{7 8 9 10 12}	24 qt ^{7 8 9 10 12} .
Breakfast cereal ¹³	36 oz	36 oz	36 oz	36 oz.
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.
Fresh fruits and vegetables ^{14 15}	\$8.00 in cash-value vouchers.	\$10.00 in cash-value vouchers.	\$10.00 in cash-value vouchers.	\$10.00 in cash-value vouchers.
Whole wheat or whole grain bread ¹⁶	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.
Legumes, dry ¹⁷ and/or Peanut butter.	1 lb or 18 oz	1 lb and 18 oz	1 lb or 18 oz	1 lb and 18 oz.

Table 2 Footnotes: N/A = the supplemental food is not authorized in the corresponding food package.

¹Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods. The competent professional authority (CPA) is authorized to determine nutritional risk and prescribe supplemental foods as established by State agency policy.

²Food Package V is issued to two categories of WIC participants: Women participants with singleton pregnancies; breastfeeding women whose partially (mostly) breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

³Food 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, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

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

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

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

⁷Whole milk is the standard milk for issuance to 1-year-old children (12 through 23 months). At State agency option, fat-reduced milks may be issued to 1-year-old children for whom overweight or obesity is a concern. The need for fat-reduced milks for 1-year-old children must be based on an individual nutritional assessment and consultation with the child's health care provider if necessary, as established by State agency policy. Lowfat (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 ≥24 months of age (Food Package IV) and women (Food Packages V–VII) must be based on an individual nutritional assessment as established by State agency policy.

⁸Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk.

⁹For children and women, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. For children and women in Food Packages IV–VI, no more than 1 pound of cheese may be substituted. For fully breastfeeding women in Food Package VII, no more than 2 pounds of cheese may be substituted for milk. State agencies do not have the option to issue additional amounts of cheese beyond these maximums even with medical documentation. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children and women in Food Packages IV–VI. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in Food Package VII.)

¹⁰For children and women, yogurt may be substituted for fluid milk at the rate of 1 quart of yogurt per 1 quart of milk; a maximum of 1 quart of milk can be substituted. Additional amounts of yogurt are not authorized. Whole yogurt is the standard yogurt for issuance to 1-year-old children (12 through 23 months). At State agency option, lowfat or nonfat yogurt may be issued to 1-year-old children for whom overweight and obesity is a concern. The need for lowfat or nonfat yogurt for 1-year-old children must be based on an individual nutritional assessment and consultation with the child's health care provider if necessary, as established by State agency policy. Lowfat or nonfat yogurts are the only types of yogurt authorized for children ≥24 months of age and women. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children and women in Food Packages IV–VI. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in Food Package VII.)

¹¹For children, issuance of tofu and soy-based beverage as substitutes for milk must be based on an individual nutritional assessment and consultation with the participant's health care provider if necessary, as established by State agency policy. Such determination can be made for situations that include, but are not limited to, milk allergy, lactose intolerance, and vegan diets. Soy-based beverage may be substituted for milk for children on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk for children at the rate of 1 pound of tofu per 1 quart of milk. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children in Food Package IV.) Additional amounts of tofu may be substituted, up to the maximum allowance for fluid milk for lactose intolerance or other reasons, as established by State agency policy.

¹²For women, soy-based beverage may be substituted for milk on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk at the rate of 1 pound of tofu per 1 quart of milk. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in Food Packages V and VI. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in Food Package VII.) Additional amounts of tofu may be substituted, up to the maximum allowances for fluid milk, for lactose intolerance or other reasons, as established by State agency policy.

¹³At least one-half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a "whole grain food with moderate fat content" as defined in Table 4 of paragraph (e)(12) of this section.

¹⁴Both fresh fruits and fresh vegetables must be authorized by State agencies. Processed fruits and vegetables, i.e., canned (shelf-stable), frozen, and/or dried fruits and vegetables may also be authorized to offer a wider variety and choice for participants. State agencies may choose to authorize one or more of the following processed fruits and vegetables: canned fruit, canned vegetables, frozen fruit, frozen vegetables, dried fruit, and/or dried vegetables. The cash-value voucher may be redeemed for any eligible fruit and vegetable (refer to Table 4 of 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.

¹⁵The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

¹⁶Whole wheat and/or whole grain bread must be authorized. State agencies have the option to also authorize brown rice, bulgur, oatmeal, whole-grain barley, whole wheat macaroni products, or soft corn or whole wheat tortillas on an equal weight basis.

¹⁷Canned legumes may be substituted for dry legumes at the rate of 64 oz. (e.g., four 16-oz cans) of canned beans for 1 pound dry beans. In Food Packages V and VII, both beans and peanut butter must be provided. However, when individually tailoring Food Packages V or VII for nutritional reasons (e.g., food allergy, underweight, participant preference), State agencies have the option to authorize the following substitutions: 1 pound dry and 64 oz. canned beans/peas (and no peanut butter); or 2 pounds dry or 128 oz. canned beans/peas (and no peanut butter); or 36 oz. peanut butter (and no beans).

(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 as follows:

TABLE 3—MAXIMUM MONTHLY ALLOWANCES (MMA) OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN WITH QUALIFYING CONDITIONS IN FOOD PACKAGE III

Foods ¹	Children		Women	
	1 through 4 years	Pregnant and partially 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	128 fl oz	144 fl oz	96 fl oz	144 fl oz.
WIC Formula ^{7,8}	455 fl oz liquid concentrate.	455 fl oz liquid concentrate.	455 fl oz liquid concentrate.	455 fl oz liquid concentrate.
Milk	16 qt ^{9,10,11,12,13}	22 qt ^{9,10,11,12,14}	16 qt ^{9,10,11,12,14}	24 qt ^{9,10,11,12,14} .
Breakfast cereal ^{15,16}	36 oz	36 oz	36 oz	36 oz.
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.
Fruits and vegetables ^{17,18,19} .	\$8.00 in cash-value vouchers.	\$10.00 in cash-value vouchers.	\$10.00 in cash-value vouchers.	\$10.00 in cash-value vouchers.
Whole wheat or whole grain bread ²⁰ .	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.
Legumes, dry ²¹ and/or Peanut butter.	1 lb or 18 oz	1 lb and 18 oz	1 lb or 18 oz	1 lb and 18 oz.

Table 3 Footnotes: N/A = the supplemental food is not authorized in the corresponding food package.

¹ Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods. The competent professional authority (CPA), as established by State agency policy, is authorized to determine nutritional risk and prescribe supplemental foods per medical documentation.

² This food package is issued to two categories of WIC participants: Women participants with singleton pregnancies and breastfeeding women whose partially (mostly) breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances as appropriate for the age of the infant as described in Table 1 of 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 breastfed infants receive more than the maximum infant formula allowances as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

⁴ This food package is issued to four categories of WIC participants: Fully breastfeeding women whose infants do not receive formula from the WIC Program; women pregnant with two or more fetuses; women partially (mostly) breastfeeding multiple infants from the same pregnancy, and pregnant women who are also partially (mostly) breastfeeding singleton infants.

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

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

⁷ WIC formula means infant formula, exempt infant formula, or WIC-eligible nutritional.

⁸ Powder and ready-to-feed may be substituted at rates that provide comparable nutritive value.

⁹ Whole milk is the standard milk for issuance to 1-year-old children (12 through 23 months). Fat-reduced milks may be issued to 1-year old children as determined appropriate by the health care provider per medical documentation. Lowfat (1%) or nonfat milks are the standard milks for issuance for children ≥24 months of age and women. Whole milk or reduced fat (2%) milk may be substituted for lowfat (1%) or nonfat milk for children ≥24 months of age and women as determined appropriate by the health care provider per medical documentation.

¹⁰ Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk.

¹¹ For children and women, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. For children and women in the pregnant, partially breastfeeding and postpartum food packages, no more than 1 pound of cheese may be substituted. For women in the fully breastfeeding food package, no more than 2 pounds of cheese may be substituted for milk. State agencies do not have the option to issue additional amounts of cheese beyond these maximums even with medical documentation. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children and women in the pregnant, partially breastfeeding and postpartum food packages. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the fully breastfeeding food package.)

¹² For children and women, yogurt may be substituted for fluid milk at the rate of 1 quart of yogurt per 1 quart of milk; a maximum of 1 quart of milk can be substituted. Additional amounts of yogurt are not authorized. Whole yogurt is the standard yogurt for issuance to 1-year-old children (12 through 23 months). Lowfat or nonfat yogurt may be issued to 1-year-old children (12 months to 23 months) as determined appropriate by the health care provider per medical documentation. Lowfat or nonfat yogurts are the standard yogurt for issuance to children ≥24 months of age and women. Whole yogurt may be substituted for lowfat or nonfat yogurt for children ≥24 months of age and women as determined appropriate by the health care provider per medical documentation. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children and women in the pregnant, partially breastfeeding and postpartum food packages. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the fully breastfeeding food package.)

¹³ For children, soy-based beverage and tofu may be substituted for milk as determined appropriate by the health care provider per medical documentation. Soy-based beverage may be substituted for milk on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk for children at the rate of 1 pound of tofu per 1 quart of milk. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children.) Additional amounts of tofu may be substituted, up to the maximum allowance for fluid milk for children, as determined appropriate by the health care provider per medical documentation.

¹⁴ For women, soy-based beverage may be substituted for milk on a quart for quart basis up to the total maximum monthly allowance of milk. Tofu may be substituted for milk at the rate of 1 pound of tofu per 1 quart of milk. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the pregnant, partially breastfeeding and postpartum food packages. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the fully breastfeeding food package.) Additional amounts of tofu may be substituted, up to the maximum allowances for fluid milk, as determined appropriate by the health care provider per medical documentation.

¹⁵ 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.

¹⁶ At least one half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a "whole grain food with moderate fat content" as defined in Table 4 of paragraph (e)(12) of this section.

¹⁷Both fresh fruits and fresh vegetables must be authorized by State agencies. Processed fruits and vegetables, i.e., canned (shelf-stable), frozen, and/or dried fruits and vegetables may also be authorized to offer a wider variety and choice for participants. State agencies may choose to authorize one or more of the following processed fruits and vegetables: canned fruit, canned vegetables, frozen fruit, frozen vegetables, dried fruit, and/or dried vegetables. The cash-value voucher may be redeemed for any eligible fruit and vegetable (refer to Table 4 of 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.

¹⁸Children 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 cash-value voucher. Children may receive 128 oz of commercial jarred infant food fruits and vegetables and women may receive 160 oz of commercial jarred infant food fruits and vegetables in lieu of the cash-value voucher. Infant food fruits and vegetables may be substituted for the cash-value voucher as determined appropriate by the health care provider per medical documentation.

¹⁹The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

²⁰Whole wheat and/or whole grain bread must be authorized. State agencies have the option to also authorize brown rice, bulgur, oatmeal, whole-grain barley, whole wheat macaroni products, or soft corn or whole wheat tortillas on an equal weight basis.

²¹Canned legumes may be substituted for dry legumes at the rate of 64 oz. (e.g., four 16-oz cans) of canned beans for 1 pound dry beans. In Food Packages V and VII, both beans and peanut butter must be provided. However, when individually tailoring Food Packages V or VII for nutritional reasons (e.g., food allergy, underweight, participant preference), State agencies have the option to authorize the following substitutions: 1 pound dry and 64 oz. canned beans/peas (and no peanut butter); or 2 pounds dry or 128 oz. canned beans/peas (and no peanut butter); or 36 oz. peanut butter (and no beans).

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

TABLE 4—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS

Categories/foods	Minimum requirements and specifications
WIC FORMULA:	
Infant formula	All authorized infant formulas must: (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; (2) Be designed for enteral digestion via an oral or tube feeding; (3) Provide at least 10 mg iron per liter (at least 1.5 mg iron/100 kilocalories) at standard dilution; (4) Provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution. (5) Not require the addition of any ingredients other than water prior to being served in a liquid state.
Exempt infant formula.	All authorized exempt infant formula must: (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 (2) Be designed for enteral digestion via an oral or tube feeding.
WIC-eligible nutritionals. ¹	Certain enteral products that are specifically formulated 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 AND MILK ALTERNATIVES:	
Cow's milk ²	Must conform to FDA standard of identity for whole, reduced fat, lowfat, or nonfat milks (21 CFR 131.110). Must be pasteurized. May be flavored or unflavored. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dry. 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). 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). 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). All reduced fat, lowfat, and nonfat cow's milk types and varieties must contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup).
Goat's milk	Must be pasteurized. May be flavored or unflavored. May be fluid, shelf-stable, evaporated or dry (i.e., powdered). All reduced fat, lowfat, and nonfat goat's milk must contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup).

TABLE 4—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS—Continued

Categories/foods	Minimum requirements and specifications
Cheese	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. Cheeses that are labeled low, free, reduced, less or light in sodium, fat or cholesterol are WIC eligible.
Yogurt (cow's milk)	Yogurt must be pasteurized and conform to FDA standard of identity for whole fat (21 CFR 131.200), lowfat (21 CFR 131.203), or nonfat (21 CFR 131.206); plain or flavored with ≤40 g of total sugars per 1 cup yogurt. Yogurts that are fortified with vitamin A and D 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.
Tofu	Calcium-set tofu prepared with calcium salts (e.g., calcium sulfate). May not contain added fats, sugars, oils, or sodium. Tofu must be calcium-set, i.e., contain calcium salts, but may also contain other coagulants, i.e., magnesium chloride.
Soy-based beverage	Must be fortified to meet the following nutrient levels: 276 mg calcium per cup, 8 g protein per cup, 500 IU vitamin A per cup, 100 IU vitamin D per cup, 24 mg magnesium per cup, 222 mg phosphorus per cup, 349 mg potassium per cup, 0.44 mg riboflavin per cup, and 1.1 mcg vitamin B12 per cup, in accordance with fortification guidelines issued by FDA. May be flavored or unflavored.
JUICE	Must be pasteurized 100% 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). With the exception of 100% 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. Vegetable juice may be regular or lower in sodium.
EGGS	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). Hard boiled eggs, where readily available for purchase in small quantities, may be provided for homeless participants.
BREAKFAST CEREAL (READY-TO-EAT AND INSTANT AND REGULAR HOT CEREALS).	Must contain a minimum of 28 mg iron per 100 g dry cereal. Must contain ≤21.2 g sucrose and other sugars per 100 g dry cereal (≤6 g per dry oz). At least half of the cereals authorized on a State agency's food list must have whole grain as the primary ingredient by weight AND meet labeling requirements for making a health claim as a "whole grain food with moderate fat content". ³
FRUITS AND VEGETABLES (FRESH AND PROCESSED) ^{4 5 6 8 9} .	Any variety of fresh (as defined by 21 CFR 101.95) whole or cut fruit without added sugars. Any variety of fresh (as defined by 21 CFR 101.95) whole or cut vegetable, except white potatoes, without added sugars, fats, or oils (orange yams and sweet potatoes are allowed). 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. Any variety of frozen fruits without added sugars, fats, oils, or salt (i.e., sodium). Any variety of canned or frozen vegetables, except white potatoes (orange yams and sweet potatoes are allowed); 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). Any type of dried fruits or dried vegetable, except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, oils, or salt (i.e., sodium). Any type of immature beans, peas, or lentils, fresh or in canned ⁵ forms. 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. State agencies must allow organic forms of WIC-eligible fruits and vegetables.
WHOLE WHEAT BREAD, WHOLE GRAIN BREAD, AND WHOLE GRAIN OPTIONS: Bread	<i>Whole wheat bread</i> 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. OR <i>Whole grain bread</i> must conform to FDA standard of identity (21 CFR 136.110) (includes whole grain buns and rolls). AND Whole grain must be the primary ingredient by weight in all whole grain bread products. AND Must meet FDA labeling requirements for making a health claim as a "whole grain food with moderate fat content". ³

TABLE 4—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS—Continued

Categories/foods	Minimum requirements and specifications
Whole Grain Options	Brown rice, bulgur, oats, and whole-grain barley without added sugars, fats, oils, or salt (i.e., sodium). May be instant-, quick-, or regular-cooking. 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. Whole wheat macaroni 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 (139.138), and have no added sugars, fats, oils, or salt (i.e., sodium), are also authorized (e.g., whole wheat rotini, and whole wheat penne).
FISH (CANNED) ⁵	Canned only: Light tuna (must conform to FDA standard of identity (21 CFR 161.190)); Salmon (Pacific salmon must conform to FDA standard of identity (21 CFR 161.170)); Sardines; and Mackerel (N. Atlantic <i>Scomber scombrus</i> ; Chub Pacific <i>Scomber japonicas</i> ; Jack Mackerel ¹⁰ May be packed in water or oil. Pack may include bones or skin. 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.
MATURE LEGUMES (DRY BEANS AND PEAS) ⁷ .	Any type of mature dry beans, peas, or lentils in dry-packaged or canned ⁵ 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 and mung beans, pinto beans, soybeans/edamame, split peas, lentils, and refried beans. 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
PEANUT BUTTER	Baked beans may only be provided for participants with limited cooking facilities. ¹¹ 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.
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

Table 4 Footnotes: FDA = Food and Drug Administration of the U.S. Department of Health and Human Services.

¹ The following are not considered a WIC-eligible nutritional: Formulas used solely for the purpose of enhancing nutrient intake, managing body weight, 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 Food, Drug and Cosmetic Act (21 U.S.C. 350a) 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 of paragraph (e)(12) of this section. Additional authorized milks include, but are not limited to: calcium-fortified, lactose-reduced and lactose-free, 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 FDA Health Claim Notification for Whole Grain Foods with Moderate Fat Content at <http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm073634.htm>

⁴ Processed refers to frozen, canned,⁵ or dried.

⁵ "Canned" refers to processed food items in cans or other shelf-stable containers, e.g., jars, pouches.

⁶ The following are not authorized: herbs and spices; creamed vegetables or vegetables with added sauces; mixed vegetables containing noodles, nuts or sauce packets, vegetable-grain (pasta or 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 on a string; garlic on a string; gourds; painted pumpkins; fruit baskets and party vegetable trays; 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.

⁷ Mature legumes in dry-packed or canned forms may be purchased with the WIC food instrument only. Immature varieties of fresh or canned beans and frozen beans of any type (immature or mature) may be purchased with the cash-value voucher only. Juices are provided as separate food WIC categories and are not authorized under the fruit and vegetable category.

⁸ Excludes white potatoes, mixed vegetables containing white potatoes, dried white potatoes; 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.

⁹ State agencies have the option to allow only lower sodium canned vegetables for purchase with the cash-value voucher.

¹⁰ FDA defines jack mackerel as any of the following six species: *Trachurus declivis*, *trachurus japonicas*, *trachurus symmetricus*, *trachurus murphyi*, *trachurus novaezelandiae*, and *trachurus lathamii* in The Seafood List at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/ucm113260.htm>. King mackerel is not authorized.

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; and beans containing added sugars (with the exception of baked beans), fats, oils, meats, fruits or vegetables.

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

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¹³Mixtures 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.

¹⁴Combinations 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. Infant foods containing white potatoes as the primary ingredient are not authorized.

¹⁵No infant food combinations (e.g., meat and vegetables) or dinners (e.g., spaghetti and meatballs) are 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 of 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 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 of 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 I A fully formula fed, IA–FF).

(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. 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 I A fully formula fed, IA–FF) 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

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next whole container of infant food (infant cereal, fruits, vegetables and meats) 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 substitutions.* (1) The State agency may submit to FNS a plan for substitution of food(s) acceptable for use in the Program 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 equivalent to or less than 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.

[50 FR 6121, Feb. 13, 1985, as amended at 73 FR 11312, Mar. 3, 2008; 74 FR 48845, Sept. 25, 2009; 74 FR 69245, Dec. 31, 2009; 79 FR 12290, Mar. 4, 2014; 79 FR 15625, Mar. 20, 2014]

§ 246.11 Nutrition education.

(a) *General.* (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. Nutrition education including breastfeeding promotion and support, shall be thoroughly integrated into participant health care plans, the delivery of supplemental foods, and other Program operations.

(2) The State agency shall ensure that nutrition education, including breastfeeding promotion and support, as appropriate, is made available to all participants. Nutrition education may be provided through the local agencies directly, or through arrangements made with other agencies. At the time of certification, the local agency shall stress the positive, long-term benefits of nutrition education and encourage the participant to attend and participate in nutrition education activities. However, individual participants shall not be denied supplemental foods for failure to attend or participate in nutrition education activities.