



December 2014

# NUTRITION ASSISTANCE

## Additional Guidance Could Assist States in Reducing Risk of Online Sale of Infant Formula

# GAO Highlights

Highlights of [GAO-15-94](#), a report to congressional requesters

## Why GAO Did This Study

WIC provides supplemental foods and assistance to low-income pregnant and postpartum women, infants, and young children. Approximately half of U.S. infants born each year receive WIC benefits, and infant formula is a key component of the food package many receive. Recent news reports suggest that some participants have attempted to sell WIC formula online, and the Internet has substantially increased as a marketplace in recent years. GAO was asked to provide information about online sales of WIC formula.

GAO assessed: (1) how USDA determines the amount of formula to provide to participants, (2) what is known about the extent to which participants sell WIC formula online, and (3) steps USDA has taken to prevent and address the online sale of WIC formula. GAO reviewed relevant federal laws, regulations, and USDA guidance; monitored advertisements to sell formula on one e-commerce website in four metropolitan areas; reviewed a non-generalizable sample of policy manuals from 25 states that as a group serve about two-thirds of WIC participants, and that were selected for their varied WIC caseloads and geography; and interviewed USDA and state and local WIC officials.

## What GAO Recommends

GAO recommends that USDA require state agencies to inform WIC participants that selling WIC formula is against program rules and describe in their state plans how they identify attempted sales. GAO also recommends that USDA assess online sales, including techniques states can use to monitor them. USDA agreed with GAO's recommendations.

View [GAO-15-94](#). For more information, contact Kay E. Brown at (202) 512-7215 or [brownke@gao.gov](mailto:brownke@gao.gov).

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### Additional Guidance Could Assist States in Reducing Risk of Online Sale of Infant Formula

## What GAO Found

In recent years, the U.S. Department of Agriculture (USDA) has more closely aligned the amount of formula it authorizes states to provide through the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) with current nutrition science and the nutritional needs of participating infants. These changes were also made, in part, to encourage and support breastfeeding. Specifically, the agency issued revised regulations in 2007, finalized in 2014, that reduced the amount of formula authorized for partially breastfed infants and delayed the age when these infants may begin receiving formula. The regulations also reduced the amount of formula authorized for older fully formula-fed infants because they added infant fruits and vegetables for the first time.

USDA has not conducted any nationwide studies on the extent of online sales of WIC formula by program participants, but information gathered from state WIC officials and GAO's own limited monitoring suggest that some WIC formula is offered for sale online, though program rules prohibit such sales. In 30 days of monitoring one online classifieds website in four large metropolitan areas, GAO found 2 posts in which individuals attempted to sell formula specifically identified as WIC—among 2,726 that advertised infant formula generally. A larger number, 346 posts, advertised formula matching the brand, type, container volume, and amount provided to WIC participants, but did not indicate the source of the formula. Because WIC participants purchase the same brands and types from stores as non-WIC customers, monitoring attempted online sales of WIC formula can present a challenge. State officials GAO spoke with cited other challenges to monitoring online sales, such as the fact that individuals posting formula for sale online are able to remain relatively anonymous, and their posts may contain insufficient information to allow staff to identify them as WIC participants.

USDA has taken steps to clarify that attempting to sell WIC formula online is a participant violation but has provided limited assistance to states in preventing and addressing these sales. For example, USDA has not specifically directed states to instruct participants that selling WIC formula is against program rules, which could lead to participants making these sales unknowingly and using program resources inappropriately. GAO's review of 25 state policy and procedure manuals found 7 that did not require local agency staff to inform participants of the prohibition. Further, although states are responsible for controlling participant violations—including sales of WIC benefits—USDA is responsible for determining compliance with the WIC statute and regulations. However, because the department has not required states to describe their procedures for controlling these violations, USDA is unable to both oversee and assess state efforts to ensure program integrity in this area. The department is also unable to assist states' efforts because it has not assessed the national extent of these sales or techniques for addressing them. Through interviews with 19 state and local WIC agency officials from 12 states, GAO found that states vary in their approaches and the amount of resources devoted to monitoring attempted WIC formula sales. In addition, due to monitoring challenges, some officials expressed concerns about the return on investment for these efforts. Without information on cost-effective monitoring techniques—such as promising search terms or online sites where states may want to focus their efforts—some states may be missing opportunities to better target their limited resources.

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## Abbreviations

FNS	Food and Nutrition Service
IOM	Institute of Medicine of the National Academies
OIG	Office of the Inspector General
SNAP	Supplemental Nutrition Assistance Program
USDA	U.S. Department of Agriculture
WIC	Special Supplemental Nutrition Program for Women, Infants, and Children

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December 11, 2014

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
House of Representatives

The Honorable Todd Rokita  
Chairman  
Subcommittee on Early Childhood, Elementary,  
and Secondary Education  
Committee on Education and the Workforce  
House of Representatives

The Honorable Steve Stivers  
House of Representatives

In fiscal year 2013, the federal government spent approximately \$6.5 billion on the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which provides food and services—including nutrition education, breastfeeding support, and health and social service referrals—to about 9 million low-income pregnant and postpartum women, infants, and young children.<sup>1</sup> Approximately half of U.S. infants born each year receive WIC benefits, and infant formula is a key component of the WIC food package many receive. The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) oversees WIC at the federal level and provides grants to state agencies,<sup>2</sup> which in turn provide food and services to participants through 1,900 local agencies in 10,000 clinic sites. USDA regulations establish the types and maximum amounts of food, including infant formula, participants may receive, and state and local agencies establish policies and procedures for

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<sup>1</sup> 42 U.S.C. § 1786.

<sup>2</sup> A state agency is the health department or comparable agency of each state (including the District of Columbia and 5 U.S. territories), or certain Indian tribal organizations. As of June 2014, there were 90 WIC state agencies: the 50 states, the District of Columbia, 5 U.S. territories, and 34 Indian tribal organizations.

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determining specific amounts of WIC foods—at or below these maximum levels—to provide to participants.<sup>3</sup>

WIC rules prohibit participants from selling foods they receive from the program, including infant formula.<sup>4</sup> In our previous study of WIC fraud and abuse, local WIC directors expressed concerns about these activities, in part because the high cost of formula can make the activity attractive to some participants. At that time, we found that there were relatively few documented cases nationwide of participants selling infant formula for cash, and generally low rates of WIC participant fraud overall, in contrast to the relatively high rate of WIC vendor fraud.<sup>5</sup> However, the use of the Internet as a marketplace has substantially increased in recent years, and news reports suggest that some participants have attempted to sell WIC formula online. Participants who violate WIC rules are subject to various sanctions, including repayment of the value of benefits and disqualification from the program. Moreover, improper use of WIC benefits undermines the integrity of the program and its ability to provide key nutrition assistance and services to vulnerable populations. We were asked to examine online sales of WIC formula.

We assessed: (1) how USDA determines the amount of formula to provide to participating infants, (2) what is known about the extent to which participants sell WIC formula online, and (3) what steps USDA has taken to prevent and address the online sale of WIC formula.

To address our research questions, we collected and analyzed information using a variety of methods. We reviewed relevant federal laws, regulations, and USDA guidance to determine requirements related to the provision of formula to infants receiving WIC benefits, as well as to identify federal, state, and local roles related to preventing and addressing online sales of WIC formula. In addition, we assessed USDA's controls against GAO Standards for Internal Control in the Federal

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<sup>3</sup> WIC regulations are found at 7 C.F.R pt. 246.

<sup>4</sup> See 7 C.F.R. § 246.2.

<sup>5</sup> See GAO, *Food Assistance: Efforts to Control Fraud and Abuse in the WIC Program Can Be Strengthened*, [GAO/RCED-99-224](#) (Washington, D.C.: August 1999). Since we issued this report, USDA has conducted several studies of WIC vendor management issues. In contrast, the department has not conducted studies of WIC participant fraud.

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Government.<sup>6</sup> To help us understand how federal WIC food requirements were recently modified, we also reviewed a 2005 report published by the National Academies' Institute of Medicine (IOM), since many of the changes were based on the recommendations of this report.<sup>7</sup> To determine the role USDA regulations and guidance play in preventing and addressing online sales of WIC formula, we reviewed a non-generalizable sample of 25 state WIC policy and procedure manuals to determine how consistent state policies and procedures are in preventing and addressing online formula sales. While not generalizable to the U.S., we selected these states primarily for their variations in WIC caseloads and diverse geographic location. Also, as a group, these states provide services to approximately two-thirds of all WIC participants in the U.S. To gather additional information to answer our second research question, we monitored online classified advertisements offering formula for sale using one popular e-commerce website in four metropolitan areas over 30 days.<sup>8</sup> We selected these areas based on (1) high number of births, (2) high WIC caseloads, and (3) geographic dispersion. To address all of our questions, we also interviewed USDA officials, as well as 17 state and 2 local WIC officials representing 12 states.<sup>9</sup> For a more detailed description of our scope and methodology, see appendix I.

We conducted this performance audit from April 2014 through December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

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<sup>6</sup> GAO, *Government Operations: Standards for Internal Control in the Federal Government*, AIMD-00-21.3.1 (Washington, D.C.: Nov. 1, 1999). GAO's internal control standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982, Pub. L. No. 97-255, 96 Stat. 814, provide the overall framework for establishing and maintaining internal control in the federal government, and for identifying and addressing major performance and management challenges and areas at greatest risk of fraud, waste, abuse, and mismanagement.

<sup>7</sup> Institute of Medicine of the National Academies, *WIC Food Packages: Time for a Change* (Washington, D.C.: 2005).

<sup>8</sup> "E-commerce" websites allow users to advertise the sale of goods and services. This monitoring provided some preliminary information about the extent to which WIC participants in the four metropolitan areas attempted to sell WIC formula online. We did not investigate individual cases as part of these efforts.

<sup>9</sup> National WIC Association staff assisted us in contacting these officials, more than half of whom were Association board members. While the WIC administrators we interviewed represented a range of geographic locations, the views they shared are not generalizable to all states.

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obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Established as a national program in the mid 1970s, the WIC program is intended to improve the health status of low-income pregnant and postpartum women, infants, and young children by providing supplemental foods and nutrition education.<sup>10</sup> Pregnant and post-partum women, infants, and children up to age 5 are eligible for WIC if they are found to be at nutritional risk and have incomes below certain thresholds.<sup>11</sup> According to USDA, research has shown that WIC helps to improve birth and dietary outcomes and contain health care costs, and USDA considers WIC to be one of the nation's most successful and cost-effective nutrition intervention programs.

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## WIC Food Benefits

In passing the legislation that created WIC, Congress intended the program to assist participants during critical times of growth and development. WIC participants typically receive food benefits—which may include infant formula—in the form of vouchers or checks that can be redeemed at state-authorized retail vendors.<sup>12</sup> USDA has established

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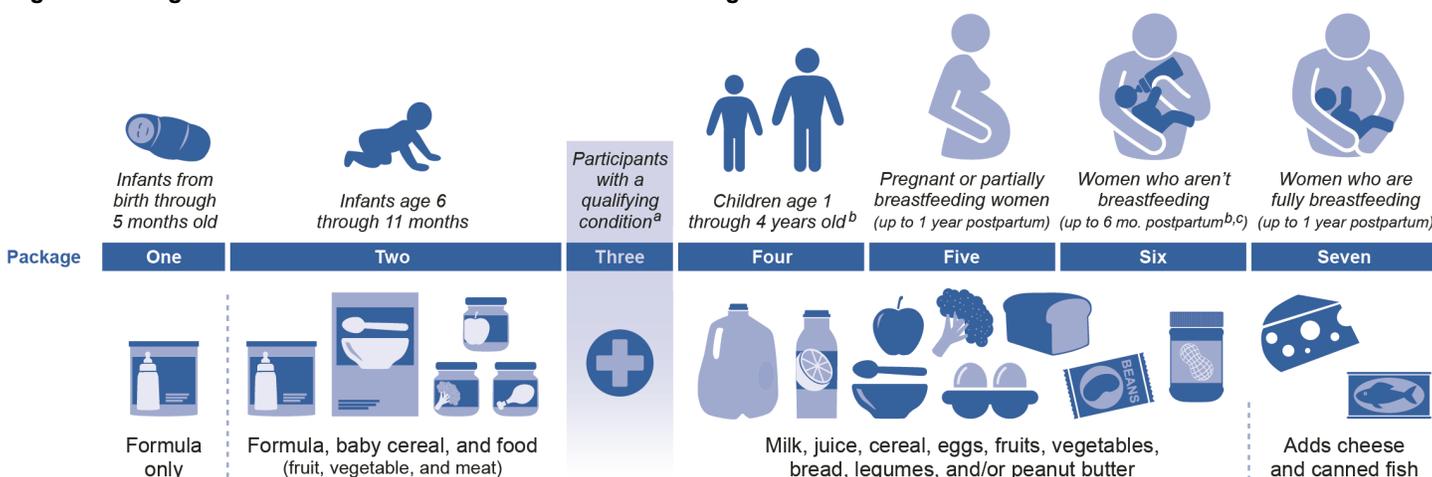
<sup>10</sup> For the purposes of this report, an “infant” is a person younger than 1 year of age.

<sup>11</sup> WIC applicants must also be living in the state in which they apply (except for Indian state agencies). See 42 U.S.C. § 1786(d), 7 C.F.R. § 246.7(c)-(e). While federal statute and regulations define criteria that must be used to determine applicants' income eligibility for WIC, state and local agencies are also given some discretion. To be eligible, applicants' income generally must fall at or below 185 percent of the U.S. Poverty Income Guidelines. A person who participates in certain other programs, such as the Supplemental Nutrition Assistance Program, Medicaid, or Temporary Assistance for Needy Families, automatically meets the income eligibility requirement. We previously reported on WIC's income eligibility determination process in *WIC Program: Improved Oversight of Income Eligibility Determination Needed*, [GAO-13-290](#) (Washington, D.C.: February 28, 2013).

<sup>12</sup> In addition, some states issue benefits through a card instead of through paper checks or vouchers in a system called electronic benefit transfer (EBT). State agencies will be required to implement WIC electronic benefit transfer systems by October 1, 2020, unless exempted by USDA. 42 U.S.C. § 1786(h)(12). USDA issued a proposed rule to implement this provision in February 2013. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111–296, 78 Fed. Reg. 13,549 (Feb. 28, 2013). The public comment period closed June 29, 2013.

seven food packages that are designed for different categories and nutritional needs of WIC participants (see fig. 1). The authorized foods must be prescribed from the food packages according to the category and nutritional needs of the participants.<sup>13</sup> Because multiple members of a family may be eligible to receive WIC benefits, individual families could receive more than one food package.

**Figure 1: Categories of Foods Available under WIC Food Packages**



Source: GAO analysis of US Department of Agriculture regulations. | GAO-15-94

Note: The authorized supplemental foods must be prescribed from food packages according to the category and nutritional needs of the participants. Formula amounts issued to breastfed infants are to be tailored to meet but not exceed the infant's nutritional needs. For example, a fully-breastfed infant would not receive any formula. For the complete food package requirements, including which participants are eligible for each package and maximum monthly allowances, see 7 C.F.R. § 246.10(e).

<sup>a</sup>Food Package Three is reserved for participating women, infants, and children with qualifying conditions, such as premature birth, low birth weight, metabolic disorders, gastrointestinal disorders, or immune system disorders. Authorized staff at local agencies determine nutritional risk and prescribe supplemental foods for individuals receiving Food Package Three according to medical documentation provided by health care professionals.

<sup>b</sup>Food Packages Four and Six include the option of legumes or peanut butter, but not both. Food Packages Five and Seven include both legumes and peanut butter.

<sup>c</sup>Bread is not a category of supplemental food under Food Package Six.

<sup>13</sup> See 7 C.F.R. § 246.10(e). The regulations also establish nutritional standards and maximum monthly allowances for the supplemental foods to be provided to participants. In general, reductions to the maximum monthly allowances in the food packages are permitted only when medically or nutritionally warranted, or in certain other circumstances. Formula amounts issued to breastfed infants are to be tailored to meet but not exceed the infant's nutritional needs. For example, a fully-breastfed infant would not receive any formula.

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In 2007, USDA issued interim regulations that implemented the first comprehensive revisions to the WIC food packages since 1980.<sup>14</sup> After considering comments received in response to the interim regulations, FNS issued final regulations in 2014.<sup>15</sup> The revisions aligned the food packages with the 2005 Dietary Guidelines for Americans and infant feeding practice guidelines of the American Academy of Pediatrics, and were largely based on recommendations of the IOM, which FNS commissioned to review the food packages.

Infants who are not exclusively breastfeeding can receive formula from WIC until they turn 1 year of age. However, WIC's authorizing legislation requires that the nutrition education provided to participants include breastfeeding promotion and support.<sup>16</sup> In addition, the Child Nutrition Amendments of 1992 required that USDA establish a program to promote breastfeeding as the best method for infant nutrition.<sup>17</sup> Accordingly, USDA, through regulations and guidance, has emphasized the importance of encouraging participating mothers to breastfeed. WIC regulations require state and local agencies to create policies and procedures to ensure that breastfeeding support and assistance are provided to WIC participants throughout the prenatal and postpartum period.

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## WIC Program Oversight and Administration

USDA's role in operating WIC is primarily to provide funding and oversight, and state and local WIC agencies are charged with carrying out most administrative and programmatic functions of the program. Specifically, USDA provides grants to state agencies, which use the funds

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<sup>14</sup> Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, 72 Fed. Reg. 68,966 (Dec. 6, 2007). State agencies were required to implement the changes by October 1, 2009. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Delay of Implementation Date, 73 Fed. Reg. 14,153 (Mar. 17, 2008).

<sup>15</sup> Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, 79 Fed. Reg. 12,274 (Mar. 4, 2014). According to USDA officials, the final rule was substantially similar to the interim rule, with some minor technical changes and clarifications.

<sup>16</sup> The Healthy, Hunger-Free Kids Act of 2010 established additional requirements related to breastfeeding support and promotion in the WIC program. See Pub. L. No. 111-296, § 231, 124 Stat. 3183, 3229-32 (amending 42 U.S.C. § 1786).

<sup>17</sup> Pub. L. No. 102-342, § 201, 106 Stat. 911, 912 (codified at 42 U.S.C. § 1790).

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to reimburse authorized retail vendors for the food purchased by WIC participants and to provide services. As part of its monitoring and oversight obligations, USDA annually reviews the state plan for each state WIC agency, which describes the agency's objectives and procedures for all aspects of administering WIC for the coming fiscal year.<sup>18</sup> USDA's review of state plans is one of the federal oversight mechanisms for the program, and state plans provide important information about how states administer WIC. For their part, state agencies are responsible for developing WIC policies and procedures within federal requirements, entering into agreements with local agencies to operate the program, and monitoring and overseeing its implementation by these local agencies. WIC regulations define participant violations, which include the sale of WIC food benefits,<sup>19</sup> and require state agencies to establish procedures to control participant violations.<sup>20</sup> However, the regulations do not specify what steps states should take to prevent participant violations, such as methods for identifying attempted sales of WIC food benefits. The regulations also require state agencies to establish sanctions for participant violations,<sup>21</sup> and require mandatory sanctions for certain types of violations. For example, when a state establishes a claim of \$100 or more against a participant who improperly disposed of program benefits—such as

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<sup>18</sup> 42 U.S.C. § 1786(f)(1), 7 C.F.R. § 246.4(a). USDA regulations also provide for other monitoring activities, such as management evaluations and reviews, audits, and investigations. 7 C.F.R. §§ 246.19-.21.

<sup>19</sup> 7 C.F.R. § 246.2. A participant violation is defined as any intentional 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 WIC program. Participant violations include “exchanging cash-value vouchers, food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument.”

<sup>20</sup> 7 C.F.R. § 246.12(u)(1).

<sup>21</sup> The regulations provide that participant sanctions may include disqualification from the program for a period of up to 1 year.

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through online sales—it must disqualify the participant for 1 year.<sup>22</sup> Beyond these mandatory sanctions, in most cases the regulations do not specify how severely states should sanction participants for particular violations.<sup>23</sup>

The WIC oversight structure is part of the program’s internal controls, which are an integral component of management. Internal control is not one event, but a series of actions and activities that occur on an ongoing basis. As programs change and as agencies strive to improve operational processes and implement new technological developments, management must continually assess and evaluate its internal control to assure that the control activities being used are effective and updated when necessary. Management should design and implement internal control based on the related cost and benefits. Effective internal controls include: (1) communicating information to management and others to enable them to carry out internal control and other responsibilities and (2) assessing the risks agencies face from both external and internal sources.<sup>24</sup>

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<sup>22</sup> 7 C.F.R. §§ 246.12(u)(1)-(2), 246.23(c)(1). If the state agency determines that program benefits have been obtained or disposed of improperly as the result of a participant violation, it must establish a claim against the participant for the full value of such benefits. In addition to claims of \$100 or more, states must disqualify participants for 1 year if they assess a claim for receiving benefits from more than one WIC clinic or both the WIC and the Commodity Supplemental Food Program, a violation the program refers to as “dual participation.” Further, participants who are assessed a second or subsequent claim of any amount must also be disqualified for 1 year. However, the regulations also provide state agencies some flexibility with respect to this requirement, allowing them to establish exceptions to, or terminate, mandatory disqualifications in certain circumstances.

<sup>23</sup> The WIC regulations also require that, when appropriate, the state agency must refer participants who violate program requirements to federal, state, or local authorities for prosecution under applicable statutes. 7 C.F.R. § 246.12(u)(5).

<sup>24</sup> See [AIMD-00-21.3.1](#).

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## In Recent Years, USDA Has Further Aligned Formula Amounts with Current Nutrition Science and Infants' Nutritional Needs

In the past decade, USDA has taken steps to better tailor WIC food packages containing formula to the nutritional needs of participating infants. After reviewing the nutritional needs of WIC participants and food packages in a study contracted by USDA, the IOM recommended changes to the packages—including those containing formula. USDA issued revised regulations in 2007—which state agencies were required to implement at the start of fiscal year 2010—that adopted many of the recommendations from the IOM report to further encourage and support breastfeeding among participating mothers. According to USDA, the revised food packages were developed to better reflect current nutrition science and dietary recommendations than the food packages they were replacing. Among other changes, the revised regulations reduced the amount of formula provided to partially breastfed infants of all ages, delayed when partially breastfed infants may begin receiving formula, and reduced the amount of formula provided to older fully formula-fed infants.

**Amount of formula for partially breastfed infants:** The revised regulations authorize maximum formula amounts for infant participants that vary by the extent to which the infant is breastfed (see fig. 2).<sup>25</sup> Under the previous regulations, partially breastfed infants could receive up to the same amount of formula as those who were fully formula-fed. Under the revised regulations, “partially breastfed,” for the purposes of assigning the WIC food package, means an infant who is breastfed but also receives formula from the WIC program up to a maximum amount that is approximately half the amount of formula allowed for a fully formula-fed infant.<sup>26</sup> USDA stated that this new category is intended to provide stronger incentives for continued breastfeeding, such as by providing partially breastfeeding mothers with additional quantities and types of supplemental foods—such as whole wheat bread or other whole grains—that are not provided to non-breastfeeding mothers.<sup>27</sup> Because partially breastfed infants require less formula than fully formula-

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<sup>25</sup> 7 C.F.R. § 246.10(e)(9).

<sup>26</sup> 7 C.F.R. § 246.10(e)(1)(i), (e)(9).

<sup>27</sup> If a breastfeeding mother requests and is provided more formula than the maximum amount authorized for partially breastfed infants, her infant would be considered fully formula-fed, and she would be eligible to receive the food package designed for non-breastfeeding women.

fed infants, this change may have reduced the potential for waste in the program.

**Figure 2: WIC Maximum Monthly Infant Formula Amounts**



Source: GAO analysis of US Department of Agriculture regulations. | GAO-15-94

Note: USDA's regulations establish maximum monthly allowances in ounces per month, see 7 C.F.R. § 246.10(e)(9). GAO calculated the bottle amounts listed in the figure assuming an 8 ounce bottle and 30 days per month. Amounts listed in the figure are fluid ounces for reconstituted powder formula. Maximum amounts for reconstituted liquid concentrate and ready-to-feed formula are lower than maximum amounts for reconstituted powder.

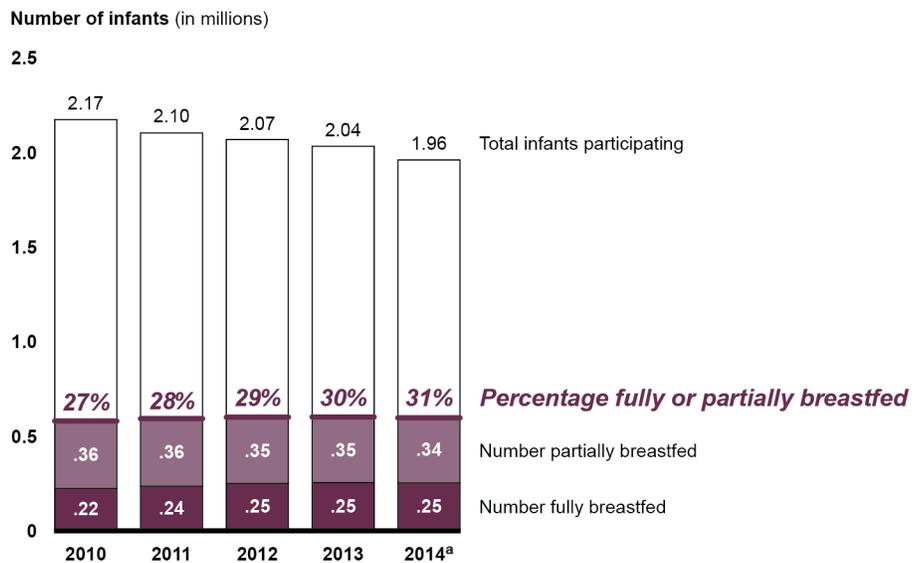
<sup>3</sup>Formula may not be provided routinely to partially breast-fed infants in the first month of life. State agencies have the option to issue not more than one can of powder infant formula in the container size that provides closest to 104 reconstituted fluid ounces to breastfed infants on a case-by-case basis.

**Age at which partially breastfed infants receive formula:** To further support the successful establishment of breastfeeding, the revised regulations disallow the routine issuance of formula to partially breastfeeding infants during the first month after birth. While mothers of partially breastfed infants are not to automatically receive formula, local agency staff have some discretion and may determine, based on an assessment of the nutritional needs of the infant, that it is appropriate to make a small amount of formula available.<sup>28</sup> According to the IOM, the fact that partially breastfed infants, under previous regulations, could

<sup>28</sup> 7 C.F.R. § 246.10(e)(1)(ii)(A), (e)(9). Guidance issued by FNS in 2009 describes the breastfeeding assessment to be conducted by local agency staff, which, along with discussing the mother's plan for breastfeeding, serves as the basis for determining the food package. The maximum amount of formula that may be provided for partially breastfed infants during the first month after birth is one can of powder formula in the container size that provides closest to 104 fluid ounces once reconstituted.

receive up to the same amount of formula from birth as fully formula-fed infants may have interfered with mothers' milk production and success at continued breastfeeding.<sup>29</sup> Between implementation of the revised regulations in fiscal year 2010 and fiscal year 2014, the number of infant participants who were either partially or fully breastfed increased nearly 4 percent (see fig. 3).<sup>30</sup>

**Figure 3: WIC Infant Participants and Feeding Categories, Fiscal Years 2010-2014**



Source: GAO analysis of program data from US Department of Agriculture. | GAO-15-94

<sup>a</sup>USDA data for fiscal year 2014 is preliminary and reflects participation between October and April 2014.

**Formula amounts for older fully formula-fed infants:** Under the revised regulations, fully formula-fed infants 6 through 11 months of age are authorized to receive less formula than they were

<sup>29</sup> According to the IOM, the physiology of breastfeeding provides a strong basis for avoiding supplemental formula because the amount of milk a breastfeeding woman produces depends directly on how often and how long she nurses.

<sup>30</sup> USDA data for fiscal year 2014 is preliminary and reflects participation between October and April 2014. USDA officials explained that the department did not collect data on breastfeeding among WIC participants until fiscal year 2010, when state agencies were required to implement the revised food packages, which distinguish between fully and partially formula-fed infants.

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authorized to previously. In addition, to introduce infants of this age to a variety of nutritious foods, the revised regulations, for the first time, added infant food fruits and vegetables to their food packages.<sup>31</sup> Because the addition of fruits and vegetables provides infants greater amounts of nutrients, in its 2005 report, IOM determined that less formula is needed for infants that receive these foods. According to USDA, the revised maximum formula amount authorized for these infants is based on a scientific review of the calorie and nutrient needs of infants at this age.

While federal regulations specify the maximum amount of formula different categories of infants are authorized to receive, state and local agency staff have some flexibility in determining precise amounts to provide, depending on an infant's nutritional needs. Staff at local WIC agencies play a critical role in determining infants' feeding categories, and they have the authority to provide them with less formula than the maximum amount allowed for each category, if nutritionally warranted.<sup>32</sup> Nutrition specialists, such as physicians or nutritionists, working at the local agency perform nutritional assessments for prospective participants as part of certification procedures.<sup>33,34</sup> They use the nutritional

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<sup>31</sup> 7 C.F.R. § 246.10(e)(2), (e)(9). In part to further encourage breastfeeding, the food package for fully breastfed infants 6 through 11 months of age includes a greater quantity of infant food fruits and vegetables than the packages for partially breastfed or fully formula-fed infants, and also includes infant food meats.

<sup>32</sup> Formula amounts issued to breastfed infants are to be tailored to meet but not exceed the infant's nutritional needs. 7 C.F.R. § 246.10(e). In general, reductions to food packages below the maximum monthly allowance can only be made on an individual basis and only in certain circumstances, such as when they are medically or nutritionally warranted. Such reductions cannot be made for cost-savings, administrative convenience, caseload management, or to control vendor abuse. 7 C.F.R. § 246.10(c).

<sup>33</sup> To be certified as eligible for the WIC program, a competent professional authority on the staff of the local agency must determine that the applicant is at nutritional risk through a medical and/or nutritional assessment. 7 C.F.R. § 246.7(e). A "competent professional authority" must be a physician, nutritionist, dietitian, registered nurse, physician's assistant, or state or local medically trained health official. 42 U.S.C.A. § 1786(b)(3), 7 C.F.R. § 246.2. These specialists perform nutritional assessments for each certification period, which varies depending on the type of participant. Infant participants are recertified approximately every 6 months. 7 C.F.R. § 246.7(g)(1).

<sup>34</sup> Prospective participants who have nutritionally-related medical conditions, such as anemia, or dietary deficiencies that impair or endanger health, such as inadequate diet, meet the nutritional risk criteria for WIC eligibility. 42 U.S.C. § 1786(b)(8), 7 C.F.R. § 246.7(e)(2).

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assessment information to appropriately target food packages to participants. WIC staff also provide regular nutrition and breastfeeding education services to established participants.<sup>35</sup> In the guidance USDA issued in 2009 to assist state and local agency staff in implementing the provisions of the new food package regulations, staff were directed to tailor the amount of infant formula to the assessed needs of breastfed infants rather than to routinely issue food packages with standard quantities of infant formula to these infants. Further, the guidance stated that the maximum amount of formula authorized in the regulations is rarely warranted for partially breastfed infants.

Even with USDA's guidance, it is possible that some participants receive formula that they do not need or cannot use, and state and local policies on how participants should handle excess formula vary. WIC provided formula to a monthly average of nearly 1.8 million infant participants in 2013, according to USDA. Although federal regulations define the sale of WIC food benefits as a participant violation, one USDA official told us there is no federal guidance that addresses how local agencies should instruct participants to handle unused formula. Rather, according to USDA, state, and local WIC officials, state and local agencies establish their own policies and procedures. Officials from 7 of the 12 states we spoke with told us that participants are instructed to return unused formula to local agencies. Further, officials from the 2 local agencies we spoke with explained that it is relatively common for participants to return infant formula to their local agency, and one added that participants often return formula for health reasons, as pediatricians sometimes prescribe specialized formula because of food allergies. Officials we spoke to from two states said that the returned formula is given to participants who have lost their benefit vouchers. Officials from three other states said that returned formula is donated to food banks or hospitals.

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<sup>35</sup> 7 C.F.R. § 246.11. Nutrition education may be provided through the local agencies directly, or through arrangements made with other agencies.

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## The National Extent of Online Sales of WIC Infant Formula Is Unknown, but Some Participants Attempt Them

USDA does not have data that can be used to determine the national extent of online sales of WIC formula; however, officials in 5 of the 12 states we spoke to said that they have found WIC formula offered for sale online by some participants. USDA officials told us that the department has not conducted a comprehensive study to assess the national extent of online sales.<sup>36</sup> According to the officials, the department does not collect data on this issue, in part because it is not the department's responsibility to sanction WIC participants for program violations. Rather, it is the responsibility of state agencies to establish procedures to prevent and address participant violations, including attempts to sell WIC food benefits. Of the officials that we spoke to from 12 states, those from 9 states mentioned that the procedures they have established to identify this violation include regularly monitoring online advertisements.<sup>37</sup> Officials in 3 of these states said that through their monitoring efforts, they have found fewer than 0.5 percent of their WIC participants attempting to sell WIC infant formula online. Officials in 2 other states did not estimate percentages but stated that the incidence is low.<sup>38</sup>

Consistent with these state accounts, our own monitoring of a popular e-commerce website for 30 days in four large metropolitan areas found few posts in which individuals explicitly stated they were attempting to sell WIC-provided formula. Specifically, we identified 2,726 posts that included the term "formula," and 2 of these posts explicitly stated that the origin of the formula was WIC.<sup>39</sup> In both posts, the users indicated they were selling the WIC formula because they had switched to different brands of formula.

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<sup>36</sup> In addition, we conducted a literature search on this topic and found no studies that estimated the national extent of online sales of WIC formula.

<sup>37</sup> Although not regular monitoring, an official from one state said that staff monitor some e-commerce websites as time allows, focusing their efforts on following up on complaints the state receives that indicate potential formula sales. An official from another state said that some local agency staff monitor e-commerce websites on their own, but it is not required by state policy. Officials from the final state did not provide information on the extent to which staff monitor online sales of WIC formula.

<sup>38</sup> Officials from the other four states that discussed their regular online monitoring efforts did not characterize the incidence of attempted online sales of WIC formula in their states.

<sup>39</sup> We did not investigate these two cases, or other cases, as part of our monitoring efforts, but we provided information about these cases to USDA officials.

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**Posts Advertising WIC-Provided Infant Formula For Sale**

- **A posting from late June 2014 included the container size in the title and stated:** “I am looking to sell 5 [brand name] 12.5oz cans (NOT OPENED) because [infant] is super picky and does not want to drink it no matter what i do. [Infant] will drink the [store brand] kind for some reason. I told my WIC office to switch me to another brand but they say it might take 3 months. Im asking 35\$ but best offer will do since the brand I buy is from [store] so Im not looking to make a profit here if you consider each can is 16\$ at the store. please text if interested!!
- **A posting from early July 2014 included the brand, type, and container size in the title and stated:** “I have 7 powder cans of [brand name] they dnt expire for another year at least just got them from my wic n we ended up switching formulas so its \$65.00 for pick up all 7 cans or \$70 if i have to drive.”

Source: GAO monitoring of online classified advertisements. | GAO 15 94

From the same e-commerce website, we also identified 481 posts, of which any number could have advertised WIC-provided formula. However, these posts did not state that the advertised formula was from WIC, and while the formula offered for sale was generally consistent with formula provided through WIC, we could not identify it as such. Specifically, during our 30 days of monitoring formula advertisements, we applied a number of criteria to narrow the broad pool of advertisements to identify those that may have been selling WIC formula. First, because state agencies are generally required to award single-source contracts for WIC formula,<sup>40</sup> we searched for posts advertising formula brands that matched the state-specific WIC-contracted brand. We found that about three-quarters (2,013 posts) fit this criterion. We then reviewed each of these posts and determined that 346 of the posts fit each of three additional criteria, which we chose because they are generally consistent with WIC formula provided to infant participants.

1. The formula type, such as soy or sensitive, advertised for sale was equivalent to one of the types provided to WIC participants in the state in which the posting was made.
2. The volume of the formula container advertised was equivalent to the volume of one of the containers provided to WIC participants in the state in which the posting was made.
3. The amount of formula advertised represented a large proportion of the maximum amount of formula authorized to be provided to fully

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<sup>40</sup> Subject to certain exceptions, WIC state agencies are required to use either a single-supplier competitive bidding system for infant formula, or use an alternative cost containment system that provides equivalent or greater savings. “Competitive bidding” means the state agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids. 42 U.S.C. § 1786(b)(17), (h)(8), 7 C.F.R. § 246.16a.

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**Examples of Posts Advertising Formula Generally Consistent with that Provided to WIC Participants**

- **A posting from mid-June 2014 stated:** "\$10 a can! 14 -12.9 oz Cans of [brand name and type] Formula. Expiration Date is - July 1, 2015. Please take it all. I will not separate the formula! NOT FROM WIC!!! [Child] is now 14 months and no longer needs this. Email only please
- **A posting from mid-June 2014:** "[Child] Turn A Year Already, and we Just bought her 7 Brand New Cans of [brand name and type]. She no longer needs Formula. Selling each Can for \$10. Brand New, NOT Open. 12.4 Oz. EXP. 1 March. 2016."

Source: GAO monitoring of online classified advertisements. | GAO 15 94

formula-fed WIC infant participants each month, averaged across all ages.<sup>41</sup>

Beyond the 346 posts that matched these three criteria, we found another 135 that met at least one, but not all, of the criteria. However, since we did not investigate any of these posts further, we do not know if any or all of these 481 posts were attempts to sell WIC formula.

Through our monitoring efforts, and through interviews with USDA and state and local WIC officials, we identified a number of key challenges associated with distinguishing between WIC-obtained formula sales and other sales:

- Each state's specific WIC-contracted formula brand is typically available for purchase at retail stores by WIC participants and non-WIC participants alike, without an indicator on the packaging that some were provided through WIC.
- There are a number of reasons why individuals may have excess formula. For example, a WIC participant may obtain the infant's full monthly allotment of formula at one time; alternatively, non-WIC parents may purchase formula in bulk at a lower cost to save money. In either case, if the infant then stops drinking that type of formula, parents may attempt to sell the unused formula.
- Individuals posting formula for sale online are able to remain relatively anonymous, so WIC staff may not have sufficient information to link the online advertisement with a WIC participant. According to one WIC official we spoke with, staff in that state identify approximately one posting a week with sufficient detail about the seller—such as name or contact information—for staff to pursue. A WIC official from another state said that staff previously used phone numbers to identify

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<sup>41</sup> We included this criterion because participants receiving WIC vouchers for formula may be likely to purchase the infant's entire monthly allotment of formula at one time. This may result in WIC participants having multiple cans of unused formula, for example, if the infant switches formulas during the month, as noted in the two posts we found that explicitly stated the individuals were attempting to sell WIC formula online. A relatively large amount of formula may also indicate an intent to traffic WIC benefits in bulk in order to make a profit. We recently reported on trafficking of food benefits in another federal nutrition program. See GAO, *Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*, [GAO-14-641](#) (Washington, D.C.: August 21, 2014). See appendix I for additional information about our monitoring approach.

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WIC participants posting formula for sale, but they believe participants then began to list other people's phone numbers on posts.

- Advertisements for infant formula sales can be numerous online, and formula for sale originates from varied sources. For example, through our literature search, we found multiple news reports on stolen infant formula advertised for sale online.

According to USDA, state, and local WIC officials, because of these challenges, the return on investment for monitoring online sales of WIC infant formula is low. One USDA official noted that it is difficult for states to prove that participants are selling WIC food benefits, which increases the amount of time and effort state staff need to spend to address these cases.<sup>42</sup> Officials from one state WIC agency and one local WIC agency we spoke to said that efforts by state and local agency staff to identify and address online WIC formula sales result in few confirmed cases and draw away scarce resources from other aspects of administering the program. One USDA official said that states that sanction a participant for attempting to sell WIC formula without sufficient evidence that it occurred will likely have the violation overturned during the administrative appeal process.<sup>43</sup> These cases also appear unlikely to result in court involvement, as when we asked the 19 officials from 12 states how these cases were addressed, only one said that a couple had gone through the

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<sup>42</sup> As noted previously, proving that a WIC participant is attempting to sell WIC infant formula is difficult in part because online advertisements do not always include the name or phone number of the seller.

<sup>43</sup> See 7 C.F.R. § 246.9. According to USDA, each state must balance the need to ensure WIC program integrity by imposing sanctions with the likely costs and benefits of these activities, taking into account, for example, the potential impacts on sanctioned participants' nutritional needs. An official from one of the states that we spoke with noted that when state staff are considering sanctions for participants, they must be careful to do so without adversely affecting child participants. For example, the official said that when suspending benefits for adult participants, staff sometimes allow the child to continue receiving benefits if a different adult agrees to be the person responsible for those benefits. As mentioned previously, state agencies have some flexibility in determining sanctions for participant violations, subject to federal requirements. In our review of 25 state policy and procedure manuals, we found that state approaches for addressing participants' attempted sales of WIC foods vary. For example, the sanctions for this violation included a written warning in 10 states and either a 6-month or 1-year disqualification in 5 states.

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legal system.<sup>44</sup> Federal internal control standards state that agencies should design and implement internal controls based on the related costs and benefits. According to USDA, because of the substantial risks associated with improper payments and fraud related to WIC vendor transactions, both USDA and the states have focused their oversight efforts in recent years on addressing vulnerabilities in the management of this area, rather than focusing on possible participant violations. However, because the use of the Internet as a marketplace has substantially increased in recent years and the national extent of online sales of WIC food benefits is unknown, USDA and the states have insufficient information to assess the benefits of broadening their oversight efforts to include this participant violation, as discussed in more detail later in this report.

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## USDA Has Provided Limited Assistance to States for Preventing and Addressing Online Sales

USDA has taken steps aimed at clarifying that the online sale of WIC benefits is a participant violation. For example, in 2013, USDA proposed regulations that would expand the definition of program violation to include offering to sell WIC benefits, specifically including sales or attempts made online.<sup>45</sup> Earlier, in 2012, USDA issued guidance to WIC state agencies clarifying that the sale of, or offer to sell, WIC foods verbally, in print, or online is a participant violation.<sup>46</sup> This guidance stated that USDA expects states to sanction and issue claims against participants for all program violations, but it did not provide direction to states on ways to prevent online sales of WIC foods, including formula. That same year, USDA also sent letters to four e-commerce websites—through which individuals advertise the sale of infant formula—requesting

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<sup>44</sup> As noted earlier, when appropriate, state agencies must refer participants who violate program requirements to federal, state, or local authorities for prosecution under applicable statutes.

<sup>45</sup> This proposed rule focused on implementing electronic benefit transfer for the WIC program. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111-296, 78 Fed. Reg. 13,549, 13,561 (Feb. 28, 2013).

<sup>46</sup> WIC Policy Memorandum #2012-1, *Offering to Sell WIC Foods, Benefits and/or EBT Cards Publicly or Online* (February 10, 2012).

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that they notify their customers that the sale of WIC benefits is prohibited, and two of the companies agreed to post such a notification.<sup>47</sup>

More generally, USDA has highlighted the importance of ensuring WIC program integrity through guidance issued in recent years aimed at encouraging participants to report WIC program fraud, waste, and abuse to the USDA Office of the Inspector General (OIG). For example, in 2012, USDA disseminated a poster developed by the OIG and attached it to a guidance document describing its purpose, which includes informing WIC participants and staff how to report violations of laws and regulations relating to USDA programs. The following year, USDA issued additional guidance that encouraged states to add contact information for the OIG to WIC checks or vouchers, or to their accompanying folders or sleeves.<sup>48</sup> USDA indicated that the intent of both guidance documents was to increase program integrity by making it easier for participants to report incidents of suspected fraud, waste, and abuse to the OIG. However, neither guidance document specifically directed states to publicize the fact that attempting to sell WIC benefits, either online or elsewhere, qualifies as an activity that should be reported.

WIC regulations require state agencies to establish procedures designed to control participant violations;<sup>49</sup> however, we found that states vary in whether their required procedures include informing participants of the prohibition against selling WIC formula. The WIC regulations require that all participants (or their caretakers) be informed of their rights and responsibilities and sign a written statement of rights and obligations during the certification process.<sup>50</sup> The regulations also require certain program violations to be included in the information provided on rights and responsibilities; however, according to USDA officials, the sale of WIC food benefits is not required to be included, nor do the regulations

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<sup>47</sup> We recently reported that USDA has also made similar efforts to curb potential online trafficking of benefits in the Supplemental Nutrition Assistance Program. See [GAO-14-641](#).

<sup>48</sup> WIC Policy Memorandum #2013-4, *OIG Hotline Information on WIC Food Instruments* (June 10, 2013).

<sup>49</sup> 7 C.F.R. § 246.12(u)(1).

<sup>50</sup> 7 C.F.R. § 246.7(i)(10), (j).

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require participants be informed of this violation through other means.<sup>51</sup> In our review of rights and responsibilities statements from 25 states' WIC policy and procedure manuals, we found that 7 did not require local agency staff to inform participants that selling WIC benefits is against program rules.<sup>52</sup> Beyond this approach, some state officials we spoke to reported using other methods to inform participants of this program rule, but some methods may not reach all participants. For example, while officials from two states said that a statement instructing participants not to sell their benefits is printed either on the food voucher or the envelope containing the voucher given to participants, an official from another state said that local agencies in that state display a poster informing participants that selling WIC benefits online is prohibited. Both USDA officials and officials we spoke with from two states noted that some WIC participants do not know that selling food benefits is a program violation. Inconsistent communication to participants about this violation conflicts with federal internal control standards, which call for agency management to ensure that there are adequate means of communicating with external stakeholders that may have a significant impact on the agency achieving its goals. Participants who are unaware of this prohibition may sell excess formula online, thus inappropriately using program resources.

In addition, we found that states vary in the ways they identify attempted sales of WIC formula through monitoring efforts. According to the state and local WIC officials we spoke with, the method of monitoring used to identify online sales of WIC formula and the level of effort devoted to this activity vary across states. For example, while officials from 10 states said that state or local staff perform monitoring activities, an official from another state said that the state contracts with a private investigative firm to perform this task. Also, officials in one state said that a number of staff within the state office, as well as a number of those in local agencies, search social media websites daily. In contrast, officials from another state said that staff spend about a half day each week monitoring online sites for attempted sales of WIC food benefits, and an official from a different state said that staff monitor for such sales only when time allows.

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<sup>51</sup> States are required to ensure that local agencies advise participants, or their caretaker, when appropriate, that the supplemental foods issued are only for their personal use. 7 C.F.R. § 246.10(b)(2)(ii)(D).

<sup>52</sup> In addition, we found that 18 of the states' rights and responsibilities statements did not require local agency staff to inform participants that selling WIC benefits online specifically is prohibited.

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USDA has signaled through recently proposed regulations and policy guidance that it considers the sale of WIC foods—including formula—to be a risk to program integrity; however, the department has not worked with states on developing ways to address these sales. A USDA official told us that the department would like to provide more support to states in pursuing likely cases of participant fraud related to the online sale of WIC food benefits, but it has not yet determined how to be of assistance. USDA officials told us that some of their regional meetings with state WIC staff have included discussions of states' approaches to monitoring online sales of WIC food benefits, but these meetings were focused broadly on program integrity issues rather than on this type of monitoring. Without general information on monitoring techniques—such as promising search terms or online sites where states may want to focus their efforts—some states may be missing opportunities to better target their limited resources. Federal internal control standards call for agencies to analyze risks from both external and internal sources, and employ mechanisms to identify and deal with any special risks brought on by changes in economic or industry conditions. The standards also note that the attitude and philosophy of management toward control operations such as monitoring can have a profound effect on internal control.<sup>53</sup>

We recently reported that USDA has provided guidance to states on monitoring online sales of Supplemental Nutrition Assistance Program (SNAP) benefits and has additional plans underway to support state program integrity efforts for SNAP;<sup>54</sup> however, these efforts likely will not directly assist state efforts to monitor online WIC benefit sales. Specifically, USDA issued guidance on suggested techniques for monitoring attempted SNAP benefit sales on e-commerce sites in 2012. Although we found that some state officials had problems using the detection tools suggested in USDA's guidance and recommended that USDA reassess the effectiveness of this guidance, we also learned that USDA is taking steps to provide additional help to states. For example, USDA officials reported that the department has plans to issue grants to support state process improvements for detecting, investigating, and prosecuting SNAP recipients involved in benefit trafficking. USDA officials also said that recently commissioned studies will help inform the department's efforts to assist states in developing better fraud detection

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<sup>53</sup> See [AIMD-00-21.3.1](#).

<sup>54</sup> See [GAO-14-641](#).

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tools. While these efforts may help to assist state WIC staff monitoring attempted online sales of WIC formula to some extent, they are not directly applicable to WIC due to differences in benefit delivery. Specifically, SNAP benefits are provided through an electronic benefits transfer card that can be used to purchase a wide variety of foods at an authorized vendor by swiping the card and entering a personal identification number. Therefore, efforts to identify SNAP benefit trafficking focus on monitoring online sales of these cards and their personal identification numbers, which can be traced back to unique SNAP participants. In contrast, WIC participants generally receive benefits through vouchers that they use to purchase specific foods at an authorized vendor, and they are required to sign the voucher at the time of purchase.<sup>55</sup> As a result, efforts to identify online sales of WIC benefits involve monitoring for formula after it has been purchased, and it is difficult to determine whether the formula was provided through WIC.

USDA officials indicated they believe states are monitoring attempted sales of WIC formula online to identify this participant violation; however, the department has not gathered information on the status of state efforts to address online sales. As part of its oversight responsibilities, USDA officials review each WIC state plan annually to ensure that it is consistent with federal requirements. However, we found that a plan outlining a state's procedures for identifying participant violations is not among the required elements for WIC state plans included in the statute and regulations.<sup>56</sup> As previously discussed, across the 12 states we spoke with, efforts taken to identify and address online sales of WIC formula varied substantially. Because USDA does not require that state agencies document their procedures for identifying sales of WIC foods, including online sales of infant formula, the agency does not know whether or how states are working to ensure program integrity in this

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<sup>55</sup> The vendor must ensure the participant, parent or caretaker, or proxy signs the voucher in the presence of the cashier. 7 C.F.R. § 246.12(h)(3)(vi). As of September 2014, nine states and four Indian tribal organizations are using electronic benefits transfer cards to administer WIC benefits. Under federal statute, all state agencies are required to have implemented electronic benefits transfer systems for WIC by October 1, 2020. 42 U.S.C. § 1786(h)(12).

<sup>56</sup> 42 U.S.C. § 1786(f)(1), 7 C.F.R. § 264.4(a). One related required element is the state agency's plan for collecting and maintaining information on cases of participant fraud and abuse. We also found that the guidance USDA provides to states on developing their state plans, while relatively detailed in some respects, does not direct states to describe their plan for identifying program violations, including sales of WIC food benefits.

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area. According to federal internal control standards, agency management needs operating information to determine compliance with laws and regulations. Also, the standards note that factors outside management's control or influence can affect an agency's ability to achieve all its goals. Because state agencies are responsible for addressing program violations under the regulations, monitoring the actions they take is key to ensuring program integrity.

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## Conclusions

WIC provides essential supplemental nutrition and assistance to low-income families, and infant formula, in particular, plays a critical role in the nutritional well-being of the many infant participants receiving it through the program. By better tailoring the food packages, USDA has better aligned the maximum amount of infant formula local agencies are allowed to provide to certain participants. For example, the reduction USDA made to the amount of formula that can be provided to partially breastfed infants reduced the amount of excess formula provided to them, which may have helped reduce opportunities for sales of excess formula. However, it is clear that some participants are selling WIC formula online, inappropriately using program resources. Although the extent of this activity is unknown, explicitly informing WIC participants that such sales are against WIC rules could help improve program integrity by preventing some online sales of WIC infant formula. However, USDA has not required state agencies to inform participants of this prohibition, and some states are not requiring local staff to do so. As a result, some participants may attempt to sell excess WIC formula online without the knowledge that it is against program rules.

Monitoring online classified advertisements for attempted sales of WIC formula is another way to ensure program integrity. As the technological environment has changed with the increased use of e-commerce, actions needed to ensure WIC participants do not inappropriately use infant formula have changed as well. While USDA officials believe that states monitor for online sales of WIC formula, USDA currently does not collect information to confirm this. As a result, USDA is unable to effectively oversee state efforts to control this participant violation, and the agency lacks assurance that efforts are taking place nationwide. State officials we spoke to have responded to the inherent challenges involved in monitoring websites for infant formula sales with varied approaches, which likely yield varied outcomes, and some officials told us the return on investment for their monitoring efforts is low. However, because USDA and state agencies lack information from a national perspective about online sales of WIC food benefits and cost-effective approaches for

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identifying and addressing these sales, states are likely to be poorly positioned to strike the appropriate balance of costs and benefits when determining how to target their resources to ensure program integrity.

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## Recommendations for Executive Action

To better ensure that WIC participants are aware of the prohibition against selling WIC formula, and to assist states' efforts to prevent and address online formula sales, we recommend that the Secretary of Agriculture direct the Administrator of FNS to take the following three actions:

- Instruct state agencies to include in the rights and responsibilities statement that participants are not allowed to sell WIC food benefits, including online.
- Require state agencies to articulate their procedures for identifying attempted sales of WIC food benefits in their WIC state plans and analyze the information to ascertain the national extent of state efforts.
- Collect information to help assess the national extent of attempted online sales of WIC formula benefits and determine cost-effective techniques states can use to monitor online classified advertisements.

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## Agency Comments

We provided a draft of this report to the Secretary of Agriculture for review and comment. In oral comments, USDA officials agreed with all three recommendations. Regarding the first two recommendations, officials noted that the department will incorporate into the WIC regulations requirements that states include the prohibition against the sale of WIC food benefits in participant rights and responsibilities statements and report to USDA in their WIC state plans on their procedures for identifying attempted sales of these benefits. USDA officials noted that because the regulatory process can be lengthy, in the interim period, the department will consider issuing guidance recommending these as best practices to state agencies. Regarding the third recommendation, officials said they would make it a priority to explore options for using available resources to assess the extent of online sales of WIC formula and to identify and share best practices, cost-effective techniques, or new approaches with state agencies to use in monitoring online advertisements. Specifically, they may draw on funds designated for addressing high-priority programmatic issues, and collaborate with stakeholders and other FNS program staff on monitoring strategies. We agree with the department's planned

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approaches to addressing the recommendations, and we believe these efforts will help to improve WIC program integrity.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Agriculture, and other interested parties. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-7215 or [brownke@gao.gov](mailto:brownke@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

*Kay E. Brown*

Kay E. Brown  
Director, Education, Workforce  
and Income Security Issues

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# Appendix I: Objectives, Scope, and Methodology

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To obtain and evaluate information about online sales of infant formula provided by the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), we used a variety of methods. We reviewed relevant federal laws, regulations, and U.S. Department of Agriculture (USDA) guidance to determine requirements related to the provision of formula to infants receiving WIC, as well as to identify federal, state, and local roles related to preventing and addressing online sales of WIC formula. We also interviewed USDA officials and reviewed USDA's data on WIC infant participants who breastfeed, which was available for fiscal years 2010 through 2014. As part of our interviews with USDA officials, we assessed the reliability of these data and determined that they were sufficiently reliable for the purpose of this study. To help us understand how federal WIC food requirements were recently modified, we also reviewed a 2005 report published by the National Academies' Institute of Medicine, since many of the changes were based on the recommendations of this report.<sup>1</sup> To determine the role USDA regulations and guidance play in preventing and addressing online sales of WIC formula, we reviewed a non-generalizable sample of 25 states' WIC policy and procedure manuals to determine how consistent states' policies and procedures are in preventing and addressing online formula sales. To obtain some information about the extent of online sales of WIC formula in four metropolitan areas, we conducted monitoring of online classified advertisements to sell formula using one popular e-commerce website. To obtain additional information relevant to our study, we also interviewed an official from the National WIC Association, as well as 19 state and local WIC officials representing 12 states.<sup>2</sup> In addition, we assessed USDA's controls against GAO standards for Internal Control in the Federal Government.<sup>3</sup>

We conducted this performance audit from April 2014 through December 2014 in accordance with generally accepted government auditing

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<sup>1</sup> Institute of Medicine of the National Academies, *WIC Food Packages: Time for a Change* (Washington, D.C.: 2005).

<sup>2</sup> We interviewed officials from California, Florida, Maryland, Massachusetts, Michigan, Minnesota, New York, Oklahoma, Oregon, Texas, Utah, and Washington. National WIC Association staff assisted us in contacting these officials, more than half of whom were Association board members. While the WIC administrators we interviewed represented a range of geographic locations, the views they shared are not generalizable to all states.

<sup>3</sup> GAO, *Government Operations: Standards for Internal Control in the Federal Government*, AIMD-00-21.3.1 (Washington, D.C.: Nov. 1, 1999).

standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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### Review of State WIC Policies and Procedures

To understand efforts to prevent and address online sales of WIC formula, we reviewed a non-generalizable sample of 25 states' WIC policy and procedure manuals, including each state's WIC participant rights and responsibilities statement.<sup>4</sup> We selected these 25 states primarily based on varied size of WIC caseloads and geographic dispersion, and as a group, the states provided services to approximately two-thirds of all WIC participants in the U.S in fiscal year 2013.<sup>5</sup> For each state, we reviewed the sections of the WIC policy and procedure manual relevant to participant violations, as well as the WIC participant rights and responsibilities statement. We analyzed each state's rights and responsibilities statement to determine if it indicated that (1) the sale of WIC food benefits is a participant violation, and (2) the sale of WIC food benefits online is a participant violation. We reviewed these statements because federal regulations require that all WIC participants be informed of their rights and responsibilities during the certification process. However, federal regulations do not require state agencies to inform participants of this type of program violation. For each state, we also reviewed the state's policies on addressing the participant violation of selling WIC benefits, such as through written warnings or program disqualifications for a specified time period.

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### Monitoring of Online Classified Advertisements

To obtain some information on the extent of online sales of WIC formula in four metropolitan areas, we conducted limited monitoring of online classified advertisements to sell formula using one popular e-commerce website that operates local websites. The selected areas included

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<sup>4</sup> Some states' WIC policy and procedure manuals did not include the WIC participant rights and responsibilities statement. In those states, we obtained the rights and responsibilities statement separately and reviewed both it and the manual.

<sup>5</sup> We reviewed policy and procedure manuals from Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, North Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, and Wisconsin.

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Chicago, IL; Dallas-Fort Worth, TX; Los Angeles, CA; and New York, NY. We selected these areas based on (1) high number of births—defined as over 100,000 or more in the metropolitan area between July 1, 2012 and July 1, 2013, (2) high state WIC caseloads—defined as over 275,000 participants in fiscal year 2013, and (3) geographic dispersion. Our monitoring results are not generalizable to all localities across the United States.

We conducted our monitoring of potential attempts to sell WIC formula during a 30-day period, from mid-June 2014 through mid-July 2014. During that period, we conducted manual search queries of the section of the website specified for infant- and child-related sales on each non-holiday weekday to detect postings containing the key terms “formula” or “WIC.”<sup>6</sup> We also conducted manual search queries of the same section of the website using the name of the formula brand equivalent to the WIC-contracted formula brand specific to the metropolitan area’s state.<sup>7</sup> We reviewed the text of each posting that contained the term “WIC,” as well as each posting containing the state-specific WIC-contracted formula brand. During our reviews of the text of the postings, we also identified those that met additional criteria generally consistent with WIC formula provided to participants. Specifically, the formula type and volume of formula container advertised for sale were equivalent to a type and volume of formula provided to WIC participants in the state in which the posting was made, and the amount of formula advertised for sale represented approximately 85 percent or more of the maximum amount of formula authorized for fully formula-fed infant WIC participants each month, averaged across all ages. We included the latter criterion to help us identify individuals attempting to sell relatively large quantities of formula. While this provides no information about the individuals’ relationship to the WIC program, we included this criterion because participants receiving WIC checks or vouchers for formula may be likely to purchase the infant’s entire monthly allotment of formula at one time.

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<sup>6</sup> During the week, we reviewed each day’s postings. Each Monday, we reviewed the posts from the weekend days, which for one week included the July 4<sup>th</sup> federal holiday. As a result, our analysis does not include any advertisements that were both posted and taken off the website over the course of a weekend.

<sup>7</sup> When identifying posts advertising formula with equivalent characteristics to what is provided to WIC participants, we looked only at the state where each metropolitan area was located. It is possible that individuals advertising formula in some of our selected metropolitan areas may have obtained the formula in other states.

This may result in WIC participants having multiple cans of unused formula, for example, if the infant switches formulas during the month, as noted in the two posts we found that specifically stated the individuals were attempting to sell WIC formula online. However, a relatively large amount of formula could also indicate intent to traffic WIC benefits in bulk in order to make a profit.<sup>8</sup>

When designing our monitoring approach, we relied on lessons learned by the GAO team that recently conducted a study to assess online sales of other federal nutrition benefits.<sup>9</sup> For example, we based our decision to use the popular e-commerce website on the experience of the other GAO team, which used both that website and a social media website. The team found that monitoring efforts were most effective when using the e-commerce website. Similarly, the other team used both an automated and a manual approach to monitor the e-commerce website but found the manual approach to be more effective—as measured by more postings indicative of potential sales of these benefits—than the automated approach.<sup>10</sup> Our monitoring was conducted to provide some information on the extent to which WIC participants may have attempted to sell WIC formula in four metropolitan areas over 30 days. As a result, we conducted our monitoring activities for illustrative purposes, and we did not intend to use them as evidence for our own investigations into potential WIC participant violations. However, we provided information to USDA officials about the two posts that explicitly stated the formula for sale was from WIC.

Our monitoring approach had some limitations. In the posts we reviewed, individuals might have been selling WIC formula, but did not clearly state in the post that the formula offered for sale was from WIC. As a result, our finding likely undercounts the number of individuals who offered WIC formula for sale in the four metropolitan areas during our monitoring period. Further, because of the general lack of structure to online sales,

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<sup>8</sup> We recently reported trafficking of food benefits in the Supplemental Nutrition Assistance Program. See GAO, *Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*, [GAO-14-641](#) (Washington, D.C.: August 21, 2014).

<sup>9</sup> [GAO-14-641](#).

<sup>10</sup> The automated approach involved the use of Really Simple Syndication technology, which provides users with aggregate content from a website based on key-word queries.

our findings on the numbers of posts offering formula for sale that met our criteria may over- or under-represent the true number. Specifically, while we excluded duplicate posts we identified on individual days, we were unable to identify duplicate posts across different days. Therefore, if someone posted formula for sale that met our criteria on Tuesday, and then because the formula did not immediately sell, they posted the same formula for sale on Friday, we would have counted those both as posts offering formula for sale. As a result, while our methods provide the total number of formula posts during our monitoring period, excluding duplicate posts on the same day, we cannot be certain that each post represented a new offer of formula for sale. In addition, our findings may understate the total number of posts from individuals attempting to sell WIC formula online because, although we chose search terms we thought individuals would be most likely to use, it is possible some individuals used different terms. We also had to make some assumptions about posts that did not include sufficient detail in the text of the post. For example, we included in our findings posts that did not explicitly state the formula brand name, type, or container volume in the text but included a photo that showed formula matching the criteria we identified. However, it is possible that the photo in some posts did not, in fact, match the formula being offered for sale, resulting in our findings overstating the true number.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Kay E. Brown, (202) 512-7215 or [brownke@gao.gov](mailto:brownke@gao.gov)

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## Staff Acknowledgements

In addition to the contact named above, Rachel Frisk (Assistant Director), Sara Pelton (analyst in charge), and Bryant Torres made key contributions to this report. Other contributors included James Bennett, Susan Bernstein, Sarah Cornetto, Celina Davidson, Michael Hartnett, James Healy, Ashley McCall, Jean McSween, and Almeta Spencer.

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