

**POLICY:**

The Local Agencies are responsible for the collection of returned formula, the donation of appropriate formulas and the disposal of special formulas.

**PROCEDURE:**

**A. When formula is returned to WIC**

Participants occasionally return formula bought with WIC benefits to the WIC Program, because WIC foods cannot be exchanged at the store for food, formula, cash or credit. All contract formula and certain special formulas (designated below) should be donated to community emergency food programs, such as food pantries. Local Agencies are directed to consult the Code of West Virginia Good Samaritan Food Donation Act, a state law enacted to encourage participation in food donation programs by providing a statutory framework to protect food donators from liability for their good faith efforts:

*A nonprofit organization is not subject to civil liability or criminal liability arising from the nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery product which the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution without profit or gain to needy individuals: Provided, That this limitation on liability does not apply to an injury to or the death of an ultimate user or recipient of the food or grocery product which results from an act or omission of the nonprofit organization which constitutes gross negligence or intentional misconduct.*

**B. Returned Formula**

1. Local Agency staff should inspect returned formula containers for visible defects and should check the label to ensure that the "use-by-date" has not expired. Infant formula that is expired, opened or that is visibly dented or damaged should be discarded and **must not** be distributed to community emergency food programs.
2. Local Agency staff must document each time formula is returned from a participant (see **Policy 3.06, Attachment #1 Voiding eWIC Benefits**).
3. Local Agency staff must store returned formula in a secure location that is out of view to WIC participants and ensure that the formula is protected from spoilage, infestation, damage or other conditions that may damage the wholesomeness or degrade the nutritional value or safety of the formula.

**C. WIC formulas appropriate for donation**

1. The following formulas listed under both **a. Contract Formulas** and **b. Exempt Infant Formula and WIC Eligible Nutritionals** on the WIC formulary would be appropriate to donate:
  - a. Contract Formulas:

**3.08**

**Returned WIC Formula**

Similac Advance	OptiGrow	Similac Soy	Isomil
Similac Gentle Comfort		Similac Sensitive	

- b. Exempt Infant Formula (special formulas) and WIC Eligible Nutritionals:  
Enfamil AR      Similac Alimentum      Nutramigen      NeoSure  
EnfaCare      Ensure      PediaSure      PediaSure with Fiber  
Carnation Instant Breakfast      Boost
- 2. Local Agency staff must document each time formula is donated to a community emergency food program (see **Attachment #1**).
- 3. Local Agency staff must reduce the formula in Crossroads' inventory upon formula donation.

**D. WIC formulas not appropriate for donation**

- 1. Formulas not specifically named and included in **Section C. 1.** are not appropriate for donation. These formulas should be discarded and **must not** be distributed to community emergency food programs.
- 2. Local Agency staff must document each time formula is discarded (see **Attachment #2**).
- 3. Local Agency staff must reduce the formula in Crossroads' inventory upon formula disposal.

**E. Formula Warehouse (CAP) Infant Formulas and WIC Nutritionals**

- 1. Infant formulas and WIC nutritionals that were delivered to the local agency clinic more than 30 days ago and did not leave the clinic may be reissued to another participant for a current benefit (i.e. staff cannot fill from stock for first date to spend dates past today's date).

**ATTACHMENTS:**

- 1. Formula Donation Tracking Form
- 2. Formula Disposal Tracking Form

**REFERENCES:**

- 1. West Virginia Code 55-7D-1 Good Samaritan Food Donation Act
- 2. WIC Regulations 246.12
- 3. WIC Policy Memo 2020-1, Donation of Unused, Returned Infant Formula