

## WIC Infant Formula Rebate Program

WIC's infant formula rebate program began in 1987 when rising infant formula costs led Tennessee to negotiate a contract with the manufacturers.<sup>5</sup> Following Tennessee's lead, Federal regulations were introduced that govern the operation of the rebate program. Current Federal regulations specify that all WIC State agencies must, by statute, operate a cost containment system for the procurement of infant formula except those States with home delivery or direct distribution food delivery systems or Indian State agencies with 1,000 or fewer participants (7 CFR Part 246). Those State agencies required to operate a cost containment procedure system for infant formula must use a sole-source (i.e., single-supplier) competitive system unless an alternative system provides savings equal to or greater than a sole-source competitive system.<sup>6</sup> Under the sole-source competitive system, a WIC State agency uses competitive bidding to award a contract to a manufacturer of infant formula in exchange for a rebate for each can of infant formula that is issued to participants. The State agency issues only the contract brand of infant formula except when medical documentation supports the use of another infant formula product. As a result, the brand of infant formula provided by WIC will vary by State according to which company has the contract. Generally, infant formula rebate contracts are for 3 years.

At the WIC State agency's option, solicitation for bids can take one of two forms: single solicitation or separate solicitations. Under single solicitation, the request for bids is for a single iron-fortified milk-based infant formula that is suitable for routine issuance to the majority of generally healthy, full-term infants. This is referred to as the primary contract brand infant formula. The primary contract brand infant formula must be offered in all physical forms (i.e., concentrated liquid, powdered, and ready-to-feed); and it cannot be an exempt infant formula, which is defined as any formula that is represented and labeled for use by an infant who has an inborn error of metabolism or a low birth weight or who otherwise has an unusual medical

or dietary problem (exempt infant formula is not required to have a rebate). Bidders are required to specify a rebate amount for the primary contract brand infant formula for each of the three physical forms of infant formula.

The sole-source contract is awarded to the bidder offering the lowest total monthly net price, as determined by the submission of sealed bids, for a standardized amount of the primary contract brand infant formula by physical form.<sup>7</sup> WIC regulations define net price as the difference between an infant formula manufacturer's lowest national wholesale price per unit for a full truckload of infant formula and the rebate level offered by the manufacturer.

All the different types of infant formula produced by the manufacturer awarded the infant formula contract (except exempt infant formula) are referred to as contract brand infant formula. The winning bidder is required to supply and provide rebates for all the contract brand infant formula the WIC State agency chooses to issue. Bidders that do not produce soy-based infant formulas must subcontract with another manufacturer to supply a soy-based infant formula under the contract. The amount of the rebate on the contract brand infant formula is based on the same percentage discount for the particular physical form of the primary contract brand infant formula. For example, if the rebate offered for the primary contract brand of powdered infant formula was 85 percent of the manufacturer's wholesale price, then the rebate for all other powdered forms of the contract brand infant formula would also be 85 percent of their wholesale price.

Under the process for separate solicitations, solicitations are issued for milk-based and soy-based infant formulas separately. This can increase competition for WIC contracts by allowing new or smaller infant formula manufacturers with a limited product line to bid on contracts (65 FR 51213-51229, August 23, 2000). Although two manufacturers have been awarded an individual State's contract in the past, currently in each State, only one manufacturer holds the WIC contract.

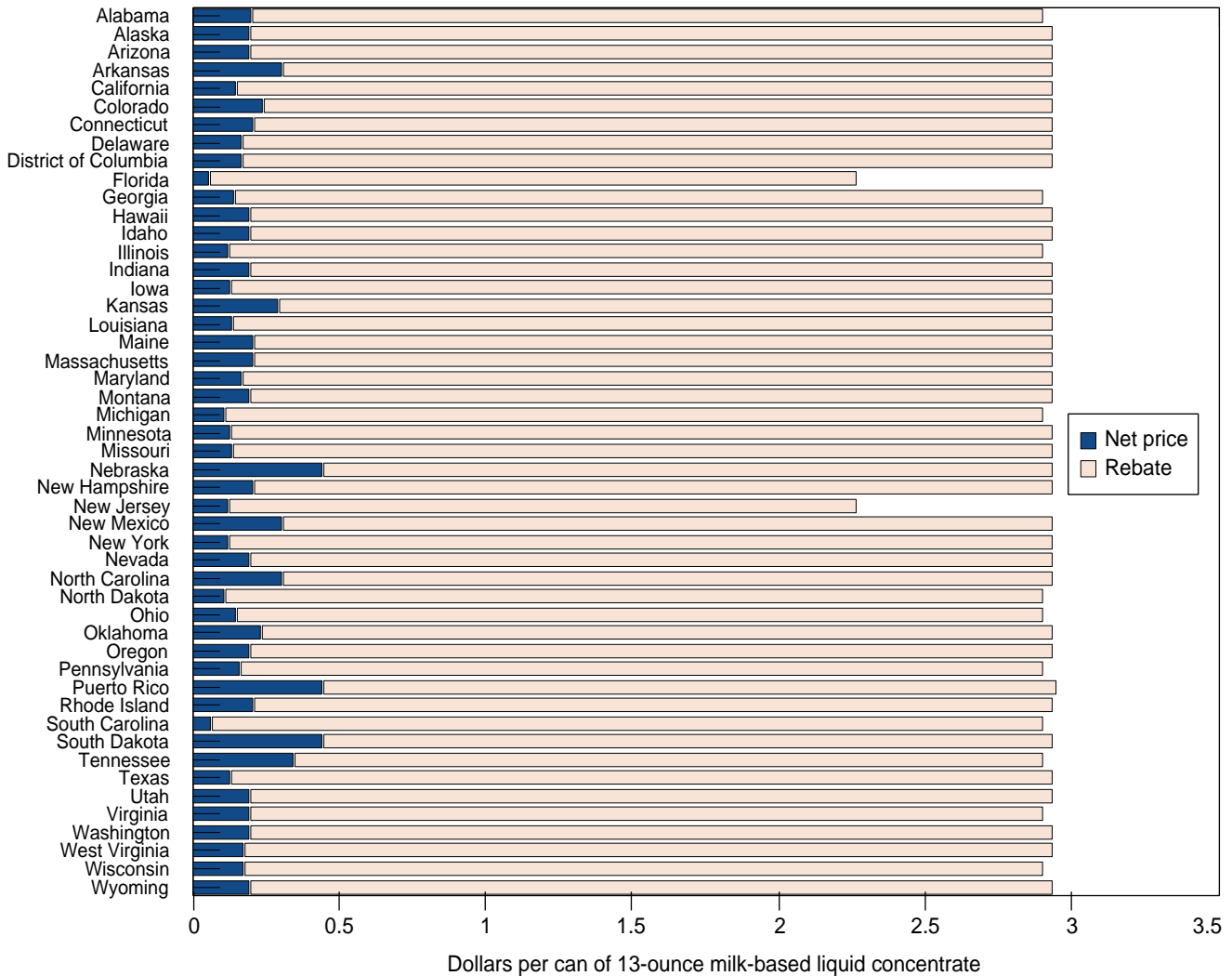
<sup>5</sup>See Appendix A for a more detailed discussion of the history of the infant formula rebate program.

<sup>6</sup>An interim rule, effective October 2000, strengthened and simplified the requirements for operating a sole-source infant formula rebate system (65 FR 51213-51229, August 23, 2000).

<sup>7</sup>WIC State agencies can elect to award the WIC contract to the bidder offering the highest monthly rebate if the weighted average retail prices for different brands of infant formula in the State vary by 5 percent or less.

Figure 1

**Wholesale price, WIC rebate, and net price of milk-based infant formula by State, September 2000<sup>1</sup>**



<sup>1</sup>Net price plus rebate equals the wholesale price.

Notes: Mississippi operates a direct distribution system, Vermont operates a home delivery system, and Kentucky uses a composite price for milk and soy-based infant formula.

Source: USDA's Food and Nutrition Service, 2000d.

The WIC State agency may choose to issue all or some of the different types of contract brand infant formula. Any noncontract brand infant formula (including exempt infant formulas and formulas not manufactured by the WIC contract manufacturer) may be issued only with medical documentation that an infant has a condition that dictates the formula's use.<sup>8</sup> The documentation must be provided by a licensed health care professional authorized to write medical prescriptions under State law.

<sup>8</sup>The only exception to this rule is that local WIC agencies may issue noncontract brand infant formula without medical documentation in order to accommodate religious eating patterns (65 FR 51213-51229, August 23, 2000).

Infant formula issued to WIC participants is usually in concentrated liquid or powdered forms. However, formula may be issued in ready-to-feed form in special situations, such as when the participant's household does not have an adequate and safe water supply or refrigeration, or if the person caring for the participant may have difficulty in correctly diluting concentrated liquid or powdered forms of infant formula.

As noted, most WIC participants receive food instruments, such as vouchers, that they transact for the contract brand of infant formula at authorized retailers. The WIC State agency then reimburses the vendor for the full retail price of the infant formula. WIC State agencies are required to consider the prices a vendor

applicant charges for supplemental foods, and WIC vendors are not allowed to mark up the price of the contract brand of infant formula more than other brands. The WIC State agency or the WIC State agency's financial institution bills the contract-winning manufacturer for the rebate agreed to in the contract. As a result, the actual cost of infant formula to the WIC program equals the retail cost minus the amount of the manufacturer's rebate.<sup>9</sup>

In fiscal year 2000, 67 of the 88 WIC State agencies operated a competitive sole-source rebate system in conjunction with a retail food delivery system.<sup>10</sup> There are 7 multistate systems in place, involving 40 WIC State agencies. Under these systems, WIC State agencies join together in a single rebate agreement to obtain infant formula. In this way, WIC State agencies with small- to medium-size populations can pool their buying power to leverage higher rebate levels (Liu, 1991).

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<sup>9</sup>The net price, as defined in a WIC infant formula rebate contract, is wholesale price minus the rebate. Because the retail price is wholesale price plus the retail markup, the cost of infant formula to the WIC program—retail price minus the rebate—differs from the net price received by the manufacturer by the amount of the retail markup.

<sup>10</sup>Vermont (home delivery system) and Mississippi (direct distribution system) did not use retail grocery stores to distribute WIC foods. In addition, 19 Indian Tribal State Agencies with participation of less than 1,000 either did not operate a cost containment system for infant formula or else used a cost containment procedure other than a competitive sole-source rebate system.

As of September 2000, only three manufacturers—Mead Johnson, Ross, and Carnation—held WIC infant formula rebate contracts. The wholesale prices for a 13-ounce can of milk-based liquid concentrate infant formula with iron varied by company—for Carnation \$2.27, Ross \$2.91, and Mead Johnson \$2.94 (fig. 1).<sup>11</sup> Because the wholesale price reflects the manufacturer's lowest *national* wholesale price, the wholesale price for an individual manufacturer does not vary by State (territories and Indian Tribal Organizations are excluded from this discussion). On the other hand, the amount of the rebate, determined by the submission of sealed bids, varied by State, ranging from \$2.14 in New Jersey to \$2.866 in New York. Rebates as a percentage of the WIC contract winning manufacturer's wholesale price ranged from about 85 percent in Nebraska and South Dakota to almost 98 percent in South Carolina. In other words, the infant formula purchased through the WIC program cost South Carolina about 2 percent of its wholesale cost plus the amount of the retail markup. Net price, defined in a WIC infant formula contract as the wholesale price minus the rebate, also varied greatly by State, ranging from 6.5 cents in Florida to 44.7 cents in Nebraska and South Dakota.

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<sup>11</sup>In September 2000, Carnation held WIC infant formula rebate contracts in Florida and New Jersey. Carnation has recently been awarded a third contract in Virginia that begins in July 2001.