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You Shouldn't Need a Doctor's Note to Switch Formula Brands

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On Wednesday, responding to the baby formula shortage crisis, President Biden said he is invoking the Defense Production Act “to ensure that manufacturers have the necessary ingredients to make safe, healthy infant formula here at home.” He also announced something called Operation Fly Formula “to speed up the import of infant formula and start getting more formula in stores as soon as possible.”

It's about time. If you're a parent struggling to feed an infant, the shortage is, indeed, a crisis. Two children in Tennessee were hospitalized recently because they couldn't get the specialized formula they needed for their medical condition.

Biden's announcement comes a few days after House Speaker Nancy Pelosi said that she would, according to reporting from The Times's Annie Karni, “expedite a bill to grant emergency authority to the federal food assistance program for women and children to relax restrictions on the types of formula that can be purchased.”

That program, the Special Supplemental Nutrition Program for Women, Infants and Children, usually referred to as WIC, is “the largest purchaser of infant formula in the United States,” as The Atlantic's Derek Thompson explained. Though the current crisis was kick-started by a product recall and a shutdown of an Abbott Nutrition manufacturing plant in Michigan, WIC's approach to the formula market appears to be among the reasons the shortage is so extreme right now, and it's what I want to focus on in this newsletter.

The way WIC's relationship with formula companies works is that the companies bid for the exclusive contract for WIC recipients in each state. Then the formula companies that win the bids give the states manufacturer rebates — about \$1.7 billion worth, according to an advocacy group, the National WIC Association. But as part of the rules, WIC beneficiaries can buy only the brand of formula that has the contract in their state, and as I noted last week, they may buy only specific quantities and sizes. Before this shortage, if a family receiving WIC assistance wanted to change formula brands, a doctor's note was needed (though WIC requested “flexibility” in March, and requirements were waived by some states when the scope of the crisis was becoming clear).

In his newsletter, Matt Stoller, the director of research at the American Economic Liberties Project, wrote that when a formula company is granted that contract, it has a knock-on effect for consumers in that state:

This rebate system distorts the entire market in a state, because it's just not worth having alternative formulas on a retail shelf if half of the buyers simply cannot purchase those formulas. As a result, the market tips to the WIC supplier, and that supplier raises prices on non-WIC recipients, and does so by between 26 to 35 percent.

And these contracts can make it easier for companies to dominate the market: According to The Washington Post, "Four major companies control 90 percent of the infant formula supply in the United States: Abbott, Gerber, Mead Johnson and Perrigo Nutritionals."

The system was constructed with good intentions, said Scott Lincicome, the director of general economics and trade at the Cato Institute: The government wanted to help people pay for baby formula, which is essential for the health of millions of infants. "But they also have a countervailing mandate to save taxpayers money," he said. As a 2015 report from the Department of Agriculture explained, "Infant formula is the single most expensive food item for WIC," and the rebates allow WIC to provide formula to more families. However, the states have no control over the amounts of the rebates; the manufacturers determine that via the bidding process.

The House Appropriations Committee chair, Rosa DeLauro, thinks this crisis is an opportunity for reforming how WIC works. When I spoke to her this week, she said that in the short term, the goal is to get formula back on the shelves. But in the longer term, "we're trying to vote on labor legislation to give the U.S.D.A. more power and control" over formula contracts and to empower the government to relax regulations not related to safety.

Lincicome thinks that the entire system should be overhauled and that parents who can't afford formula should simply be given vouchers that will cover the cost of whatever brand of formula they prefer to buy. The \$1.7 billion saved by WIC rebates "is a rounding error" to the federal government, he said. "We're not talking about huge bucks. That strikes me as an easy and totally worthwhile expenditure." Doing away with rebates would also drive down formula costs for non-WIC participants, he said, echoing Stoller's point about suppliers raising prices on regular consumers. Theoretically, the cost would better reflect market value, Lincicome said.

Brian Dittmeier, the senior director of public policy at the National WIC Association, is not ready to throw out the rebates just yet. WIC is able to serve almost all eligible infants under the current system, and he said he doesn't want to see a situation in which families are on waiting lists to get formula. But he wants to make sure this kind of shortage never happens again. "I think the No. 1 lesson we've learned is that WIC is not currently structured to have the flexibilities" that we need, he said.

While reporting this, I couldn't shake the feeling that in this country, we make things much more complicated and onerous for parents than they need to be. I talked to Daniela Gutierrez, the mother of an 11-month-old in New York City, who is a WIC recipient. Even before the shortage, she said, the seven cans of formula per month her family receives doesn't last. "My baby eats a lot. One of those lasts two days," she said, and it's \$18 a can. She works for the City University of New York, and she receives \$1,000 of guaranteed income a month through the Bridge Project,

which helps her pay for the extra formula her son needs. Before that additional financial support, “I was really, really struggling,” she said.

Last year — when the expanded child tax credit was still a thing — Quartz’s Camille Squires wrote, “Among wealthier nations, the U.S. provides some of the lowest direct support to families with children compared to the size of its economy. It has reduced this spending over time.” She mentioned WIC as part of America’s assistance for lower-income parents but assessed this support as limited in scope, saying that “these programs ultimately have not done much to change the child poverty rate in the U.S., which still remains one of the highest among developed nations.”

When you look at the bigger picture, this crisis really starts to seem like a slow-motion train wreck that could have been prevented if the well-being of infants had been at the forefront of a number of policy decisions. Alas. And while it appears the immediate formula shortage will be alleviated soon — beyond Biden’s announcement, the F.D.A. and Abbott reached an agreement on reopening the Michigan plant in about two weeks — there needs to be a bigger reckoning.

Want More on the Formula Crisis?

- In The Times, Catherine Pearson goes deep on the difficulties many women have breastfeeding their children and how emotionally charged the issue can be.
- In 2015 in Opinion, Courtney Jung explained that WIC offers a different set of benefits to encourage women to breastfeed. “Unlike formula-fed babies, who are eligible only for infant cereal and fruit- and vegetable-based baby food, breastfeeding babies also receive meat-based baby food, which is richer in iron. The difference in benefits is intended to create incentives for poor mothers to breastfeed, but withholding food from mothers at nutritional risk, and from their babies, seems more like punishment to me,” she wrote.