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EDMUND G. BROWN JR.
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REGULATORY ALERT 2015-02

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Department of Public Health (CDPH) to inform stakeholders of the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) of CDPH's plan to amend the California WIC Authorized Food List (WIC Bulletin Regulations Section 82000 et seq.), pursuant to Health and Safety Code Section 123322.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, CDPH will meet with stakeholders by webinar between November 9 and November 13, 2015 to receive input on the amendments to the WIC Authorized Food List. If you are interested in participating in this stakeholder workgroup, please send an e-mail by close of business on October 30, 2015 with the subject line reading "Stakeholder RSVP" to WICRegulations@cdph.ca.gov, with the following information included in the body of the e-mail:

Name:

Company Name (if applicable):

Address:

E-mail Address:

Stakeholder Group Represented: (Stakeholders can include, but are not limited to: currently authorized WIC vendors, owners or representatives of a non-WIC authorized store, manufacturers, WIC Local agency representatives, WIC participants, advocates, and consumer groups)

CDPH will contact you by November 4, 2015 with details on how and when to attend a webinar workgroup meeting. Stakeholders participating in a meeting will be assigned to the first available meeting.



CDPH Women, Infants and Children (WIC) Division
3901 Lennane Drive MS 8600 Sacramento, CA 95834
P.O. Box 997375 MS 8600 Sacramento, CA 95899-7375
(916) 928-8500 [Division Website](http://www.wicworks.ca.gov) (www.wicworks.ca.gov)

Comment Period

CDPH will accept written comments from affected stakeholders regarding the adoption of the proposed action. The comment period will be open for 27 calendar days, from October 24, 2015 through November 19, 2015. Send your comments electronically to the following e-mail address: WICRegulations@cdph.ca.gov.

If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.

Proposed Regulation

The California Department of Public Health, which administers the California WIC Program, proposes to adopt the following rules into California regulation via regulatory bulletin.

Article 5. WIC Authorized Food List

82000 WIC Authorized Food List

- ~~(a) The California WIC Authorized Food List Shopping Guide dated July 5, 2011, is the list of authorized supplemental foods for the California Special Supplemental Nutrition Program for Women, Infants and Children, except for the information regarding Whole Wheat Bread and Tortillas on the Whole Grains page.~~
- ~~(b) As of October 26, 2013, "infant fruits and/or vegetables in pouches" is added to the Infant Fruits and Vegetables category "Cannot Buy" section on the list of authorized supplemental foods.~~
- ~~(c) In the Whole Grain category, breads and tortillas that meet the following criteria are authorized supplemental foods:
 - ~~(1) 16 ounce packages of whole wheat bread that conforms to the standard of identity in Title 21 of the Code of Federal Regulations part 136.180. The dough must be made from "whole wheat flour" or "bromated whole wheat flour" or both.~~
 - ~~(2) 16 ounce packages of soft corn tortillas made from ground masa flour (corn flour) using traditional processing methods, where the primary ingredient is whole corn, corn (masa), whole ground corn, corn masa flour, masa harina, or white corn flour.~~
 - ~~(3) 16 ounce packages of whole wheat tortillas, where "whole wheat flour" is the only flour listed in the ingredient list. The Department shall list~~~~

~~authorized whole wheat tortillas by brand on an insert to the California
WIC Authorized Food List Shopping Guide.~~

- (a) For the purposes of this article “Department” is defined as the California Department of Public Health, and the “WIC Program” and “WIC” are defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.
- (b) The WIC Authorized Foods List or WAFL is composed of foods listed in sections 82050-83000, which meet the criteria specified for the categories of foods.
- (c) If a manufacturer makes a non-material change to an authorized food in food categories for which specific brand and/or product names are authorized, the Department will continue to authorize that food for purchase. Non-material changes are changes to brand or product name.
- (d) The Department will publish a document, entitled the “WIC Authorized Food List Shopping Guide.” This document is intended for educational purposes only and does not create any rights, obligations, affirmative duties, or replace or supersede the regulations in this Article.

82050 WIC Authorized Food List: Bottled Juice

- (a) Bottled Juice Category
 - (1) Any brand of pasteurized juice is authorized in the Bottled Juice Category when the juice has all of the following characteristics:
 - (A) Is sold in sixty-four (64) ounce bottled (ready-to-drink) containers;
 - (B) Is one of the following kinds of juice:
 - 1. Grapefruit (white);
 - 2. Orange;
 - 3. Apple;
 - 4. Cranberry;
 - 5. Grape (red, purple, or white);
 - 6. Grapefruit (ruby red or pink);
 - 7. Pineapple;
 - 8. Prune;
 - 9. Tomato (regular, low sodium, or spicy);
 - 10. Vegetable (regular, low sodium, or spicy); or

11. Juice blends: juice that is named as two or more authorized types of juice on the front label, such as orange-white grapefruit or cranberry-grape.
 - (C) Juice and juice blends containing the kinds of juice listed in subsection (a)(1)(B)(3)-(10) above must have "100% Juice" and "120% Vitamin C" (or more) printed on the front label;
 - (D) Is of regular calcium content or contains added calcium; and
 - (E) Is of regular Vitamin D content or contains added Vitamin D.
- (2) The following products are never authorized for purchase as part of the Bottled Juice Category:
 - (A) Authorized kinds of juice other than orange juice and white grapefruit juice that are not labeled as specified in subsection (a)(1)(C);
 - (B) Cider;
 - (C) Diet, light, or "lite" juice;
 - (D) Juice with added ingredients or supplements, including but not limited to caffeine, carnitine, chromium, DHA, echinacea, ginkgo biloba, ginseng, guarana, St. John's wort, taurine, or wheatgrass;
 - (E) Organic juice; and
 - (F) Refrigerated juice.

82100 WIC Authorized Food List: Breakfast Cereal

(a) Breakfast Cereal Category

- (1) The following breakfast cereals are authorized by brand and product name in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:
 - (A) B & G Foods — Cream of Wheat Whole Grain;¹
 - (B) General Mills — Cheerios;¹
 - (C) General Mills — MultiGrain Cheerios;¹
 - (D) General Mills — Honey Kix;¹
 - (E) General Mills — Kix;¹
 - (F) General Mills — Total Whole Grain;¹
 - (G) Kellogg's — Corn Flakes;
 - (H) Kellogg's — Frosted Mini Wheats Original;¹
 - (I) Kellogg's — Frosted Mini Wheats Little Bites;¹

- (J) Kellogg's — Special K Original;
 - (K) Malt-O-Meal — Malt-O-Meal Hot Cereal Original;
 - (L) Malt-O-Meal — Oat Blenders with Honey;
 - (M) Mill Select Early On — Puffed Wheat;¹
 - (N) Post — Bran Flakes;¹
 - (O) Post — Grape-Nuts;¹
 - (P) Post — Honey Bunches of Oats Honey Roasted;
 - (Q) Quaker — Corn Bran Crunch;
 - (R) Quaker — Life Original;¹
 - (S) Quaker — Oatmeal Squares Brown Sugar;¹ and
 - (T) Quaker — Oatmeal Squares Cinnamon. ¹
- (2) The following crisp rice or crispy rice breakfast cereals are authorized by brand in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:
- (A) Best Yet;
 - (B) Essential Everyday;
 - (C) First Street;
 - (D) Food Club;
 - (E) Great Value;
 - (F) Hospitality;
 - (G) HY-TOP;
 - (H) Hy-Vee;
 - (I) IGA;
 - (J) Kiggins;
 - (K) Kroger;
 - (L) Malt-O-Meal;
 - (M) Market Pantry;
 - (N) Mill Select Early On;¹
 - (O) Parade;
 - (P) Raley's;
 - (Q) Ralston Foods;

- (R) Red & White;
 - (S) Shurfine;
 - (T) Signature Kitchens;
 - (U) Springfield;
 - (V) Stater Bros.;
 - (W) Sunny Select;
 - (X) Valu Time;
 - (Y) Western Family; and
 - (Z) WinCo Foods.
- (3) The following instant oatmeals in old-fashioned, classic, regular, or original flavors are authorized by brand in eleven and eight-tenths (11.8) ounce to twelve (12) ounce containers of individual serving packets in the Breakfast Cereal Category:
- (A) Best Yet;¹
 - (B) Early On;¹
 - (C) Essential Everyday;¹
 - (D) First Street;¹
 - (E) Food Club;¹
 - (F) Hy-Vee;¹
 - (G) Great Value;¹
 - (H) IGA;¹
 - (I) Kroger;¹
 - (J) Raley's;¹
 - (K) Ralston Foods;¹
 - (L) Red & White;¹
 - (M) Shurfine;¹
 - (N) Signature Kitchens;¹
 - (O) Special Value;¹
 - (P) Springfield;¹
 - (Q) Stater Bros;¹
 - (R) Sunny Select;¹
 - (S) Western Family;¹ and

- (T) WinCo Foods.¹
- (4) The following types of breakfast cereal are never authorized for purchase as part of the Breakfast Cereal Category:
 - (A) Grits;
 - (B) Hot breakfast cereal with added fruits and nuts;
 - (C) Hot breakfast cereal with added sweeteners, including sugar, artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners; and
 - (D) Organic cereal.

¹ This cereal contains 51% or more whole grain by weight.

82150 WIC Authorized Food List: Canned Fish

(a) Canned Fish Category

(1) Chunk Light Tuna Subcategory

- (A) Any brand of chunk light tuna is authorized in the Chunk Light Tuna Subcategory of the Canned Fish Category when it has all of the following characteristics:
 - 1. Is sold in five (5) ounce cans;
 - 2. Is packed in water;
 - 3. Is plain; and
 - 4. Is of regular or low sodium content.
- (B) The following types of tuna are never authorized for purchase as part of the Chunk Light Tuna Subcategory:
 - 1. Solid white tuna;
 - 2. Albacore tuna;
 - 3. Prime fillet fish; and
 - 4. Kits in which tuna is packaged with other foods, such as condiments and crackers.

(2) Mackerel Subcategory

- (A) Any brand of mackerel is authorized in the Mackerel Subcategory of the Canned Fish Category when it has all of the following characteristics:
 - 1. Is sold in fifteen (15) ounce cans;
 - 2. Is packed in water or tomato sauce; and

3. Is of regular or low sodium content.
- (B) The following types of mackerel are never authorized for purchase as part of the Mackerel Subcategory:
1. Canned king mackerel; and
 2. Canned mackerel packed in anything other than water or tomato sauce.
- (3) Pink Salmon Subcategory
- (A) Any brand of pink salmon is authorized in the Pink Salmon Subcategory of the Canned Fish Category when it has all of the following characteristics:
1. Is sold in five (5) ounce, six (6) ounce, or fourteen and three-quarters (14.75) ounce cans;
 2. Is packed in water;
 3. Is plain; and
 4. Is of regular or low sodium content.
- (B) The following types of salmon are never authorized for purchase as part of the Pink Salmon Subcategory:
1. Specialty salmon, including smoked salmon, wild sockeye salmon, blue back salmon, or red salmon; and
 2. Kits in which salmon is packaged with other foods, such as condiments and crackers.
- (4) Sardines Subcategory
- (A) Any brand of sardines is authorized in the Sardines Subcategory of the Canned Fish Category when it has all of the following characteristics:
1. Is sold in fifteen (15) ounce cans;
 2. Is packed in water, mustard, or tomato sauce; and
 3. Is of regular or low sodium content.
- (B) The following types of sardines are never authorized for purchase as part of the Sardines Subcategory:
1. Canned sardines packed in anything other than water, mustard, or tomato sauce.
- (5) The following types of canned fish products are never authorized for purchase as part of any subcategory of the Canned Fish Category:
- (A) Organic canned fish;

- (B) Canned fish in organic sauce;
- (C) Canned fish packed in oil; and
- (D) Fish packaged in pouches or plastic containers.

82200 WIC Authorized Food List: Canned Mature Beans

(a) Canned Mature Beans Category

- (1) Any brand and variety of canned lentils or mature beans are authorized in the Canned Mature Beans Category when the canned lentils or mature beans have all of the following characteristics:
 - (A) Are plain;
 - (B) Are sold in fifteen (15) to sixteen (16) ounce cans; and
 - (C) Are of regular sodium content or low sodium content.
- (2) Authorized varieties of canned lentils or mature beans include but are not limited to:
 - (A) Black;
 - (B) Black-eyed peas;
 - (C) Garbanzo (chickpeas);
 - (D) Great northern;
 - (E) Kidney;
 - (F) Lentils;
 - (G) Lima;
 - (H) Mixed;
 - (I) Navy;
 - (J) Pink;
 - (K) Pinto; and
 - (L) Red.
- (3) The following types of lentils and beans are never authorized for purchase as part of the Canned Mature Beans Category:
 - (A) Canned lentils or beans with added sugars, spices, fats, or oils;
 - (B) Canned lentils or beans with added vegetables, fruits, or meat;
 - (C) Canned lentils or beans with artificial, reduced-calorie, or no-calorie sweeteners;

- (D) Canned immature peas or beans including green peas, green beans, or wax beans;
- (E) Canned baked beans;
- (F) Canned refried beans;
- (G) Flavored lentils or beans, such as Cajun, barbeque (bbq), or ranch style beans;
- (H) Dry or frozen beans, peas, or lentils; and
- (I) Organic canned beans or lentils.

82250 WIC Authorized Food List: Cheese

(a) Cheese Category

- (1) Any brand of non-organic cheese is authorized in the Cheese Category when the cheese has all of the following characteristics:
 - (A) Is made in the United States of America;
 - (B) Is sold in a sixteen (16) ounce package in one of the following ways:
 - 1. Individually wrapped mozzarella string-cheese sticks; or
 - 2. Blocks or rounds of the following cheeses:
 - A. Orange or white cheddar (mild, medium, sharp, or longhorn)
 - B. Colby
 - C. Jack
 - D. Mozzarella
 - E. Marbled or blends of cheeses authorized by this subsection (for example, colby-jack)
 - (C) Is of regular fat content, lowfat, or fat free; and
 - (D) Is of regular sodium content or low sodium.
- (2) The following types of cheese are never authorized for purchase as part of the Cheese Category:
 - (A) Diced, grated, sliced, crumbled, or shredded cheese;
 - (B) Cheese that is purchased from or sliced at the deli;
 - (C) Cheese with added ingredients, including but not limited to peppers or spices; and
 - (D) Organic Cheese.

82300 WIC Authorized Food List: Concentrate Juice

(a) Concentrate Juice Category

- (1) Any brand of pasteurized juice concentrate is authorized in the Concentrate Juice Category when the juice has all of the following characteristics:
 - (A) Is sold in eleven and a half (11.5), twelve (12), or sixteen (16) ounce containers;
 - (B) Is frozen or shelf-stable;
 - (C) Is one of the following kinds of juice:
 1. Grapefruit (white);
 2. Orange;
 3. Apple;
 4. Cranberry;
 5. Grape (red, purple, or white);
 6. Grapefruit (ruby red or pink);
 7. Pineapple;
 8. Prune;
 9. Tomato (regular, low sodium, or spicy);
 10. Vegetable (regular, low sodium, or spicy); or
 11. Juice blends: juice that is named as two or more authorized types of juice on the front label, such as orange-white grapefruit or cranberry-grape.
 - (D) Juice and juice blends containing the kinds of juice listed in subsection (a)(1)(C)(3)-(10) above must have "100% Juice" and "120% Vitamin C" (or more) printed on the front label;
 - (E) Is of regular calcium content or contains added calcium; and
 - (F) Is of regular Vitamin D content or contains added Vitamin D.
- (2) The following products are never authorized for purchase as part of the Concentrate Juice Category:
 - (A) Authorized kinds of juice other than orange juice and white grapefruit juice that are not labeled as specified in subsection (a)(1)(D);
 - (B) Cider;

- (C) Diet, light, or "lite" juice;
- (D) Juice with added ingredients or supplements, including but not limited to caffeine, carnitine, chromium, DHA, echinacea, ginkgo biloba, ginseng, guarana, St. John's wort, taurine, or wheatgrass;
- (E) Organic juice; and
- (F) Refrigerated juice.

82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils

(a) Dry Beans, Peas, or Lentils Category

- (1) Any brand and variety of dry beans, peas, or lentils are authorized in the Dry Beans, Peas, or Lentils Category when the dry beans, peas, or lentils are sold in bulk or in sixteen (16) ounce containers.
- (2) Authorized varieties of dry beans, peas, or lentils include but are not limited to:
 - (A) Black;
 - (B) Black-eyed peas;
 - (C) Garbanzo (chickpeas);
 - (D) Great northern;
 - (E) Kidney;
 - (F) Lentils;
 - (G) Lima;
 - (H) Mixed;
 - (I) Navy;
 - (J) Pink;
 - (K) Pinto;
 - (L) Red; and
 - (M) Split peas.
- (3) The following types of beans, peas, or lentils are never authorized for purchase as part of the Dry Beans, Peas, or Lentils Category:
 - (A) Canned or frozen beans, peas, or lentils;
 - (B) Dry beans, peas, or lentils with added sugars, fats, or oils;
 - (C) Dry beans, peas, or lentils with added vegetables, fruits, or meat;
 - (D) Dry beans, peas, or lentils with artificial, reduced-calorie, or no calorie sweeteners;

- (E) Dry beans, peas, or lentils with flavors or spices or bean soup mixes with flavoring packets or spices; and
- (F) Soy nuts.

82400 WIC Authorized Food List: Eggs

(a) Eggs Category

- (1) Any brand of non-organic white, large, chicken eggs sold in cartons of twelve (12) or one (1) dozen is authorized in the Eggs Category.
- (2) The following types of eggs are never authorized for purchase as part of the Eggs Category:
 - (A) Powdered eggs;
 - (B) Liquid eggs;
 - (C) Specialty eggs, such as cage-free, vitamin-enriched, pastured, low cholesterol, or DHA-enriched eggs; and
 - (D) Organic eggs.

82450 WIC Authorized Food List: Fresh Bananas

(a) Fresh Bananas Category

- (1) Fresh yellow organic or non-organic bananas are authorized in the Fresh Bananas Category.
- (2) Any other type of banana is never authorized for purchase as part of the Fresh Bananas Category, including but not limited to:
 - (A) Plantains;
 - (B) Red bananas;
 - (C) Mini bananas; and
 - (D) Fingerling bananas.

82500 WIC Authorized Food List: Fruits and Vegetables

(a) Fruits and Vegetables Category

- (1) All food items authorized in the Fruits and Vegetables Category and subcategories are authorized for purchase using a cash value voucher.
- (2) Fresh Fruits and Vegetables Subcategory
 - (A) Any type, variety, and brand of fresh fruits and vegetables in any combination is authorized in the Fresh Fruits and Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:

1. Organic or non-organic fresh fruits and vegetables;
 2. Whole or cut fresh fruits and vegetables;
 3. Bagged fresh fruits and vegetables;
 4. Bagged or packaged salad mixtures; and
 5. Garlic, onion, ginger, jalapeños, peppers, and chilies.
- (B) The following foods are never authorized for purchase as part of the Fresh Fruits and Vegetables Subcategory:
1. Food or products from a salad bar or deli; party trays; fruit baskets; and decorative vegetables and fruits, including but not limited to chilies or garlic on a string and painted pumpkins;
 2. Nuts or fruit-nut mixtures;
 3. Edible blossoms, such as squash blossoms;
 4. Bagged salad with added ingredients, such as dressing, croutons, and cheese;
 5. Vegetable or fruit kits with added ingredients, such as dressing, cheese, dips, or sauces;
 6. Dried vegetables;
 7. Herbs and spices, such as parsley, basil, cilantro, and mint;
 8. Fruits and vegetables with added fats, oils, or sugars; and
 9. Fruits and vegetables with artificial, reduced-calorie, or no-calorie sweeteners.
- (3) Dried Fruits Subcategory
- (A) Any variety, size, and brand of dried fruits without added fats, sugars, or oils in any type of container or bulk is authorized as part of the Dried Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic dried fruits;
 2. Freeze-dried fruits; and
 3. Dried fruits with or without pits.
- (B) The following foods are never authorized for purchase as part of the Dried Fruits Subcategory:
1. Dried fruits with artificial, reduced-calorie, or no-calorie sweeteners;

2. Dried fruits with added artificial or natural flavors, including essences;
 3. Dried or freeze-dried vegetables;
 4. Fruit snacks or fruit bites; and
 5. Trail mix.
- (4) Canned Fruits Subcategory
- (A) Any brand, variety, and size of canned fruits in any type of container that are packed in water or juice and do not contain added sugars are authorized in the Canned Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic canned fruits;
 2. Natural or unsweetened applesauce; and
 3. Canned fruits mixed with canned vegetables when a fruit is listed as the first ingredient.
- (B) The following types of fruits are never authorized for purchase as part of the Canned Fruits Subcategory:
1. Canned fruits packed in syrup, such as heavy, light, or extra light syrup;
 2. Canned fruits with added sugars, salt, fats, or oils;
 3. Canned fruits with artificial, reduced-calorie, or no-calorie sweeteners;
 4. Canned fruits that do not list a fruit as the first ingredient;
 5. Canned fruit cocktail;
 6. Mixed fruit with cherries;
 7. Cranberry sauce;
 8. Pie filling; and
 9. Home-canned or home-preserved fruits.
- (5) Canned Vegetables Subcategory
- (A) Any brand, size, and variety of regular or low sodium canned vegetables in any type of container is authorized in the Canned Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic canned vegetables;
 2. Sweet potatoes or yams without added sugars or syrup;

3. Tomatoes or tomato products including but not limited to strained, crushed, diced, paste, or pureed tomatoes; and
 4. Canned vegetables mixed with canned fruits when a vegetable is listed as the first ingredient.
- (B) The following foods are never authorized for purchase as part of the Canned Vegetables Subcategory:
1. Canned tomato products with added sugars, fats, or oils;
 2. Canned tomato products with artificial, reduced-calorie, or no-calorie sweeteners;
 3. Canned vegetables with added fats or oils;
 4. Canned vegetable mixtures with mature beans;
 5. Canned vegetables that do not list a vegetable as the first ingredient;
 6. Pickled, creamed, or sauced canned vegetables;
 7. Soups, ketchup, relishes, olives, salsa, stewed tomatoes, or tomato sauces (tomato, pizza, or spaghetti);
 8. Canned mature beans, including but not limited to black-eyed peas, kidney beans, and pinto beans; and
 9. Home-canned or home-preserved vegetables.

(6) Frozen Fruits Subcategory

- (A) Any brand, size, and variety of organic or non-organic frozen fruits in any type of container are authorized in the Frozen Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Frozen fruits mixed with frozen vegetables when a fruit is listed as the first ingredient.
- (B) The following types of fruits are never authorized for purchase as part of the Frozen Fruits Subcategory:
1. Frozen fruits with added ingredients, oils, salts, or sugars;
 2. Frozen fruits with artificial, reduced-calorie, or no-calorie sweeteners; and
 3. Frozen fruits that do not list a fruit as the first ingredient.

(7) Frozen Vegetables Subcategory

- (A) Any brand, size, and variety of organic or non-organic frozen vegetables in any type of container are authorized in the Frozen

Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:

1. Sweet potatoes or yams without added sugars or syrup;
 2. Frozen mature or immature beans; and
 3. Frozen vegetables mixed with frozen fruits when a vegetable is listed as the first ingredient.
- (B) The following types of vegetables are never authorized for purchase as part of the Frozen Vegetables Subcategory:
1. Frozen vegetables with added sugars, oils, or fats;
 2. Breaded or flavored frozen vegetables;
 3. French fries, tater tots, hash browns, or mashed potatoes;
 4. Frozen vegetables that do not list a vegetable as the first ingredient;
 5. Frozen vegetables with added ingredients, such as sauces, cheese, butter, pasta, or rice; and
 6. Frozen vegetables with artificial, reduced-calorie, or no-calorie sweeteners.

82550 WIC Authorized Food List: Infant Cereal

(a) Infant Cereal

- (1) The following infant cereals are authorized by brand and product name in eight (8) ounce or sixteen (16) ounce containers in the Infant Cereal Category:
 - (A) Baby Basics — Oatmeal;
 - (B) Baby Basics — Rice;
 - (C) Beech-Nut — Single Grain Multigrain;
 - (D) Beech-Nut — Single Grain Oatmeal;
 - (E) Beech-Nut — Single Grain Rice;
 - (F) Comforts for Baby — Oatmeal;
 - (G) Comforts for Baby — Rice;
 - (H) Early On — Multi Grain;
 - (I) Early On — Oatmeal;
 - (J) Early On — Rice;
 - (K) Earth's Best Organic — Whole Grain Multi-Grain;

- (L) Earth's Best Organic — Whole Grain Oatmeal;
 - (M) Earth's Best Organic — Whole Grain Rice;
 - (N) Gerber — MultiGrain;
 - (O) Gerber — Oatmeal;
 - (P) Gerber — Organic Brown Rice;
 - (Q) Gerber — Organic Oatmeal;
 - (R) Gerber — Rice;
 - (S) Gerber — Whole Wheat;
 - (T) Healthy Times Special Nourish Organic — Brown Rice;
 - (U) Healthy Times Special Nourish Organic — Mixed Grain;
 - (V) Healthy Times Special Nourish Organic — Oatmeal;
 - (W) Healthy Times Special Nourish Organic —Rice;
 - (X) Mom's Choice — Multigrain;
 - (Y) Mom's Choice — Oatmeal;
 - (Z) Mom's Choice — Rice;
 - (AA) Tippy Toes — Oatmeal;
 - (BB) Tippy Toes — Rice;
 - (CC)Up & Up — Oatmeal;
 - (DD)Up & Up — Rice;
 - (EE) Yummy Naturals — Multigrain;
 - (FF) Yummy Naturals — Oatmeal; and
 - (GG)Yummy Naturals — Rice.
- (2) The following types of infant cereal are never authorized for purchase as part of the Infant Cereal Category:
- (A) Infant cereal with added ingredients, including formula, milk, fruits, vegetables, probiotics, and DHA; and
 - (B) Infant cereal with added sugars, artificial sweeteners, reduced-calorie sweeteners, and no-calorie sweeteners.

82600 WIC Authorized Food List: Infant Formula

(a) Infant Formula Category

- (1) Authorized infant formula shall be selected and prescribed for a participant by a competent professional authority. Participants may

only purchase the brand, type (physical form), size, and number of prescribed cans printed on their food instrument(s).

(2) Contract Formula

(A) Authorized contract infant formula must meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and is selected through a competitive bidding process. The list of the [current contract formulas](#) can be found at:

http://www.cdph.ca.gov/programs/wicworks/Documents/WICFood/Formula_Flyer_English.pdf.

(3) Non-Contract Formula

(A) Non-contract brand infant formula is all infant formula that is not covered by an infant formula cost containment contract awarded by the State agency. Non-contract brand formula may only be issued in food package III for participants with qualifying conditions with medical documentation pursuant to 7 Code of Federal Regulations part 246.10(d)(1)(i) (2015).

(4) The following types of infant formula are never authorized for purchase as part of the Infant Formula Category:

(A) Low iron or no iron formula.

82650 WIC Authorized Food List: Infant Fruits and Vegetables

(a) Infant Fruits and Vegetables Category

(1) Any infant fruits and/or vegetables product made by the brands listed in (a)(2)(A)-(R) is authorized in the Infant Fruits and Vegetables Category when it has the all of the following characteristics:

(A) Is sold in three and a half (3.5) ounce or four (4) ounce containers other than pouches;

(B) Is sold individually or in multi-packs;

(C) Is organic or non-organic;

(D) Lists a fruit or vegetable as the first ingredient; and

(E) Contains only single ingredient fruits or vegetables, or combinations of two (2) or more single ingredient fruits or vegetables.

(2) The following brands are authorized in the Infant Fruits and Vegetables Category:

(A) Beech-Nut;

(B) Early On Baby;

- (C) Earth's Best;
 - (D) First Choice;
 - (E) Full Circle;
 - (F) Gerber;
 - (G) Happy Naturals;
 - (H) Healthy Times;
 - (I) Mom's Natural Choice;
 - (J) Mom's Organic Choice;
 - (K) O Organics;
 - (L) Organico;
 - (M) Raley's Organic;
 - (N) SistaGirl;
 - (O) Tippy Toes;
 - (P) Wild Harvest;
 - (Q) Yummy Naturals; and
 - (R) Yummy Organics.
- (3) When purchasing authorized containers of infant fruits and vegetables that are sold individually, participants may not purchase both three and a half (3.5) ounce and four (4) ounce containers using the same food instrument.
- (4) The following infant foods are never authorized for purchase as part of the Infant Fruits and Vegetables Category:
- (A) Infant fruits and vegetables in pouches;
 - (B) Infant fruits and vegetables mixed with cereal, meat, pasta, or rice;
 - (C) Infant fruits and vegetables with added sugars, salt, spices, starch, fiber, or DHA;
 - (D) Infant fruits and vegetables with added sweeteners including artificial, reduced-calorie, or no-calorie sweeteners;
 - (E) Infant fruits and vegetables that do not list a fruit or vegetable as the first ingredient;
 - (F) Dried or powdered infant fruits and vegetables;
 - (G) Infant desserts, puddings, or smoothies;

- (H) Infant juice;
- (I) Infant dinners; and
- (J) Graduates or toddler infant food.

82700 WIC Authorized Food List: Infant Meats

(a) Infant Meats Category

- (1) Any infant meat or poultry product made by the brands listed in (a)(2)(A)-(M) is authorized in the Infant Meats Category when it has all of the following characteristics:
 - (A) Meat or poultry is the single major ingredient;
 - (B) Is sold in two and a half (2.5) ounce containers other than pouches;
 - (C) Is sold individually or in multi-packs;
 - (D) Is organic or non-organic; and
 - (E) May contain added broth or gravy.
- (2) The following brands are authorized in the Infant Meats Category:
 - (A) Beech-Nut;
 - (B) First Choice
 - (C) Full Circle;
 - (D) Gerber;
 - (E) Happy Naturals;
 - (F) Mom's Choice;
 - (G) Mom's Natural Choice;
 - (H) O Organics;
 - (I) Raley's Organic;
 - (J) Tippy Toes;
 - (K) Wild Harvest;
 - (L) Yummy Naturals; and
 - (M) Yummy Organics.
- (3) The following infant foods are never authorized for purchase as part of the Infant Meats Category:
 - (A) Infant meats in pouches;
 - (B) Infant meats with added sugars, salt, spices, fiber, or DHA;

- (C) Infant meats with artificial, reduced-calorie, or no-calorie sweeteners;
- (D) Infant meats mixed with vegetables, fruits, cereal, pasta, or rice;
- (E) Infant dinners; and
- (F) Graduates or toddler infant food.

82750 WIC Authorized Food List: Milk

(a) Milk Category:

- (1) If no other type of milk is specified on a food instrument, any brand of non-organic milk that has all of the following characteristics is authorized as part of a participant's food package in the Milk Category:
 - (A) Plain fluid cow's milk;
 - (B) One percent (1%) lowfat (light) or nonfat (fat free or skim);
 - (C) Pasteurized or ultra-pasteurized; and
 - (D) Sold in one (1) gallon containers.
- (2) Plain fluid cow's milk in half gallon containers is authorized in the Milk Category as part of a participant's food package under the following circumstances: when a participant selects a homeless food package or when the maximum monthly allowance cannot be met by issuing one (1) gallon containers. Plain fluid cow's milk in half gallon containers is only authorized for purchase when it meets the requirements in section (a)(1)(A) and (C) and only when half gallon is printed on a participant's food instrument.
- (3) Whole milk is authorized in the Milk Category as part of the standard food package issuance to one-year-old children (12 through 23 months). Whole milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C), and (D) and only when it is the type of milk printed on a participant's food instrument. Half gallon containers of whole milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
- (4) Two percent (2%) milk is authorized in the Milk Category as part of the participant food package issued to one-year-old children (12 through 23 months) for whom overweight or obesity is a concern when prescribed by a competent professional authority, based on an individual nutritional assessment. Two percent (2%) milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C) and (D) and only when it is the type of milk printed on a participant's food instrument. Half gallon containers of two percent (2%) milk are

authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).

- (5) Lactose-free milk in half gallon containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Lactose free milk in half gallon containers is authorized for purchase when it meets the requirements in section (a)(1)(A)-(C) and only when half gallon lactose-free milk is printed on a participant's food instrument. Whole lactose-free milk in half gallon containers is authorized in the Milk Category as part of standard food package issuance to one-year-old children when half gallon whole lactose-free milk is printed on a participant's food instrument.
- (6) Evaporated milk in twelve (12) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Evaporated milk that is one percent (1%) lowfat or nonfat (fat free or skim) in twelve (12) ounce containers is authorized for purchase when it meets the requirements in sections (a)(1)(B)-(C) above and only when it is the type and fat-level of milk printed on a participant's food instrument. Whole evaporated milk in twelve (12) ounce containers is authorized for purchase when it meets the requirements in section (a)(1)(C) above and only when whole evaporated milk is printed on a participant's food instrument.
- (7) Powdered dry milk in nine and six tenths (9.6) ounce and twenty-five and six tenths (25.6) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Pasteurized powdered dry milk that is nonfat (fat free or skim) in nine and six-tenths (9.6) ounce and twenty-five and six-tenths (25.6) ounce containers is authorized for purchase only when it is the type of milk printed on a participant's food instrument.
- (8) The following types of milk are never authorized for purchase in the Milk Category:
 - (A) Unpasteurized (raw) milk;
 - (B) Acidophilus milk;
 - (C) Buttermilk;
 - (D) Calcium-fortified milk;
 - (E) Flavored milk, including but not limited to chocolate or strawberry;
 - (F) Goat's milk;
 - (G) Soy milk;
 - (H) Non-dairy milk substitutes;

- (I) Milk with added DHA;
- (J) Milk sold in pint sized containers;
- (K) Milk in glass bottles;
- (L) Sweetened condensed or filled milk;
- (M) Ultra heat treated (UHT) shelf-stable milk; and
- (N) Organic milk.

82800 WIC Authorized Food List: Peanut Butter

(a) Peanut Butter Category

- (1) Any brand of peanut butter is authorized in the Peanut Butter Category when it has all of the following characteristics:
 - (A) Conforms to the F.D.A. standard of identity for peanut butter in 21 Code of Federal Regulations part 164.150;
 - (B) Is sold in sixteen (16) to eighteen (18) ounce containers; and
 - (C) Is of regular or low sodium content.
- (2) Authorized peanut butters may be any texture, such as:
 - (A) Creamy;
 - (B) Smooth;
 - (C) Crunchy;
 - (D) Super crunchy;
 - (E) Chunky;
 - (F) Super chunky; and/or
 - (G) Old fashioned or natural.
- (3) The following varieties of peanut butter are never authorized for purchase as part of the Peanut Butter Category:
 - (A) Honey nut roasted peanut butter
 - (B) "Grind your own" peanut butter;
 - (C) Peanut butter spread;
 - (D) Lowfat or reduced fat peanut butter;
 - (E) Peanut butter with added ingredients, such as jams, jellies, chocolate, marshmallows, or honey;
 - (F) Peanut butter with added supplements, such as omega-3 fatty acids;

- (G) Peanut butter with artificial, reduced-calorie, or no-calorie sweeteners; and
- (H) Organic peanut butter.

82850 WIC Authorized Food List: Soy

(a) Soy Category

- (1) The following soy-based beverage products are authorized in the Soy Category:
 - (A) 8th Continent Soymilk
 - 1. Original flavor; and
 - 2. Sold in refrigerated half-gallon containers.
 - (B) Pacific Ultra Soy
 - 1. Original flavor; and
 - 2. Sold in shelf-stable quart-sized containers.
 - (C) Silk Soymilk
 - 1. Original flavor; and
 - 2. Sold in refrigerated half gallons or refrigerated quart-sized containers.
 - (D) WESTSOY Organic Plus Soymilk
 - 1. Plain flavor; and
 - 2. Sold in shelf-stable half gallons and quart-sized containers.
- (2) All authorized soy-based beverages are authorized both individually and in multi-packs.
- (3) The following types of soy-based beverages are never authorized for purchase as part of the Soy Category:
 - (A) Flavored soy-based beverage, such as chocolate or vanilla; and
 - (B) Light, lowfat, fat free, and non-fat soy-based beverage.

82900 WIC Authorized Food List: Tofu Category

(a) Tofu Category

- (1) The following tofus, as identified below by brand/product name and texture, in sixteen (16) ounce packages are authorized in the Tofu Category:
 - (A) Azumaya

1. Extra Firm
 2. Firm
 3. Silken
- (B) House Foods
1. Premium Extra Firm
 2. Premium Firm
 3. Premium Medium Firm
- (C) Nasoya
1. Organic Silken
- (D) O Organics
1. Organic Sprouted Super Firm
- (E) Wo Chong
1. Firm
 2. Silken
 3. Soft
- (2) The following types of tofu are never authorized for purchase as part of the Tofu Category:
- (A) Tofu with added fats, sugars, sweeteners (artificial, reduced-calorie, or no-calorie), oils, sodium, flavoring, or seasoning;
 - (B) Cubed, dried, baked, or fried tofu; and
 - (C) Tofu that is sold in bulk and not pre-packaged.

82950 WIC Authorized Food List: Whole Grains

(a) Whole Grains Category

(1) Brown Rice Subcategory

- (A) Any brand of brown rice is authorized in the Brown Rice Subcategory of the Whole Grains Category when it has all of the following characteristics:
1. Is sold in bulk or in sixteen (16) ounce packages;
 2. Is of any variety of brown rice, such as basmati and jasmine;
 3. Is short, medium, or long grain; and
 4. Is regular, quick, or instant.

- (B) The following types of rice are never authorized for purchase as part of the Brown Rice Subcategory:
 - 1. Ready-to-serve rice;
 - 2. Brown rice mixed with any other type of rice; and
 - 3. Organic brown rice.
- (2) Bulgur Subcategory
 - (A) Any brand of bulgur is authorized in the Bulgur Subcategory of the Whole Grains Category when it has the following characteristics:
 - 1. Is sold in bulk or in sixteen (16) ounce packages; and
 - 2. Is organic or non-organic.
- (3) Corn Tortillas Subcategory
 - (A) The following soft corn tortillas (white or yellow), identified by brand and product name, in sixteen (16) ounce packages are authorized in the Corn Tortillas Subcategory of the Whole Grains Category:
 - 1. Acapulco Tortilleria Mexicatessen — King Size White Corn Tortillas
 - 2. Carlita — Corn Tortillas Soft Taco Style
 - 3. Chi-Chi's — White Corn Taco Style Tortillas
 - 4. Don Pancho — White Corn Tortillas
 - 5. Early On — White Corn Tortillas
 - 6. Early On — Yellow Corn Tortillas
 - 7. El Comal — Corn Tortillas
 - 8. Fiesta — Corn Tortillas
 - 9. Guerrero — Tortillas de Maiz Blanco
 - 10. Herdez — White Corn Tortillas Soft Taco Size
 - 11. La Banderita — Corn Tortillas
 - 12. La Banderita — Grande Corn Tortillas
 - 13. La Burrita — Corn Tortillas
 - 14. La Fe Tortilleria — Corn Tortillas King Size
 - 15. La Mexicana — Corn Tortillas
 - 16. La Perla Mexicana — King Size White Corn Tortillas

17. La Perla Mexicana — King Size Yellow Corn Tortillas
 18. La Rosa — Corn Tortillas La Grande
 19. La Rosa — Yellow Corn Tortillas La Grande
 20. La Tapatia — Premium Corn Tortillas
 21. La Tapatia — White Corn Tortillas/Tortillas Blancas
 22. Marcela Valladolid — White Corn Tortillas
 23. Mi Rancho — Mama's White Corn Tortillas
 24. Mi-Rancho Tortillas — Soft White Corn Tortillas
 25. Mission — Yellow Corn Tortillas Extra Thin
 26. Northgate Gonzalez Market — White Corn Tortillas de Maiz
 27. Northgate Gonzalez Market — Yellow Corn Tortillas de Maiz
 28. Ozuna — Corn Tortillas
 29. Romero's— Stone Ground Corn Tortillas Large King Size
 30. Romero's — Whole Grain Corn Tortillas
 31. Santa Fe Tortilla Company — White Corn Tortillas
 32. Santa Fe Tortilla Company — Yellow Corn Tortillas
 33. Sol De Oro — Premium Corn Tortillas
 34. Vallarta Supermarkets — Vallarta Tortilla de Maiz
 35. Vallarta Supermarkets — Vallarta Tortilla de Maiz Amaril
- (B) The following type of Corn Tortillas is never authorized for purchase as part of the Corn Tortillas Subcategory:
1. Organic Corn Tortillas.
- (4) Oatmeal or Oats Subcategory
- (A) Any brand of oatmeal or oats is authorized in the Oatmeal or Oats Subcategory of the Whole Grains Category when it has all of the following characteristics:
1. Is sold in bulk or in sixteen (16) ounce packages;
 2. Is plain;
 3. Is of any variety of oatmeal or oats, including old fashioned or crystal wedding;
 4. Is rolled, cut, or steel cut; and
 5. Is regular-cooking, instant-cooking, or quick-cooking.

- (B) The following types of oatmeal or oats are never authorized for purchase as part of the Oatmeal or Oats Subcategory:
 - 1. Individual and flavored oatmeal packets; and
 - 2. Organic oatmeal or oats.
- (5) Whole Grain Barley Subcategory
 - (A) Any brand of whole grain barley is authorized in the Whole Grain Barley Subcategory of the Whole Grains Category when it has the following characteristics:
 - 1. Is sold in bulk or in sixteen (16) ounce packages; and
 - 2. Is organic or non-organic.
 - (B) The following type of barley is never authorized for purchase as part of the Whole Grain Barley Subcategory:
 - 1. Pearled barley.
- (6) Whole Wheat Bread Subcategory
 - (A) Any brand of whole wheat bread (loaves, buns, or rolls) is authorized in the Whole Wheat Bread Subcategory of the Whole Grains Category when it has all of the following characteristics:
 - 1. Is sold in sixteen (16) ounce packages; and
 - 2. The package has “100% Whole Wheat” printed on the front label.
 - (B) Whole wheat bread (loaves, buns, or rolls) made by an in-store bakery is allowed if it meets the requirements of subsection (A).
 - (C) The following type of whole wheat bread is never authorized for purchase as part of the Whole Wheat Bread Subcategory:
 - 1. Organic whole wheat bread.
- (7) Whole Wheat Pasta
 - (A) The following whole wheat pastas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Pasta Subcategory of the Whole Grains Category:
 - 1. Allegra — Whole Wheat Spaghetti
 - 2. Barilla — Whole Grain Penne
 - 3. Barilla — Whole Grain Spaghetti
 - 4. Bella Terra Organic — Organic Whole Wheat Capellini
 - 5. Bella Terra Organic — Organic Whole Wheat Spaghetti

6. Essential Everyday — Whole Wheat Elbow Macaroni
7. Essential Everyday — Whole Wheat Penne Rigate
8. Essential Everyday — Whole Wheat Rotini
9. Essential Everyday — Whole Wheat Spaghetti
10. Essential Everyday — Whole Wheat Thin Spaghetti
11. Full Circle — Organic Whole Wheat Angel Hair
12. Full Circle — Organic Whole Wheat Spaghetti
13. Great Value — Whole Wheat Spaghetti
14. Hodgson Mill — Whole Wheat Angel Hair
15. Hodgson Mill — Whole Wheat Elbows
16. Hodgson Mill — Whole Wheat Spaghetti
17. Hodgson Mill — Whole Wheat Spirals
18. Hodgson Mill — Whole Wheat Thin Spaghetti
19. Kroger — 100% Whole Grain Penne Rigate
20. Kroger — 100% Whole Grain Rotini
21. Kroger — 100% Whole Grain Spaghetti
22. Kroger — 100% Whole Grain Thin Spaghetti
23. O Organics — Organic Whole Wheat Penne Rigate
24. O Organics — Organic Whole Wheat Spaghetti
25. Racconto — Whole Wheat Capellini
26. Racconto — Whole Wheat Elbows
27. Racconto — Whole Wheat Farfalle
28. Racconto — Whole Wheat Linguine
29. Racconto — Whole Wheat Penne Rigate
30. Racconto — Whole Wheat Rigatoni
31. Racconto — Whole Wheat Rotini
32. Racconto — Whole Wheat Spaghetti
33. Ronzoni Healthy Harvest — 100% Whole Grain Linguine
34. Ronzoni Healthy Harvest — 100% Whole Grain Penne Rigate
35. Ronzoni Healthy Harvest — 100% Whole Grain Rotini

36. Ronzoni Healthy Harvest — 100% Whole Grain Spaghetti
37. Ronzoni Healthy Harvest — 100% Whole Grain Thin Spaghetti
38. Simple Truth Organic — Whole Wheat Penne Rigate
39. Simple Truth Organic — Whole Wheat Rotini
40. Simple Truth Organic — Whole Wheat Spaghetti
41. Simply Balanced — Organic Whole Wheat Farfalle
42. Simply Balanced — Organic Whole Wheat Fusilli
43. Simply Balanced — Organic Whole Wheat Penne Rigate
44. Simply Balanced — Organic Whole Wheat Spaghetti
45. Western Family — 100% Whole Wheat Penne Rigate
46. Western Family — 100% Whole Wheat Spaghetti

(8) Whole Wheat Tortillas Subcategory

(A) The following whole wheat tortillas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Tortillas Subcategory of the Whole Grains Category:

1. Acapulco Tortilleria Mexicatessen — Whole Wheat Flour Tortillas
2. Carlita — 100% Whole Wheat Flour Tortillas
3. Chi-Chi's — Whole Wheat Tortillas Fajita Style
4. Don Pancho — Whole Wheat Tortillas Soft Taco & Wraps Style
5. Early On — Whole Wheat Tortillas
6. El Comal — 100% Whole Wheat Flour Tortillas
7. Esperanza's Tortilleria — Whole Wheat Flour Tortillas
8. Fiesta — Whole Wheat Tortillas
9. Food Club — Whole Wheat Tortillas Fajita Style
10. Frestillas — 100% Whole Wheat Tortillas
11. Guerrero — Tortillas de Harina Integral
12. Herdez — Whole Wheat Tortillas Fajita Style
13. Kroger — Soft Taco Sized 100% Whole Wheat Tortillas
14. La Banderita — Whole Wheat Flour Tortillas Fajita

15. La Banderita — 100% Whole Wheat Flour Tortillas Soft Taco
 16. La Perla Mexicana — Whole Wheat Tortillas
 17. La Reina — Whole Wheat Flour Tortillas
 18. La Rosa — 100% Whole Wheat Flour Tortillas
 19. La Victoria — Whole Wheat Tortillas Soft Taco
 20. Mi Casa — Wheat Tortillas
 21. Mi-Rancho Tortillas — Whole Wheat Flour Tortillas
 22. Mission — 100% Whole Wheat Flour Tortillas Medium-Soft Taco
 23. Ortega — Whole Wheat Tortillas
 24. Ozuna — Whole Wheat Tortillas
 25. Romero's — 100% Whole Wheat Grain Flour Tortillas
 26. Romero's — 100% Whole Wheat Grain Flour Tortillas Regular/Soft Taco Size
 27. Santa Fe Tortilla Company — Whole Wheat Tortillas
 28. Tortilleria Santacruz — 100% Whole Wheat Flour Tortillas
 29. Vallarta Supermarkets — 100% Whole Wheat Tortillas
 30. Vallarta Supermarkets — Tortilla de Trigo/Whole Wheat Flour Tortillas
- (B) The following type of whole wheat tortillas is never authorized for purchase as part of the Whole Wheat Tortillas Subcategory:
1. Organic whole wheat tortillas.
- (9) The following types of whole grains are never authorized for purchase as part of the Whole Grains Category:
- (A) Whole grains that are not plain and that have added ingredients, such as fruits, nuts, or spices;
 - (B) Bread, tortillas, rice, oats, or pasta that is refrigerated or frozen;
 - (C) Refrigerated or frozen dough and mixes;
 - (D) Whole grains with artificial, reduced-calorie, or no-calorie sweeteners; and
 - (E) Homemade whole grains.
- (10) If buying whole grains in bulk, a participant shall only purchase one type of whole grain per food instrument.

83000 WIC Authorized Food List: Yogurt

(a) Yogurt Category

- (1) Whole cow's milk yogurt is authorized in the Yogurt Category as the standard yogurt for issuance to one-year-old (12 through 23 months) children. Whole cow's milk yogurt is authorized for purchase only when whole yogurt is printed on the participant's food instrument.
- (2) Lowfat and nonfat cow's milk yogurt are authorized in the Yogurt Category as part of the food packages issued to the following types of participants and only when lowfat or nonfat yogurt is printed on the participant's food instrument:
 - (A) Children twenty-four (24) months of age or older;
 - (B) Pregnant and partially breastfeeding women;
 - (C) Postpartum women;
 - (D) Fully breastfeeding women; and
 - (E) Children aged one-year-old (12 through 23 months) for whom overweight and obesity is a concern and when prescribed by a competent professional authority based on an individual nutritional assessment.
- (3) The following cow's milk yogurts, as identified by brand and product name, fat level, and flavor, in thirty-two (32) ounce containers are authorized in the Yogurt Category:
 - (A) Alta Dena
 1. Plain (nonfat, lowfat, or whole)
 2. Strawberry (lowfat)
 3. Vanilla (lowfat)
 - (B) Coburn Farms
 1. Plain (lowfat)
 - (C) Dannon
 1. All Natural Plain (nonfat, lowfat, or whole)
 2. All Natural Vanilla (lowfat)
 - (D) Essential Everyday
 1. Blended Plain (lowfat)
 2. Blended Strawberry (lowfat)
 3. Blended Vanilla (lowfat)

- (E) Food Club
 - 1. Plain (fat free)
- (F) Great Value
 - 1. Plain (nonfat)
 - 2. Strawberry (lowfat)
 - 3. Vanilla (lowfat)
- (G) Kroger
 - 1. Blended Plain (lowfat)
 - 2. Plain (nonfat)
- (H) LALA
 - 1. Plain (lowfat)
- (I) Lucerne
 - 1. Plain (fat free)
 - 2. Strawberry (lowfat)
- (J) Market Pantry
 - 1. Plain (nonfat)
- (K) Mountain High
 - 1. Original Plain (whole)
 - 2. Plain (fat free, lowfat)
 - 3. Original Strawberry (whole)
 - 4. Original Vanilla (whole)
 - 5. Vanilla (fat free, lowfat)
- (L) Springfield
 - 1. Premium Plain (lowfat)
- (M) Tillamook
 - 1. Plain & Simple (lowfat)
- (N) Western Family
 - 1. Plain (nonfat, lowfat)
 - 2. Strawberry (lowfat)
- (O) Yoplait
 - 1. Plain (nonfat)

2. Original Strawberry (lowfat)
3. Original Vanilla (lowfat)
- (4) The following yogurts are never authorized for purchase as part of the Yogurt Category:
 - (A) Any type, brand, fat level, or flavor of yogurt not listed in (a)(3), including but not limited to Greek yogurt, lactose-free yogurt, soy yogurt, and goat's milk yogurt;
 - (B) Yogurt with mix-in ingredients, such as granola, candy pieces, honey, or nuts;
 - (C) Drinkable yogurts;
 - (D) Yogurt with artificial, reduced-calorie, or no-calorie sweeteners; and
 - (E) Organic yogurt.

Nature of the Regulation

The Department proposes adoption of the WIC Authorized Food list in regulatory text as set forth in Attachment 1 of this notice. This proposed regulation would replace the existing WIC Authorized Food List Shopping Guide, which is incorporated by reference in 82000 with regulatory text.

Federal regulations provide criteria and minimum standards for the Department to comply with when authorizing supplemental foods to be issued to participants and also allow the Department to adopt additional criteria for the Department to consider when authorizing foods. (7 C.F.R. § 246.10(b)(1)(i), and (e)(12) (2015.)) The Department's criteria for food authorization include but are not limited to the cost and nutritional content of the foods. (Cal. Code Regs., tit. 22, section 40715, subd. (c)(1)-(4).) The Department proposes to amend the authorized foods in compliance with these sections.

Reason for the Regulation

The reasons for this amendment are included in Attachment 1 of this notice.

Authority

Federal:

The Child Nutrition Act of 1966, title 42 of the United States Code, section 1786 (Public law 89-645, Section 17), as amended, establishes the federal authority under which states may administer the Special Supplemental Nutrition Program for Women, Infants, and Children through local agencies. The WIC Program was established as a result of a Congressional finding that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children up to the age of 5 from families with

eligible income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the WIC Program is to provide supplemental foods and nutrition education.

In fulfilling this objective, the WIC Program is funded and administered by the United States Department of Agriculture (USDA), Food and Nutrition Service, pursuant 7 Code of Federal Regulations, part 246.

The WIC Program is also subject to federal memoranda and directives from USDA.

State:

The WIC Program was established under the authority of Health and Safety Code section 123275 et seq. The regulations for CDPH's administration of the WIC Program are contained in the California Code of Regulations, title 22, sections 40601 through 40815, and in the [WIC Regulatory Bulletins posted](#) at:

<http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>.

Questions and Additional Information

If you have any questions, please contact CDPH at WICRegulations@cdph.ca.gov.



Catherine Lopez, M.Ed.
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Women, Infants and Children Division
California Department of Public Health

Attachment 1

WIC Authorized Food List and Statement of Reasons

California Special Supplemental Nutrition Program for Women, Infants, and Children

October 23, 2015

Health & Safety Code § 123322 authorizes the California Department of Public Health to establish regulations regarding the authorized foods for the California Special Supplemental Nutrition Program for Women, Infants, and Children using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations. This document is intended to provide reasons why the Department proposes to amend the authorized foods and criteria for authorized foods as specified in Regulatory Alert 2015-02.

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82000 WIC Authorized Food List

PROPOSED REGULATION

82000 WIC Authorized Food List

- (a) For the purposes of this article “Department” is defined as the California Department of Public Health, and the “WIC Program” and “WIC” are defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.
- (b) The WIC Authorized Foods List or WAFL is composed of foods listed in sections 82050-83000, which meet the criteria specified for the categories of foods.
- (c) If a manufacturer makes a non-material change to an authorized food in food categories for which specific brand and/or product names are authorized, the Department will continue to authorize that food for purchase. Non-material changes are changes to brand or product name.
- (d) The Department will publish a document, entitled the “WIC Authorized Food List Shopping Guide.” This document is intended for educational purposes only and does not create any rights, obligations, affirmative duties, or replace or supersede the regulations in this Article.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the

department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivisions (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82000 WIC Authorized Food List

- (a) The California State Legislature authorizes the Department to administer the California Special Supplemental Nutrition Program for Women, Infants, and Children pursuant to federal law. (Health & Saf. Code § 123275 et seq.)
- (b) Federal regulations provide criteria and minimum standards for the Department to comply with when authorizing supplemental foods to be issued to participants. (7 C.F.R. § 246.10(e)(12) (2015).) Federal regulations allow the Department to adopt additional criteria for the Department to consider when authorizing foods. (7 C.F.R. § 246.10(b)(1)(i) (2015).) The Department adopted such criteria in regulations. (22 Cal. Code Regs., tit. 22, § 40715, subd. (c).) This proposed regulation clarifies that the list of foods which meet these criteria and minimum standards, also known as the WAFL, can now be found by category in sections 82050-83000.
- (c) The Department proposes to authorize specific brand and/or product names in certain food categories to help participants select foods and vendors conduct WIC transactions. When a manufacturer makes changes to a food's brand or product name only, the Department considers such changes to be non-material because the food continues to offer the same nutritional benefit for which it was included in the authorized food list. Thus, the Department proposes to continue

authorization for foods for which there is only a non-material change, which is a change to the brand or product name.

- (d) The Department will publish a document guide entitled the “WIC Authorized Food List Shopping Guide,” which includes photographs and general descriptions of authorized food categories. This document is intended for use as an educational guide for participants and vendors to help understand which foods are authorized for purchase in the WIC Program. The guide will not be a part of this regulation adopting the authorized food list. Thus, the Department proposes to notify the public that the document is intended for educational purposes only and does not create any rights, obligations, affirmative duties, or replace or supersede the regulations in this Article.

82050 WIC Authorized Food List: Bottled Juice

PROPOSED REGULATION

82050 WIC Authorized Food List: Bottled Juice

(a) Bottled Juice Category

- (1) Any brand of pasteurized juice is authorized in the Bottled Juice Category when the juice has all of the following characteristics:
 - (A) Is sold in sixty-four (64) ounce bottled (ready-to-drink) containers;
 - (B) Is one of the following kinds of juice:
 1. Grapefruit (white);
 2. Orange;
 3. Apple;
 4. Cranberry;
 5. Grape (red, purple, or white);
 6. Grapefruit (ruby red or pink);
 7. Pineapple;
 8. Prune;
 9. Tomato (regular, low sodium, or spicy);
 10. Vegetable (regular, low sodium, or spicy); or
 11. Juice blends: juice that is named as two or more authorized types of juice on the front label, such as orange-white grapefruit or cranberry-grape.
 - (C) Juice and juice blends containing the kinds of juice listed in subsection (a)(1)(B)(3)-(10) above must have "100% Juice" and "120% Vitamin C" (or more) printed on the front label;
 - (D) Is of regular calcium content or contains added calcium; and
 - (E) Is of regular Vitamin D content or contains added Vitamin D.
- (2) The following products are never authorized for purchase as part of the Bottled Juice Category:
 - (A) Authorized kinds of juice other than orange juice and white grapefruit juice that are not labeled as specified in subsection (a)(1)(C);
 - (B) Cider;
 - (C) Diet, light, or "lite" juice;

- (D) Juice with added ingredients or supplements, including but not limited to caffeine, carnitine, chromium, DHA, echinacea, ginkgo biloba, ginseng, guarana, St. John's wort, taurine, or wheatgrass;
- (E) Organic juice; and
- (F) Refrigerated juice.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for bottled juice in all applicable food packages are as follows:

Must be pasteurized 100% unsweetened fruit juice. Must contain at least 30 mg of vitamin C per 100 mL of juice. Must conform to FDA standard of identity as appropriate (21 CFR part 146) or vegetable juice must conform to FDA standard of identity as appropriate (21 CFR part 156). With the exception of 100% citrus juices, State agencies must verify the vitamin C content of all State-approved juices. Juices that are fortified with other nutrients may be allowed at the State agency's option. Juice may be fresh, from concentrate, frozen, canned, or shelf-stable. Blends of authorized juices are allowed.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the

requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivisions (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82050 WIC Authorized Food List: Bottled Juice

- (a) Bottled Juice Category regulations were promulgated in WIC Regulatory Bulletin (W.R.B.) 2012-02. This section has been moved to Section 82050.
 - (1)(A)-(E) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 - (2) The Department specifies juice products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.
 - (A) There is no change being made to this requirement, which was promulgated in W.R.B. 2012-02.
 - (B) The Department proposes to prohibit cider in these regulations. Generally, cider is a product that is unpasteurized, which means it does not meet federal regulation's requirement that authorized juice be pasteurized. (7 C.F.R. § 246.10(e)(12) (2015).) Although not all ciders are unpasteurized, most are, and it is often difficult to locate documentation on the label that specifies whether or not the product is pasteurized; therefore, the Department finds it necessary to prohibit all ciders so that the participant and vendor will not bear the burden of trying to identify which ciders are authorized.
 - (C)-(F) There is no change being made to these requirements, which were promulgated in W.R.B. 2012-02.

82100 WIC Authorized Food List: Breakfast Cereal

PROPOSED REGULATION

82100 WIC Authorized Food List: Breakfast Cereal

(a) Breakfast Cereal Category

(1) The following breakfast cereals are authorized by brand and product name in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:

- (A) B & G Foods — Cream of Wheat Whole Grain;¹
- (B) General Mills — Cheerios;¹
- (C) General Mills — MultiGrain Cheerios;¹
- (D) General Mills — Honey Kix;¹
- (E) General Mills — Kix;¹
- (F) General Mills — Total Whole Grain;¹
- (G) Kellogg's — Corn Flakes;
- (H) Kellogg's — Frosted Mini Wheats Original;¹
- (I) Kellogg's — Frosted Mini Wheats Little Bites;¹
- (J) Kellogg's — Special K Original;
- (K) Malt-O-Meal — Malt-O-Meal Hot Cereal Original;
- (L) Malt-O-Meal — Oat Blenders with Honey;
- (M) Mill Select Early On — Puffed Wheat;¹
- (N) Post — Bran Flakes;¹
- (O) Post — Grape-Nuts;¹
- (P) Post — Honey Bunches of Oats Honey Roasted;
- (Q) Quaker — Corn Bran Crunch;
- (R) Quaker — Life Original;¹
- (S) Quaker — Oatmeal Squares Brown Sugar;¹ and
- (T) Quaker — Oatmeal Squares Cinnamon.¹

(2) The following crisp rice or crispy rice breakfast cereals are authorized by brand in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:

- (A) Best Yet;
- (B) Essential Everyday;

- (C) First Street;
 - (D) Food Club;
 - (E) Great Value;
 - (F) Hospitality;
 - (G) HY-TOP;
 - (H) Hy-Vee;
 - (I) IGA;
 - (J) Kiggins;
 - (K) Kroger;
 - (L) Malt-O-Meal;
 - (M) Market Pantry;
 - (N) Mill Select Early On;¹
 - (O) Parade;
 - (P) Raley's;
 - (Q) Ralston Foods;
 - (R) Red & White;
 - (S) Shurfine;
 - (T) Signature Kitchens;
 - (U) Springfield;
 - (V) Stater Bros.;
 - (W) Sunny Select;
 - (X) Valu Time;
 - (Y) Western Family; and
 - (Z) WinCo Foods.
- (3) The following instant oatmeals in old-fashioned, classic, regular, or original flavors are authorized by brand in eleven and eight-tenths (11.8) ounce to twelve (12) ounce containers of individual serving packets in the Breakfast Cereal Category:
- (A) Best Yet;¹
 - (B) Early On;¹
 - (C) Essential Everyday;¹

- (D) First Street;¹
 - (E) Food Club;¹
 - (F) Hy-Vee;¹
 - (G) Great Value;¹
 - (H) IGA;¹
 - (I) Kroger;¹
 - (J) Raley's;¹
 - (K) Ralston Foods;¹
 - (L) Red & White;¹
 - (M) Shurfine;¹
 - (N) Signature Kitchens;¹
 - (O) Special Value;¹
 - (P) Springfield;¹
 - (Q) Stater Bros;¹
 - (R) Sunny Select;¹
 - (S) Western Family;¹ and
 - (T) WinCo Foods.¹
- (4) The following types of breakfast cereal are never authorized for purchase as part of the Breakfast Cereal Category:
- (A) Grits;
 - (B) Hot breakfast cereal with added fruits and nuts;
 - (C) Hot breakfast cereal with added sweeteners, including sugar, artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners; and
 - (D) Organic cereal.

¹ This cereal contains 51% or more whole grain by weight.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States

. . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for breakfast cereal in all applicable food packages are as follows:

Must contain a minimum of 28 mg iron per 100 g dry cereal.

Must contain \leq 21.2 g sucrose and other sugars per 100 g dry cereal (\leq 6 g per dry oz). At least half of the cereals authorized on a State agency's food list must have whole grain as the primary ingredient by weight AND meet labeling requirements for making a health claim as a "whole grain food with moderate fat content".³

³ FDA *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at <http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm073634.htm>.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82100 WIC Authorized Food List: Breakfast Cereal

(a) Breakfast Cereal Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82100.

(1) The sizes and containers of breakfast cereals in this subsection were authorized in W.R.B. 2012-02.

(A)-(T) These brands and product names of breakfast cereals were authorized in W.R.B. 2012-02. The Department proposes to remove Mill Select Toasted Corn Flakes and Mill Select Oat Bran as authorized cereals because the manufacturer discontinued production of these products.

(2) The sizes and containers of crisp rice and crispy rice breakfast cereal were authorized in W.R.B. 2012-02 as part of the Breakfast Cereal Category.

(A)-(Z) In W.R.B. 2012-02, the Department authorized a list of private label/store brand crisp rice and crispy rice breakfast cereal by holding open submission periods for crisp rice and crispy rice cereals in August 2014 and June 2015. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for authorization. The letter was also posted on the Department's website, in order to ensure the process for authorization was made public and open to all interested parties.

The Department proposes to authorize all submitted crisp rice and crispy rice cereal brands and products that that comply with 7 Code of Federal Regulations part 246.10(e)(12) (2015), and the state requirements described in subsections (a)(2) and(a)(4) of this regulation. The Department also proposes to add/delete the brands in the table below from the existing list of authorized crisp rice and crispy rice breakfast cereals. The Department proposes to delete brands as a result of their manufacturers discontinuing production.

Added	Deleted
<ul style="list-style-type: none"> • Essential Everyday • Hy-Vee • Kiggins • Market Pantry • Signature Kitchens • WinCo Foods 	<ul style="list-style-type: none"> • Albertsons • Mornin' Gems • Ralphs • Safeway

(3) Instant oats/oatmeal in 11.8–12 ounce containers of individual serving packets was authorized by brand and product in the Breakfast Cereal Category in W.R.B. 2012-02.

(A)-(T) For this proposed regulation, the Department held open submission periods for instant oats/oatmeal in August 2014 and June 2015. The Department proposes to authorize all submitted instant oats/oatmeal products by brand that that comply with 7 Code of Federal Regulations part 246.10(e)(12) (2015) and the state requirements described in subsection (a)(3)-(4) of this regulation section.

The Department proposes to delete/add the brands in the table below from the existing list of instant oats/oatmeal breakfast cereals adopted in W.R.B. 2012-02. The Department proposes to delete brands as a result of their manufacturers discontinuing production.

Added	Deleted
<ul style="list-style-type: none"> • Early On • Essential Everyday • Great Value • Hy-Vee • Shurfine • Signature Kitchens • Special Value • WinCo Foods 	<ul style="list-style-type: none"> • Albertsons • BetterOats-Good 'n hearty • HY-TOP • Parade • Ralphs • Safeway

(4) The Department specifies breakfast cereal products that are not authorized in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.

(A) There are no changes being made to the prohibition on grits, which was adopted in W.R.B. 2012-02.

(B) There are no changes being made to the prohibition on hot breakfast cereal with added fruits and nuts, which was adopted in W.R.B. 2012-02.

(C) There are no changes being made to the prohibition of hot cereal with added sugars. The Department proposes to prohibit hot breakfast cereal with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

(D) The Department proposes to prohibit organic cereal because organic foods are generally more expensive than non-organic foods. This prohibition is in keeping with USDA's guidance encouraging state agencies to "limit organic products" to help contain food costs.¹

¹ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 34.

82150 WIC Authorized Food List: Canned Fish

PROPOSED REGULATION

82150 WIC Authorized Food List: Canned Fish

(a) Canned Fish Category

(1) Chunk Light Tuna Subcategory

(A) Any brand of chunk light tuna is authorized in the Chunk Light Tuna Subcategory of the Canned Fish Category when it has all of the following characteristics:

1. Is sold in five (5) ounce cans;
2. Is packed in water;
3. Is plain; and
4. Is of regular or low sodium content.

(B) The following types of tuna are never authorized for purchase as part of the Chunk Light Tuna Subcategory:

1. Solid white tuna;
2. Albacore tuna;
3. Prime fillet fish; and
4. Kits in which tuna is packaged with other foods, such as condiments and crackers.

(2) Mackerel Subcategory

(A) Any brand of mackerel is authorized in the Mackerel Subcategory of the Canned Fish Category when it has all of the following characteristics:

1. Is sold in fifteen (15) ounce cans;
2. Is packed in water or tomato sauce; and
3. Is of regular or low sodium content.

(B) The following types of mackerel are never authorized for purchase as part of the Mackerel Subcategory:

1. Canned king mackerel; and
2. Canned mackerel packed in anything other than water or tomato sauce.

(3) Pink Salmon Subcategory

- (A) Any brand of pink salmon is authorized in the Pink Salmon Subcategory of the Canned Fish Category when it has all of the following characteristics:
 - 1. Is sold in five (5) ounce, six (6) ounce, or fourteen and three-quarters (14.75) ounce cans;
 - 2. Is packed in water;
 - 3. Is plain; and
 - 4. Is of regular or low sodium content.
- (B) The following types of salmon are never authorized for purchase as part of the Pink Salmon Subcategory:
 - 1. Specialty salmon, including smoked salmon, wild sockeye salmon, blue back salmon, or red salmon; and
 - 2. Kits in which salmon is packaged with other foods, such as condiments and crackers.
- (4) Sardines Subcategory
 - (A) Any brand of sardines is authorized in the Sardines Subcategory of the Canned Fish Category when it has all of the following characteristics:
 - 1. Is sold in fifteen (15) ounce cans;
 - 2. Is packed in water, mustard, or tomato sauce; and
 - 3. Is of regular or low sodium content.
 - (B) The following types of sardines are never authorized for purchase as part of the Sardines Subcategory:
 - 1. Canned sardines packed in anything other than water, mustard, or tomato sauce.
- (5) The following types of canned fish products are never authorized for purchase as part of any subcategory of the Canned Fish Category:
 - (A) Organic canned fish;
 - (B) Canned fish in organic sauce;
 - (C) Canned fish packed in oil; and
 - (D) Fish packaged in pouches or plastic containers.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for canned fish in all applicable food packages are as follows:

FISH (CANNED)⁵ . . .

Canned only:

Light tuna (must conform to FDA standard of identity (21 CFR § 161.190));

Salmon (Pacific salmon must conform to FDA standard of identity (21 CFR § 161.170));

Sardines; and

Mackerel (N. Atlantic *Scomber scombrus*; Chub Pacific *Scomber japonicas*; Jack Mackerel)¹⁰

May be packed in water or oil. Pack may include bones or skin.

Added sauces and flavorings, e.g., tomato sauce, mustard, lemon, are authorized at the State agency's option. May be regular or lower in sodium content.

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

¹⁰FDA defines jack mackerel as any of the following six species:

Trachurus declivis, trachurus japonicas, trachurus symmetricus, trachurus murphyi, trachurus novaezelandiae, and trachurus lathami in The Seafood List at

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocuments/RegulatoryInformation/Seafood/ucm113260.htm>. King mackerel is not authorized.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82150 WIC Authorized Food List: Canned Fish

(a) Canned Fish Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82150.

(1)(A) The requirement allowing any brand of chunk light tuna was promulgated in W.R.B. 2012-02.

1. The Department is continuing the allowance of 5 ounce cans, which was promulgated in W.R.B. 2012-02. The Department proposes to prohibit 6 ounce cans of chunk light tuna because the canned-tuna industry transitioned from 6 ounce cans to five 5 ounce cans. Both can sizes were previously authorized during the transition to the smaller size. That transition is now complete and there is no longer a need to authorize 6 ounce cans since they are no longer available.
- 2.-4. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

(B) The Department specifies canned tuna products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.

- 1.-3. There are no changes to these requirements, which were promulgated in W.R.B. 2012-02.
4. The prohibition on kits was promulgated in W.R.B. 2012-02. The term “kit” was previously undefined. The Department is defining “kit” as tuna packaged with other foods to prevent participant and vendor confusion.

(2) The Department proposes to add the Mackerel Subcategory to the Canned Fish Category as a WIC authorized supplemental food. Previously, mackerel was a federal canned fish option that the Department chose not to offer due to its limited availability in the California marketplace. Federal WIC Regulation, 7 Code of Federal Regulations part 246.10 (2015), was updated to include additional types of mackerel as an authorized fish option, to be authorized at a state agency’s discretion, in the *Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Final Rule*, published March 4, 2014. The Department is proposing to authorize canned mackerel for the following reasons:

Cost

The Department proposes to authorize canned mackerel as a lower-cost alternative to the other types of authorized canned fish. The Department analyzed 2008 market share pricing data (the most recent data available to the Department) from IRI, Inc. (a market share research company similar to Nielsen) to compare the cost of canned mackerel with other types of authorized canned fish (see table below). The data showed that mackerel is much less expensive and its authorization as a WIC authorized supplemental food could lead to a reduction in food costs.

Fish Type	Average Cost per Ounce (in WIC Authorized Container Sizes)
Mackerel	Fifteen (15) ounce container: \$0.07
Pink Salmon	Six (6) ounce container: \$0.41
Sardines	Fifteen (15) ounce container: \$0.11
Tuna	Six (6) ounce container: \$0.25

(A)The Department proposes to authorize any brand of canned mackerel that has all of the following characteristics:

1. The Department intends to authorize 15 ounce cans because they are a widely produced size that is a standard in the industry, as evidenced by several canned mackerel companies producing that size. Additionally, USDA guidance² mandates that a state agency “authorize WIC foods in package sizes that provide participants their full authorized food benefit.” Federal regulations require that participants receiving canned fish receive either a maximum monthly allowance of 30 ounces or 45 ounces total of canned fish. (7 C.F.R. § 246.10(e)(10), tbl. 2 and (e)(11), tbl. 3 (2015).) Cans in 15 ounce sizes evenly divide into these maximum monthly allowances, providing participants their full authorized food benefit.
2. Federal regulation provides state agencies the option to authorize canned mackerel in either water or oil and allows flavorings or sauces. (7 C.F.R. § 246(10)(e)(12), tbl. 4 (2015).) The Department proposes to authorize only canned mackerel packed in water or tomato sauce. The Department is limiting the kinds of allowed sauces to tomato sauce because many cans of mackerel packed in other sauces include added oil, an ingredient the Department proposes to prohibit. WIC participants and authorized vendors are responsible for making sure they select the correct items for purchase/sale at the store. Limiting authorized mackerel with sauces to tomato sauce will reduce the amount of time and effort for participants to identify authorized mackerel at the store.

The Department authorizes foods based in part on the nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the WIC Program; therefore, the Department does not plan to allow canned mackerel packed in oil. Canned mackerel packed in oil has an increased fat content as a result of being packed in oil. For example, mackerel packed in water contains 4 grams of fat per 2 ounce serving. Mackerel packed in oil contains 11 grams of fat per 2 ounce serving.

Participants who receive canned fish do not have a nutrition need for the added fat found in canned fish packed in oil. Per federal regulation, canned fish may only be issued to participants who are

² United States Department of Agriculture, Food and Nutrition Service, *Women Infants and Children (WIC): Questions and Answers about the WIC Food Packages* <<http://www.fns.usda.gov/sites/default/files/wic/20140508-WICFoodPkg-QuestionsAnswers.pdf>> (as of August 1, 2015).

fully breastfeeding their infants. These women do not have a nutritional need for the added fat from the fish packed in oil, as evidenced by Participant Nutritional Risk data collected by the Department. Participant Nutritional Risk data collected from November 2014 through April 2015 demonstrated a significant percentage of fully breastfeeding CDPH/WIC women participants are overweight. For example, an average of 28.3 percent of fully breastfeeding women participants are considered overweight, meaning their Body Mass Index (BMI) falls between 25.0 and 29.9 kg/m². Moreover, 25.1 percent of fully breastfeeding participants are considered very overweight, with a BMI of greater than 30.0 kg/m². The percentages combine to show that over 50 percent of fully breastfeeding participants can be categorized at varying levels of overweight. The increased fat level (nutrient content) of canned mackerel packed in oil is not justified by nutritional need because of the large number of fully breastfeeding women who are overweight.

Additionally, limiting added fats is consistent with the Department's nutrition-education goal of limiting fat intake³ in efforts to safeguard participants' health against heart disease, increased rates of cancer, and weight gain, which can lead to high blood pressure, diabetes, and other health-related problems, as evidenced by the Department's participant education campaigns that highlight limiting fat intake.

3. The Department is proposing this requirement in compliance with federal regulation. (7 C.F.R. § 246(10)(e)(12), tbl. 4, (2015).)
- (B) The Department proposes to specify canned mackerel products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 1. The Department is proposing a prohibition of king mackerel in compliance with federal regulation. (7 C.F.R. § 246(10)(e)(12), tbl. 4 (2015).)

³ See, e.g., California Department of Public Health, *Be a Healthy Mom!* (Jan. 2015) <<http://www.cdph.ca.gov/programs/wicworks/Documents/NE/WIC-NE-EdMaterials-BeAHealthyMom.pdf>> (as of August 1, 2015), and California Department of Public Health, *Lose the Fat, Keep the Vitamins. . . Drink Lowfat Milk!* (Mar. 2009) <<http://www.cdph.ca.gov/programs/wicworks/Documents/NE/WIC-NE-LessonPlans-HHED-LoseTheFatKeepTheVitaminsDrinkLowfatMilk.doc>> (as of August 1, 2015).

2. The Department is proposing to prohibit mackerel packed in anything other than water or tomato sauce for reasons explained in (a)(2)(A)2 above.
- (3) (A) The requirement allowing any brand of pink salmon as a WIC authorized supplemental food was promulgated in W.R.B. 2012-02.
 - 1.-4. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 - (B) The Department specifies canned salmon products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 1. There are no changes being made to the prohibition of specialty salmon, which was promulgated in W.R.B. 2012-02.
 2. The prohibition on kits was promulgated in W.R.B. 2012-02. The term “kit” was previously undefined. The Department is defining “kit” as salmon packaged with other foods to prevent participant and vendor confusion.
- (4) (A) The authorization of any brand of sardines was promulgated in W.R.B. 2012-02.
 - 1.-3. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 - (B) The Department specifies canned sardine products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 1. There are no changes being made to the prohibition of canned sardines packed in anything other than water, mustard, or tomato sauce, which was promulgated in W.R.B. 2012-02.
- (5) The Department specifies canned fish products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 - (A)-(B) The Department proposes to prohibit organic canned fish and canned fish in organic sauces due the higher cost of most organic foods; organic products are typically more expensive than their non-organic counterparts. To the best of the Department’s knowledge, canned organic fish and canned fish in organic sauce are virtually non-existent or are not widely available in the can sizes authorized by the Department. Despite this, the Department is including these items as not allowed due to the nature of the Canned Fish Category’s “any brand” method of authorization. If organic canned fish products become available, the Department will

do a careful analysis of the costs associated with these products before making a decision of whether to authorize them. The Department will monitor the availability of organic canned fish and canned fish in organic sauce so that should they become available analysis can be performed to decide whether they will be authorized.

(C)-(D) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

82200 WIC Authorized Food List: Canned Mature Beans

PROPOSED REGULATION

82200 WIC Authorized Food List: Canned Mature Beans

- (a) Canned Mature Beans Category
- (1) Any brand and variety of canned lentils or mature beans are authorized in the Canned Mature Beans Category when the canned lentils or mature beans have all of the following characteristics:
 - (A) Are plain;
 - (B) Are sold in fifteen (15) to sixteen (16) ounce cans; and
 - (C) Are of regular sodium content or low sodium content.
 - (2) Authorized varieties of canned lentils or mature beans include but are not limited to:
 - (A) Black;
 - (B) Black-eyed peas;
 - (C) Garbanzo (chickpeas);
 - (D) Great northern;
 - (E) Kidney;
 - (F) Lentils;
 - (G) Lima;
 - (H) Mixed;
 - (I) Navy;
 - (J) Pink;
 - (K) Pinto; and
 - (L) Red.
 - (3) The following types of lentils and beans are never authorized for purchase as part of the Canned Mature Beans Category:
 - (A) Canned lentils or beans with added sugars, spices, fats, or oils;
 - (B) Canned lentils or beans with added vegetables, fruits, or meat;
 - (C) Canned lentils or beans with artificial, reduced-calorie, or no-calorie sweeteners;
 - (D) Canned immature peas or beans including green peas, green beans, or wax beans;

- (E) Canned baked beans;
- (F) Canned refried beans;
- (G) Flavored lentils or beans, such as Cajun, barbeque (bbq), or ranch style beans;
- (H) Dry or frozen beans, peas, or lentils; and
- (I) Organic canned beans or lentils.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of 7 Code of Federal Regulations part 246.10 (2015).

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for canned mature beans in all applicable food packages are as follows:

Any type of mature dry beans, peas, or lentils in dry-packaged or canned⁵ forms. Examples include but are not limited to black beans, black-eyed peas, garbanzo beans (chickpeas), great northern beans, white beans (navy and pea beans), kidney beans, mature lima (“butter beans”), fava and mung beans, pinto beans, soybeans/edamame, split peas, lentils, and refried beans. All categories exclude soups. May not contain added sugars, fats, oils, vegetables, fruits or meat as purchased. Canned legumes may be regular or lower in sodium content.¹¹

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

¹¹ The following are not authorized in the mature legume category: soups; immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, yellow beans, and wax beans; baked beans with meat, e.g., beans and franks; and beans containing added sugars (with the exception of baked beans), fats, oils, meats, fruits or vegetables.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82200 WIC Authorized Food List: Canned Mature Beans

- (a) Canned Mature Beans Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82200.
 - (1) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 - (A)-(C) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 - (2) Allowed types of canned mature beans are listed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 - (A)-(E) There are no changes being made to these examples of authorized canned mature beans varieties, which were promulgated in W.R.B. 2012-02.

- (F) The Department is adding “Lentils” to the examples list to help participants and vendors understand that this variety is allowed pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), as the Department receives frequent inquiries about the authorization status of lentils.
 - (G) There is no change being made to the example of lima beans as an authorized canned mature bean variety, which was promulgated in W.R.B. 2012-02.
 - (H) The Department is adding “Mixed” canned mature beans to the examples list to help participants and vendors understand that this variety is allowed pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), which states that “any type” of mature beans, peas, or lentils is authorized, as the Department receives frequent inquiries about the authorization status of these products.
 - (I)-(L) There are no changes being made to these examples of authorized canned mature beans varieties, which were promulgated in W.R.B. 2012-02.
- (3) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.
- (A) The Department is adding this prohibition because canned lentils or beans with added sugars, spices, fats, or oils are not allowed pursuant to federal regulation. 7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)
 - (B) The Department is adding this prohibition because canned lentils or beans with added vegetables, fruits, or meat are not allowed pursuant to federal regulation. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)
 - (C) The Department proposes to prohibit the authorization of canned lentils and beans with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia,

have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

- (D) The prohibition of canned green peas, green beans, and wax beans was promulgated in W.R.B. 2012-02. The Department proposes to add "canned immature peas" to the list of prohibited products because they are not allowed in the Canned Mature Beans Category pursuant to federal regulation. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)
- (E)-(F) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
- (G) There are no changes being made to the prohibition of Cajun, barbeque (bbq), and ranch style beans. The Department is proposing to expand this prohibition to clarify that flavored lentils and beans are not allowed, as stated in (a)(1)(A) of this regulatory section.
- (H) There are no changes being made to the prohibition of dry and frozen beans, peas, or lentils, which was promulgated in W.R.B. 2012-02.
- (I) The Department's prohibition of organic canned beans was promulgated in W.R.B. 2012-02. The Department's previous use of the term "canned mature beans" did not address canned lentils, which are allowed pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015). The Department is proposing to add the prohibition of canned organic lentils because organic foods are generally more expensive than non-organic foods. This prohibition is in keeping with USDA's guidance encouraging state agencies to "limit organic products" to help contain food costs.⁴

⁴ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 34.

82250 WIC Authorized Food List: Cheese

PROPOSED REGULATION

82250 WIC Authorized Food List: Cheese

(a) Cheese Category

- (1) Any brand of non-organic cheese is authorized in the Cheese Category when the cheese has all of the following characteristics:
 - (A) Is made in the United States of America;
 - (B) Is sold in a sixteen (16) ounce package in one of the following ways:
 1. Individually wrapped mozzarella string-cheese sticks; or
 2. Blocks or rounds of the following cheeses:
 - A. Orange or white cheddar (mild, medium, sharp, or longhorn)
 - B. Colby
 - C. Jack
 - D. Mozzarella
 - E. Marbled or blends of cheeses authorized by this subsection (for example, colby-jack)
 - (C) Is of regular fat content, lowfat, or fat free; and
 - (D) Is of regular sodium content or low sodium.
- (2) The following types of cheese are never authorized for purchase as part of the Cheese Category:
 - (A) Diced, grated, sliced, crumbled, or shredded cheese;
 - (B) Cheese that is purchased from or sliced at the deli;
 - (C) Cheese with added ingredients, including but not limited to peppers or spices; and
 - (D) Organic Cheese.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States

. . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for cheese in all applicable food packages are as follows:

Domestic cheese made from 100 percent pasteurized milk. Must conform to FDA standard of identity (21 CFR part 133); Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, part-skim or whole Mozzarella, pasteurized process American, or blends of any of these cheeses are authorized. Cheeses that are labeled low, free, reduced, less or light in sodium, fat or cholesterol are WIC eligible.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and

- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82250 WIC Authorized Food List: Cheese

Cheese Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82250; there are no changes being made to these requirements.

82300 WIC Authorized Food List: Concentrate Juice

PROPOSED REGULATION

82300 WIC Authorized Food List: Concentrate Juice

(a) Concentrate Juice Category

- (1) Any brand of pasteurized juice concentrate is authorized in the Concentrate Juice Category when the juice has all of the following characteristics:
 - (A) Is sold in eleven and a half (11.5), twelve (12), or sixteen (16) ounce containers;
 - (B) Is frozen or shelf-stable;
 - (C) Is one of the following kinds of juice:
 1. Grapefruit (white);
 2. Orange;
 3. Apple;
 4. Cranberry;
 5. Grape (red, purple, or white);
 6. Grapefruit (ruby red or pink);
 7. Pineapple;
 8. Prune;
 9. Tomato (regular, low sodium, or spicy);
 10. Vegetable (regular, low sodium, or spicy); or
 11. Juice blends: juice that is named as two or more authorized types of juice on the front label, such as orange-white grapefruit or cranberry-grape.
 - (D) Juice and juice blends containing the kinds of juice listed in subsection (a)(1)(C)(3)-(10) above must have "100% Juice" and "120% Vitamin C" (or more) printed on the front label;
 - (E) Is of regular calcium content or contains added calcium; and
 - (F) Is of regular Vitamin D content or contains added Vitamin D.
- (2) The following products are never authorized for purchase as part of the Concentrate Juice Category:

- (A) Authorized kinds of juice other than orange juice and white grapefruit juice that are not labeled as specified in subsection (a)(1)(D);
- (B) Cider;
- (C) Diet, light, or “lite” juice;
- (D) Juice with added ingredients or supplements, including but not limited to caffeine, carnitine, chromium, DHA, echinacea, ginkgo biloba, ginseng, guarana, St. John’s wort, taurine, or wheatgrass;
- (E) Organic juice; and
- (F) Refrigerated juice.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods:* The minimum requirements and specifications for concentrate juice in all applicable food packages are as follows:

Must be pasteurized 100% unsweetened fruit juice. Must contain at least 30 mg of vitamin C per 100 mL of juice. Must conform to FDA standard of identity as appropriate (21 CFR part 146) or vegetable juice must conform to FDA standard of identity as appropriate (21 CFR part 156). With the exception of 100% citrus juices, State agencies must verify the vitamin C content of all State-approved juices. Juices that are fortified with other nutrients may be allowed at the State agency’s option. Juice may be fresh, from concentrate, frozen, canned, or shelf-stable. Blends of authorized juices are allowed.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82300 WIC Authorized Food List: Concentrate Juice

- (a) Concentrate Juice Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82300.
 - (1)(A)-(F) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 - (2) The Department specifies juice products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.
 - (A) There are no changes being made to this requirement, which was promulgated in W.R.B. 2012-02.
 - (B) The Department proposes to prohibit cider in these regulations. Generally, cider is a product that is unpasteurized, which means it does not meet federal regulation's requirement that authorized juice be pasteurized. (7 C.F.R. § 246.10(e)(12) (2015).) Although not all ciders are unpasteurized, most are, and it is often difficult to locate documentation on the label that specifies whether or not the product is pasteurized; therefore, the Department finds it necessary

to prohibit all ciders so that the participant and vendor will not bear the burden of trying to identify which ciders are authorized.

(C)-(F) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils

PROPOSED REGULATION

82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils

- (a) Dry Beans, Peas, or Lentils Category
 - (1) Any brand and variety of dry beans, peas, or lentils are authorized in the Dry Beans, Peas, or Lentils Category when the dry beans, peas, or lentils are sold in bulk or in sixteen (16) ounce containers.
 - (2) Authorized varieties of dry beans, peas, or lentils include but are not limited to:
 - (A) Black;
 - (B) Black-eyed peas;
 - (C) Garbanzo (chickpeas);
 - (D) Great northern;
 - (E) Kidney;
 - (F) Lentils;
 - (G) Lima;
 - (H) Mixed;
 - (I) Navy;
 - (J) Pink;
 - (K) Pinto;
 - (L) Red; and
 - (M) Split peas.
 - (3) The following types of beans, peas, or lentils are never authorized for purchase as part of the Dry Beans, Peas, or Lentils Category:
 - (A) Canned or frozen beans, peas, or lentils;
 - (B) Dry beans, peas, or lentils with added sugars, fats, or oils;
 - (C) Dry beans, peas, or lentils with added vegetables, fruits, or meat;
 - (D) Dry beans, peas, or lentils with artificial, reduced-calorie, or no calorie sweeteners;
 - (E) Dry beans, peas, or lentils with flavors or spices or bean soup mixes with flavoring packets or spices; and
 - (F) Soy nuts.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for dry bean, peas, or lentils in all applicable food packages are as follows:

Any type of mature dry beans, peas, or lentils in dry-packaged or canned⁵ forms. Examples include but are not limited to black beans, black-eyed peas, garbanzo beans (chickpeas), great northern beans, white beans (navy and pea beans), kidney beans, mature lima (“butter beans”), fava and mung beans, pinto beans, soybeans/edamame, split peas, lentils, and refried beans. All categories exclude soups. May not contain added sugars, fats, oils, vegetables, fruits or meat as purchased. Canned legumes may be regular or lower in sodium content.¹¹

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

¹¹ The following are not authorized in the mature legume category: soups; immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, yellow beans, and wax beans; baked beans with meat, e.g., beans and franks; and beans containing added sugars (with the exception of baked beans), fats, oils, meats, fruits or vegetables.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and

Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82350 WIC Authorized Food List: Dry Bean, Peas, or Lentils

- (a) Dry Beans, Peas or Lentils Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82350.
 - (1) There are no changes being made to the size or brand requirements, which were promulgated in W.R.B. 2012-02.
 - (2) Authorized types of dry beans, peas or lentils are listed to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 - (A)-(G) There are no changes being made to these examples of authorized dry beans, peas, and lentils, which were promulgated in W.R.B. 2012-02.
 - (H) The Department authorizes any variety of dry beans, peas, or lentils and is adding "Mixed" dry beans, peas, or lentils to the examples list to help participants and vendors understand that this variety is authorized. The Department receives frequent inquiries about the authorization status of these products.
 - (I)-(M) There are no changes being made to these examples of authorized dry beans, peas, and lentils varieties, which were promulgated in W.R.B. 2012-02.
 - (3) The Department specifies bean, peas, and lentil products that are not allowed in order to help WIC participants and WIC authorized vendors

identify which products are allowed as WIC authorized supplemental foods.

- (A)-(C) There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02.
- (D) The Department proposes to prohibit dry beans, peas, and lentils with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

- (E) The prohibition of bean soup mixes with flavoring packets or spices was promulgated in W.R.B. 2012-02. Since its promulgation, the Department was made aware that there are products that, though they may be intended to be used for soup mixes, are not being labeled as soup mixes. The Department is proposing to amend these regulations to expand that prohibition to prohibit all dry beans, peas, and lentils with flavors or spices in order to ensure that participants are not purchasing dry beans, peas, and lentils products intended for use as soup mixes, which are prohibited under 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- (F) The Department plans to prohibit soy nuts in these proposed regulations. Dry soybeans are dry, uncooked soy beans; soy nuts are roasted soy beans and are plain, salted, or otherwise

seasoned. Since soy nuts are roasted, they are no longer considered to be “dry” soy beans and, therefore, do not meet the federal requirements for authorization as mature legumes. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)

82400 WIC Authorized Food List: Eggs

PROPOSED REGULATION

82400 WIC Authorized Food List: Eggs

(a) Eggs Category

- (1) Any brand of non-organic white, large, chicken eggs sold in cartons of twelve (12) or one (1) dozen is authorized in the Eggs Category.
- (2) The following types of eggs are never authorized for purchase as part of the Eggs Category:
 - (A) Powdered eggs;
 - (B) Liquid eggs;
 - (C) Specialty eggs, such as cage-free, vitamin-enriched, pastured, low cholesterol, or DHA-enriched eggs; and
 - (D) Organic eggs.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for eggs in all applicable food packages are as follows:

Fresh shell domestic hens' eggs or dried eggs mix (must conform to FDA standard of identity in 21 CFR 160.105) or pasteurized liquid whole eggs (must conform to FDA standard of identity in 21 CFR 160.115). Hard boiled eggs, where readily available for purchase in small quantities, may be provided for homeless participants.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82400 WIC Authorized Food List: Eggs

(a) Eggs Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82400.

(1) There are no changes being made to these requirements authorizing any brand of non-organic white, large, chicken eggs sold in cartons of twelve (12) eggs or one (1) dozen eggs, which were promulgated in W.R.B. 2012-02.

(2) The Department specifies egg products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.

(A)-(B) There are no changes to the prohibition of powdered and liquid eggs, which were promulgated in W.R.B. 2012-02.

(C) The Department is proposing to change the prohibition of “Eggland’s Best” eggs to a general prohibition of “DHA-Enriched eggs,” meaning eggs enriched with docosahexaenoic acid (DHA). When W.R.B. 2012-02 was promulgated, Eggland’s Best was the only brand of DHA-enriched eggs known to the Department. Although Eggland’s Best remains the market leader in DHA-enriched eggs, there are now other DHA-enriched eggs available for sale. The Department proposes to prohibit all DHA-enriched eggs, not just Eggland’s Best eggs. The Department does not authorize DHA-enriched eggs because they generally cost more than regular chicken eggs. According to 2013 market share pricing data from IRI, Inc. the average price per unit for a one dozen package of non-organic, large, white Eggland’s Best chicken eggs was \$2.97. The same data shows the average price per unit for one dozen non-organic, non-DHA enriched, large, white chicken eggs was \$2.03. Because expanding the prohibition on Eggland’s Best eggs to include all DHA-enriched eggs will help to contain food costs the Department is proposing to prohibit DHA-enriched eggs.

The Department is proposing to repeal the prohibition of “stress-free” eggs. The Department has received complaints that the terminology is confusing. Upon a search of products available, it does not appear that the industry labels eggs as “stress-free;” therefore, the Department finds it appropriate to remove the prohibition of “stress-free” from the list of prohibitions for the Eggs Category.

The Department is making no changes to the prohibition of the other specialty types of eggs listed in this subsection.

(D) There are no changes to the prohibition of organic eggs, which was promulgated in W.R.B. 2012-02.

82450 WIC Authorized Food List: Fresh Bananas

PROPOSED REGULATION

82450 WIC Authorized Food List: Fresh Bananas

- (a) Fresh Bananas Category
 - (1) Fresh yellow organic or non-organic bananas are authorized in the Fresh Bananas Category.
 - (2) Any other type of banana is never authorized for purchase as part of the Fresh Bananas Category, including but not limited to:
 - (A) Plantains;
 - (B) Red bananas;
 - (C) Mini bananas; and
 - (D) Fingerling bananas.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of 7 Code of Federal Regulations part 246.10 (2015).

7 Code of Federal Regulations part 246.10(e)(9), table 1, footnote 9 (2015): *Maximum Monthly Allowances of Supplemental Foods for Infants in Food Packages I, II, and III.:*

Fresh banana may replace up to 16 ounces of infant food fruit at a rate of 1 pound of bananas per 8 ounces of infant food fruit.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in

the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82450 WIC Authorized Food List: Fresh Bananas

Fresh Bananas Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82450; there are no changes being made to these requirements.

82500 WIC Authorized Food List: Fruits and Vegetables

PROPOSED REGULATION

82500 WIC Authorized Food List: Fruits and Vegetables

(a) Fruits and Vegetables Category

(1) All food items authorized in the Fruits and Vegetables Category and subcategories are authorized for purchase using a cash value voucher.

(2) Fresh Fruits and Vegetables Subcategory

(A) Any type, variety, and brand of fresh fruits and vegetables in any combination is authorized in the Fresh Fruits and Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:

1. Organic or non-organic fresh fruits and vegetables;
2. Whole or cut fresh fruits and vegetables;
3. Bagged fresh fruits and vegetables;
4. Bagged or packaged salad mixtures; and
5. Garlic, onion, ginger, jalapeños, peppers, and chilies.

(B) The following foods are never authorized for purchase as part of the Fresh Fruits and Vegetables Subcategory:

1. Food or products from a salad bar or deli; party trays; fruit baskets; and decorative vegetables and fruits, including but not limited to chilies or garlic on a string and painted pumpkins;
2. Nuts or fruit-nut mixtures;
3. Edible blossoms, such as squash blossoms;
4. Bagged salad with added ingredients, such as dressing, croutons, and cheese;
5. Vegetable or fruit kits with added ingredients, such as dressing, cheese, dips, or sauces;
6. Dried vegetables;
7. Herbs and spices, such as parsley, basil, cilantro, and mint;
8. Fruits and vegetables with added fats, oils, or sugars; and
9. Fruits and vegetables with artificial, reduced-calorie, or no-calorie sweeteners.

(3) Dried Fruits Subcategory

- (A) Any variety, size, and brand of dried fruits without added fats, sugars, or oils in any type of container or bulk is authorized as part of the Dried Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
 - 1. Organic or non-organic dried fruits;
 - 2. Freeze-dried fruits; and
 - 3. Dried fruits with or without pits.
 - (B) The following foods are never authorized for purchase as part of the Dried Fruits Subcategory:
 - 1. Dried fruits with artificial, reduced-calorie, or no-calorie sweeteners;
 - 2. Dried fruits with added artificial or natural flavors, including essences;
 - 3. Dried or freeze-dried vegetables;
 - 4. Fruit snacks or fruit bites; and
 - 5. Trail mix.
- (4) Canned Fruits Subcategory
- (A) Any brand, variety, and size of canned fruits in any type of container that are packed in water or juice and do not contain added sugars are authorized in the Canned Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
 - 1. Organic or non-organic canned fruits;
 - 2. Natural or unsweetened applesauce; and
 - 3. Canned fruits mixed with canned vegetables when a fruit is listed as the first ingredient.
 - (B) The following types of fruits are never authorized for purchase as part of the Canned Fruits Subcategory:
 - 1. Canned fruits packed in syrup, such as heavy, light, or extra light syrup;
 - 2. Canned fruits with added sugars, salt, fats, or oils;
 - 3. Canned fruits with artificial, reduced-calorie, or no-calorie sweeteners;
 - 4. Canned fruits that do not list a fruit as the first ingredient;
 - 5. Canned fruit cocktail;

6. Mixed fruit with cherries;
 7. Cranberry sauce;
 8. Pie filling; and
 9. Home-canned or home-preserved fruits.
- (5) Canned Vegetables Subcategory
- (A) Any brand, size, and variety of regular or low sodium canned vegetables in any type of container is authorized in the Canned Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic canned vegetables;
 2. Sweet potatoes or yams without added sugars or syrup;
 3. Tomatoes or tomato products including but not limited to strained, crushed, diced, paste, or pureed tomatoes; and
 4. Canned vegetables mixed with canned fruits when a vegetable is listed as the first ingredient.
- (B) The following foods are never authorized for purchase as part of the Canned Vegetables Subcategory:
1. Canned tomato products with added sugars, fats, or oils;
 2. Canned tomato products with artificial, reduced-calorie, or no-calorie sweeteners;
 3. Canned vegetables with added fats or oils;
 4. Canned vegetable mixtures with mature beans;
 5. Canned vegetables that do not list a vegetable as the first ingredient;
 6. Pickled, creamed, or sauced canned vegetables;
 7. Soups, ketchup, relishes, olives, salsa, stewed tomatoes, or tomato sauces (tomato, pizza, or spaghetti);
 8. Canned mature beans, including but not limited to black-eyed peas, kidney beans, and pinto beans; and
 9. Home-canned or home-preserved vegetables.
- (6) Frozen Fruits Subcategory
- (A) Any brand, size, and variety of organic or non-organic frozen fruits in any type of container are authorized in the Frozen Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:

1. Frozen fruits mixed with frozen vegetables when a fruit is listed as the first ingredient.
- (B) The following types of fruits are never authorized for purchase as part of the Frozen Fruits Subcategory:
1. Frozen fruits with added ingredients, oils, salts, or sugars;
 2. Frozen fruits with artificial, reduced-calorie, or no-calorie sweeteners; and
 3. Frozen fruits that do not list a fruit as the first ingredient.
- (7) Frozen Vegetables Subcategory
- (A) Any brand, size, and variety of organic or non-organic frozen vegetables in any type of container are authorized in the Frozen Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Sweet potatoes or yams without added sugars or syrup;
 2. Frozen mature or immature beans; and
 3. Frozen vegetables mixed with frozen fruits when a vegetable is listed as the first ingredient.
- (B) The following types of vegetables are never authorized for purchase as part of the Frozen Vegetables Subcategory:
1. Frozen vegetables with added sugars, oils, or fats;
 2. Breaded or flavored frozen vegetables;
 3. French fries, tater tots, hash browns, or mashed potatoes;
 4. Frozen vegetables that do not list a vegetable as the first ingredient;
 5. Frozen vegetables with added ingredients, such as sauces, cheese, butter, pasta, or rice; and
 6. Frozen vegetables with artificial, reduced-calorie, or no-calorie sweeteners.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal. For eligible

fruits and vegetables, State agencies may restrict packaging, e.g., plastic containers, and package sizes, such as single serving, of processed fruits and vegetables available for purchase with the cash-value voucher. In addition, State agencies may identify certain processed WIC-eligible fruits and vegetables on food lists where the potential exists for vendor or participant confusion in determining authorized WIC-eligible items.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of 7 Code of Federal Regulations part 246.10 (2015).

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for fruits and vegetables^{4 5 6 8 9} in all applicable food packages are as follows:

Any variety of fresh (as defined by 21 CFR 101.95) whole or cut fruit without added sugars.

Any variety of fresh (as defined by 21 CFR 101.95) whole or cut vegetable, except white potatoes, without added sugars, fats, or oils (orange yams and sweet potatoes are allowed).

Any variety of canned fruits (must conform to FDA standard of identity as appropriate (21 CFR part 145)); including applesauce, juice pack or water pack without added sugars, fats, oils, or salt (i.e., sodium). The fruit must be listed as the first ingredient.

Any variety of frozen fruits without added sugars, fats, oils, or salt (i.e., sodium).

Any variety of canned or frozen vegetables, except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, or oils. Vegetable must be listed as the first ingredient. May be regular or lower in sodium. Must conform to FDA standard of identity as appropriate (21 CFR part 155).

Any type of dried fruits or dried vegetable, except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, oils, or salt (i.e., sodium).

Any type of immature beans, peas, or lentils, fresh or in canned forms. Any type of frozen beans (immature or mature). Beans purchased with the CVV may contain added vegetables and fruits, but may not contain added sugars, fats, oils, or meat as purchased. Canned beans, peas, or lentils may be regular or lower in sodium content. State agencies must allow organic forms of WIC-eligible fruits and vegetables.

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

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

⁶ The following are not authorized: herbs and spices; creamed vegetables or vegetables with added sauces; mixed vegetables containing noodles, nuts or sauce packets, vegetable-grain (pasta or rice) mixtures; fruit-nut mixtures; breaded vegetables; fruits and vegetables for purchase on salad bars; peanuts or other nuts; ornamental and decorative fruits and vegetables such as chili peppers on a string; garlic on a string; gourds; painted pumpkins; fruit baskets and party vegetable trays; decorative blossoms and flowers, and foods containing fruits such as blueberry muffins and other baked goods. Home-canned and home-preserved fruits and vegetables are not authorized.

⁸ Excludes white potatoes, mixed vegetables containing white potatoes, dried white potatoes; catsup or other condiments; pickled vegetables; olives; soups; juices; and fruit leathers and fruit roll-ups. Canned tomato sauce, tomato paste, salsa and spaghetti sauce without added sugar, fats, or oils are authorized.

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

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic

needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82500 WIC Authorized Food List: Fruits and Vegetables

- (a) Fruits and Vegetables Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82500.
 - (1) The Department proposes to add clarifying language specifying that products in the Fruits and Vegetables Category are authorized for purchase with the cash value voucher. (7 C.F.R. § 246.2 (2015).)
 - (2) Fresh Fruits and Vegetables Subcategory regulations were promulgated in W.R.B. 2012-02.
 - (A) There are no changes being made to the requirements to authorize any type, variety, and brand of fresh fruits and vegetables in any combination of type, variety, and brand of fresh fruits and vegetables, which were promulgated in W.R.B. 2012-02 and amended by W.R.B. 2015-01.
 - 1.-5. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02 and amended by W.R.B. 2015-01.
 - (B) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors to identify which products are WIC authorized supplemental foods.
 - 1.-7. There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02 and amended in W.R.B. 2015-01.
 8. The Department proposes to prohibit fresh fruits and vegetables with added fats, oils, or sugars pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
 9. The Department proposes to prohibit fresh fruits and vegetables with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research

regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

(3) Dried Fruits Subcategory regulations were promulgated in W.R.B. 2012-02.

(A) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

1.-3. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

(B) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors to identify which products are WIC authorized supplemental foods.

1. The Department proposes to prohibit dried fruits with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners

that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

- 2.-3. There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02.
 4. The Department proposes the prohibition of fruit snacks or fruit bites, because these products do not meet federal requirements for dried fruits. (7 C.F.R. § 246.10(e)(12), table 4 (2015).) Fruit snacks or bites typically contain additional, unauthorized ingredients, such as added sugars and/or oils. To ensure that participants do not purchase unauthorized products, the Department is proposing to add language clarifying that these products are not authorized.
 5. There is no change being made to the prohibition of trail mix, which was promulgated in W.R.B. 2012-02.
- (4) Canned Fruits Subcategory regulations were promulgated in W.R.B. 2012-02.
- (A) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
- 1.-2. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
 3. The Department proposes to add clarifying language that canned fruits mixed with canned vegetables are authorized due to their increasing availability in the market. The Department considers it reasonable to authorize them since both canned fruits and canned vegetables are currently authorized separately and the combination of the two at the manufacturing level would not significantly alter the participant's nutritional benefit. When the fruit is the first ingredient, the product shall be considered a canned fruit

and the canned fruit prohibitions found in (a)(4)(B) apply to these mixtures.

(B) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.

- 1.-2. There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02.
3. There is no change being made to the prohibition of canned fruits with artificial sweeteners. The Department proposes to additionally prohibit canned fruits with reduced-calorie sweeteners or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

4. The Department proposes to prohibit canned fruits that do not list fruit as the first ingredient pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- 5.-8. There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02.
9. The Department proposes to prohibit home-canned or home-preserved fruits pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4, footnote 6 (2015).

(5) Canned Vegetables Subcategory regulations were promulgated in W.R.B. 2012-02.

(A) 1.-2. There are no changes being made to the requirements allowing any brand, size, and variety of regular or low sodium organic or non-organic canned vegetables in any type of container, which were promulgated in W.R.B. 2012-02. The Department is proposing to authorize canned potatoes pursuant to 7 Code of Federal Regulations part 246.10(e)(10), table 2, footnote 14 and (e)(11), table 3, footnote 17 (2015), which state that “State agencies may not selectively choose which fruits and vegetables are available to participants.”

3. There are no changes being made to the requirements allowing tomatoes or tomato products but the Department is proposing to add strained as an example to the list of allowed types for clarity. The Department has received many questions asking if strained tomatoes are allowed. Strained tomatoes meet the federal requirements for fresh vegetables and adding it to this list will help eliminate confusion regarding the authorization status of strained tomatoes.

4. The Department proposes to add clarifying language that canned vegetables mixed with canned fruits are authorized due to their increasing availability in the market. The Department considers it reasonable to authorize them since both canned fruits and canned vegetables are currently authorized separately and the combination of the two at the manufacturing level would not significantly alter the participant’s nutritional benefit. When the vegetable is the first ingredient, the product shall be considered a canned vegetable and the canned vegetable prohibitions found in (a)(5)(B) apply to these mixtures.

(B) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors to identify which products are WIC authorized supplemental foods. The Department has removed the prohibition on canned potatoes other than sweet potatoes and yams since it is proposing to allow all types of canned potatoes without added fats, sugars, or oils, for reasons described in subsection (a)(5)(A) above.

1. There is no change to the prohibition of canned tomato products with added sugars, fats, or oils; which was promulgated in W.R.B. 2012-02.

2. The Department proposes to prohibit canned tomato products with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

3. There is no change being made to the prohibition of canned vegetables with added fats or oils, which was promulgated in W.R.B. 2012-02.
4. The Department is repealing the prohibition of canned vegetables mixed with potatoes for the reasons described in (a)(5)(A) above. The Department proposes to prohibit canned vegetable mixtures with mature beans pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), which only allows canned immature beans in the fruits and vegetables category.
5. The Department proposes the prohibition of canned vegetables that do not list a vegetable as the first ingredient pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- 6.-8. There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02.

9. The Department proposes to prohibit home-canned or home-preserved vegetables pursuant to 7 Code Federal Regulations part 246.10(e)(12), table 4, footnote 6 (2015).
- (6) Frozen Fruits Subcategory regulations were promulgated in W.R.B. 2012-02.
- (A) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
1. The Department proposes to add clarifying language that frozen fruits mixed with frozen vegetables are authorized due to their increasing availability in the market. The Department considers it reasonable to authorize them since both frozen fruits and frozen vegetables are currently authorized separately and the combination of the two at the manufacturing level would not significantly alter the participant's nutritional benefit. When the fruit is the first ingredient, the product shall be considered a frozen fruit and the frozen fruit prohibitions found in (a)(6)(B) apply to these mixtures.
- (B) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
1. There is no change to the prohibition of frozen fruit with added ingredients and sugar, which was promulgated in W.R.B. 2012-02. The Department proposes to add the prohibition of frozen fruits with added oils and salts pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
 2. There is no change being made to the prohibition of frozen fruits with artificial sweetener. The Department proposes to additionally prohibit frozen fruits with reduced-calorie sweeteners or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not

been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

3. The Department proposes to prohibit frozen fruits that do not list a fruit as the first ingredient in compliance with 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).

(7) Frozen Vegetables Subcategory regulations were promulgated in W.R.B. 2012-02.

(A) There are no changes being made to these requirements allowing any brand, size, and variety of organic or non-organic frozen vegetables, which were promulgated in W.R.B. 2012-02. The Department is proposing to authorize frozen potatoes pursuant to 7 Code of Federal Regulations part 246.10(e)(10), table 2, footnote 14 and (e)(11), table 3, footnote 17 (2015) which state that "State agencies may not selectively choose which fruits and vegetables are available to participants."

- 1.-2. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
3. The Department proposes to add clarifying language that frozen vegetables mixed with frozen fruits are authorized due to their increasing availability in the market. The Department considers it reasonable to authorize them since both frozen fruits and frozen vegetables are currently authorized separately and the combination of the two at the manufacturing level would not significantly alter the participant's nutritional benefit. When the vegetable is the first ingredient, the product shall be considered a frozen vegetable and the frozen vegetable prohibitions found in (a)(7)(B) apply to these mixtures.

(B) The Department specifies products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.

- 1.-3. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
4. The Department proposes to prohibit frozen vegetables that do not list a vegetable as the first ingredient in compliance with 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
5. There is no changed being made to the prohibition of frozen vegetables with added ingredients, such as sauces, cheese, butter, pasta, or rice, which was promulgated in W.R.B. 2012-02.
6. The Department proposes to prohibit frozen vegetables with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

82550 WIC Authorized Food List: Infant Cereal

PROPOSED REGULATION

82550 WIC Authorized Food List: Infant Cereal

(a) Infant Cereal

(1) The following infant cereals are authorized by brand and product name in eight (8) ounce or sixteen (16) ounce containers in the Infant Cereal Category:

- (A) Baby Basics — Oatmeal;
- (B) Baby Basics — Rice;
- (C) Beech-Nut — Single Grain Multigrain;
- (D) Beech-Nut — Single Grain Oatmeal;
- (E) Beech-Nut — Single Grain Rice;
- (F) Comforts for Baby — Oatmeal;
- (G) Comforts for Baby — Rice;
- (H) Early On — Multi Grain;
- (I) Early On — Oatmeal;
- (J) Early On — Rice;
- (K) Earth's Best Organic — Whole Grain Multi-Grain;
- (L) Earth's Best Organic — Whole Grain Oatmeal;
- (M) Earth's Best Organic — Whole Grain Rice;
- (N) Gerber — MultiGrain;
- (O) Gerber — Oatmeal;
- (P) Gerber — Organic Brown Rice;
- (Q) Gerber — Organic Oatmeal;
- (R) Gerber — Rice;
- (S) Gerber — Whole Wheat;
- (T) Healthy Times Special Nourish Organic — Brown Rice;
- (U) Healthy Times Special Nourish Organic — Mixed Grain;
- (V) Healthy Times Special Nourish Organic — Oatmeal;
- (W) Healthy Times Special Nourish Organic — Rice;
- (X) Mom's Choice — Multigrain;

- (Y) Mom's Choice — Oatmeal;
 - (Z) Mom's Choice — Rice;
 - (AA) Tippy Toes — Oatmeal;
 - (BB) Tippy Toes — Rice;
 - (CC) Up & Up — Oatmeal;
 - (DD) Up & Up — Rice;
 - (EE) Yummy Naturals — Multigrain;
 - (FF) Yummy Naturals — Oatmeal; and
 - (GG) Yummy Naturals — Rice.
- (2) The following types of infant cereal are never authorized for purchase as part of the Infant Cereal Category:
- (A) Infant cereal with added ingredients, including formula, milk, fruits, vegetables, probiotics, and DHA; and
 - (B) Infant cereal with added sugars, artificial sweeteners, reduced-calorie sweeteners, and no-calorie sweeteners.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for infant cereal in all applicable food packages are as follows:

Infant cereal must contain a minimum of 45 mg of iron per 100 g of dry cereal.¹²

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

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82550 WIC Authorized Food List: Infant Cereal

(a) Infant Cereal Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82550.

(1) There are no changes being made to these requirements authorizing infant cereals by brand and product in organic or non-organic 8 ounce and 16 ounce containers, which were promulgated in W.R.B. 2012-02.

(A)-(GG) In W.R.B. 2012-02, the Department promulgated a list of authorized brands and product names for infant cereal. For this proposed regulation, the Department held open submission periods for infant cereal submissions in August 2014 and June 2015. The Department proposes to authorize all submitted infant cereal products that meet federal requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and other state

requirements (as described in (a)(2)) of the proposed regulation, which include the prohibition of added ingredients. As a result, the brands and product names in the table below will be added/deleted from the existing list of infant cereals promulgated in W.R.B. 2012-02. Deleted brands/products were removed as a result of their manufacturers discontinuing production.

Added	Deleted
<ul style="list-style-type: none"> • Baby Basics — Oatmeal • Baby Basics — Rice • Comforts for Baby — Oatmeal • Comforts for Baby — Rice • Early On — Multi Grain • Early On — Rice • Early On — Oatmeal • Healthy Times Special Nourish Organic — Brown Rice • Healthy Times Special Nourish Organic — Mixed Grain • Healthy Times Special Nourish Organic — Oatmeal; • Healthy Times Special Nourish Organic —Rice • Gerber — MultiGrain* • Mom’s Choice — Multigrain • Mom’s Choice — Oatmeal • Mom’s Choice — Rice • Tippy Toes — Oatmeal • Tippy Toes — Rice • Up & Up — Rice • Up & Up — Oatmeal • Yummy Naturals — Rice 	<ul style="list-style-type: none"> • Gerber — Barley • Gerber — Mixed Grain* • O Organics for Baby — Organic Rice

Added	Deleted
<ul style="list-style-type: none"> • Yummy Naturals — Oatmeal • Yummy Naturals — Multigrain 	

*Gerber changed the name of its “Mixed Grain” cereal to “MultiGrain” in 2013. The Department is deleting Gerber “Mixed Grain” from the list of authorized infant cereals and is adding Gerber “MultiGrain,” as an authorized infant cereal.

(2) The Department specifies infant cereal products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.

(A) The prohibition on infant cereals with added ingredients was promulgated in W.R.B. 2012-02. The Department is proposing to expand the list of examples of non-allowed ingredients to include probiotics and vegetables. Both probiotics and vegetables are “non-cereal ingredients,” which may not be included in authorized infant cereals pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).

(B) The Department proposes to prohibit infant cereal with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department’s knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

82600 WIC Authorized Food List: Infant Formula

PROPOSED REGULATION

82600 WIC Authorized Food List: Infant Formula

- (a) Infant Formula Category
 - (1) Authorized infant formula shall be selected and prescribed for a participant by a competent professional authority. Participants may only purchase the brand, type (physical form), size, and number of prescribed cans printed on their food instrument(s).
 - (2) Contract Formula
 - (A) Authorized contract infant formula must meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and is selected through a competitive bidding process. The list of the [current contract formulas](http://www.cdph.ca.gov/programs/wicworks/Documents/WICFood%20s/Formula%20Flyer%20English.pdf) can be found at: [http://www.cdph.ca.gov/programs/wicworks/Documents/WICFood s/Formula Flyer English.pdf](http://www.cdph.ca.gov/programs/wicworks/Documents/WICFood%20s/Formula%20Flyer%20English.pdf).
 - (3) Non-Contract Formula
 - (A) Non-contract brand infant formula is all infant formula that is not covered by an infant formula cost containment contract awarded by the State agency. Non-contract brand formula may only be issued in food package III for participants with qualifying conditions with medical documentation pursuant to 7 Code of Federal Regulations part 246.10(d)(1)(i) (2015).
 - (4) The following types of infant formula are never authorized for purchase as part of the Infant Formula Category:
 - (A) Low iron or no iron formula.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for infant formula in all applicable food packages are as follows:

Infant formula . . .

All authorized infant formulas must:

- (1) Meet the definition for an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and meet the requirements for an infant formula under section 412 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107;
- (2) Be designed for enteral digestion via an oral or tube feeding;
- (3) Provide at least 10 mg iron per liter (at least 1.5 mg iron/100 kilocalories) at standard dilution;
- (4) Provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution.
- (5) Not require the addition of any ingredients other than water prior to being served in a liquid state.

Exempt infant formula . . .

All authorized exempt infant formula must:

- (1) Meet the definition and requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107; and
- (2) Be designed for enteral digestion via an oral or tube feeding.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic

needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82600 WIC Authorized Food List: Infant Formula

- (a) Infant Formula Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82600. The Department is proposing to add clarifying language to this section to specify requirements that are defined and/or mandated in federal regulation.
 - (1) The Department proposes to add clarifying language to specify that infant formula must be selected and prescribed for a participant by a competent professional authority. (7 C.F.R. §§ 246.2; 246.10(b)(2)(ii)(C) and (e)(1)(iii)-(iv) (2015).) The requirement stating that participants may only purchase the brand, type (physical form), size, and number of cans printed on their food instrument(s) was promulgated in W.R.B. 2012-02.
 - (2) The Department proposes to add clarifying language to specify that it issues contract formula, which is defined at 7 Code of Federal Regulations part 246.2 (2015).
 - (A) The Department proposes to add clarifying language specifying the minimum requirements for contract formula pursuant to requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015). The Department also proposes to add clarifying language specifying that contract formula is selected through a competitive bidding process pursuant to 7 Code of Federal Regulations part 246.16a(b) (2015). The Department also proposes to add clarifying language that specifies a flyer listing the contract formulas will be listed on its website to help ensure that vendors and participants know which formulas are contract formulas.
 - (3) The Department proposes to add clarifying language to specify that non-contract formula may be issued, which is defined at 7 Code of Federal Regulations part 246.2 (2015).

- (A) The Department proposes to add clarifying language specifying when non-contract formula can be issued, as specified in 7 Code of Federal Regulations part 246.10(d)(1)(iii) (2015).
- (4) The Department specifies infant formula products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.
 - (A) There are no changes being made to this requirement, which was promulgated in W.R.B. 2012-02.

82650 WIC Authorized Food List: Infant Fruits and Vegetables

PROPOSED REGULATION

82650 WIC Authorized Food List: Infant Fruits and Vegetables

(a) Infant Fruits and Vegetables Category

- (1) Any infant fruits and/or vegetables product made by the brands listed in (a)(2)(A)-(R) is authorized in the Infant Fruits and Vegetables Category when it has the all of the following characteristics:
 - (A) Is sold in three and a half (3.5) ounce or four (4) ounce containers other than pouches;
 - (B) Is sold individually or in multi-packs;
 - (C) Is organic or non-organic;
 - (D) Lists a fruit or vegetable as the first ingredient; and
 - (E) Contains only single ingredient fruits or vegetables, or combinations of two (2) or more single ingredient fruits or vegetables.
- (2) The following brands are authorized in the Infant Fruits and Vegetables Category:
 - (A) Beech-Nut;
 - (B) Early On Baby;
 - (C) Earth's Best;
 - (D) First Choice;
 - (E) Full Circle;
 - (F) Gerber;
 - (G) Happy Naturals;
 - (H) Healthy Times;
 - (I) Mom's Natural Choice;
 - (J) Mom's Organic Choice;
 - (K) O Organics;
 - (L) Organico;
 - (M) Raley's Organic;
 - (N) SistaGirl;
 - (O) Tippy Toes;

- (P) Wild Harvest;
 - (Q) Yummy Naturals; and
 - (R) Yummy Organics.
- (3) When purchasing authorized containers of infant fruits and vegetables that are sold individually, participants may not purchase both three and a half (3.5) ounce and four (4) ounce containers using the same food instrument.
- (4) The following infant foods are never authorized for purchase as part of the Infant Fruits and Vegetables Category:
- (A) Infant fruits and vegetables in pouches;
 - (B) Infant fruits and vegetables mixed with cereal, meat, pasta, or rice;
 - (C) Infant fruits and vegetables with added sugars, salt, spices, starch, fiber, or DHA;
 - (D) Infant fruits and vegetables with added sweeteners including artificial, reduced-calorie, or no-calorie sweeteners;
 - (E) Infant fruits and vegetables that do not list a fruit or vegetable as the first ingredient;
 - (F) Dried or powdered infant fruits and vegetables;
 - (G) Infant desserts, puddings, or smoothies;
 - (H) Infant juice;
 - (I) Infant dinners; and
 - (J) Graduates or toddler infant food.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for infant fruits and vegetables in all applicable food packages are as follows:

Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced. The fruit must be listed as the first ingredient.¹³

¹³ Mixtures with cereal or infant food desserts (e.g., peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) and combinations of single ingredients of fruits and/or vegetables (e.g., apples and squash) are allowed.

Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced. The vegetable must be listed as the first ingredient.¹⁴

¹⁴ Combinations of single ingredients (e.g., peas and carrots) and combinations of single ingredients of fruits and/or vegetables (e.g., apples and squash) are allowed. Mixed vegetables with white potato as an ingredient (e.g., mixed vegetables) are authorized. Infant foods containing white potatoes as the primary ingredient are not authorized.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments

. . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82650 WIC Authorized Food List: Infant Fruits and Vegetables

(a) Infant Fruits and Vegetables Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82650.

(1) The Department proposes to be brand specific and list authorized infant fruits and vegetables brands as authorized supplemental foods. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*⁵, USDA instructs states to identify this food category by brand in its food list. In order to comply with this guidance, the Department proposes to authorize infant fruits and vegetables products that meet the requirements in subsections (a)(1)(A)-(E) and (a)(4)(A)-(J) of these proposed regulations.

(A) There is no change being made to the authorization of infant fruits and vegetables in 3.5 ounce or 4 ounce containers, which was promulgated in W.R.B. 2012-02. There is no change being made to the prohibition of pouches, which was promulgated in W.R.B. 2013-02.

(B) There is no change being made to the authorization of infant fruits and vegetables packaged individually or in multi-packs, which was promulgated in W.R.B. 2012-02.

(C) There is no change being made to the requirement authorizing both organic and non-organic infant fruits and vegetables, which was promulgated in W.R.B. 2012-02.

(D) The Department proposes to authorize only infant fruits and vegetables that list a fruit or vegetable as the first ingredient in compliance with 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).

⁵ United States Department of Agriculture, Food and Nutrition Service, *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies* (May 2014) p. 38.

- (E) The Department proposes to authorize infant fruits and vegetables that contain only single ingredient fruits or vegetables, or combinations of two (2) or more single ingredient fruits or vegetables in compliance with 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- (2) The Department proposes to list authorized infant fruits and vegetables by brand. As discussed in subsection (a)(1), USDA guidance instructs states to identify the Infant Fruits and Vegetables Category by brand in their food lists. The Department held an open submission period in June 2015, with the purpose of identifying brands with products that comply with 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and the state requirements listed in subsections (a)(1)(A)-(E) and (a)(4)(A)-(J). The Department proposes to authorize all of the infant fruits and vegetables brands that submitted products that meet the requirements. Only products made by the authorized brands that meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and the state requirements listed in subsections (a)(1)(A)-(E) and (a)(4)(A)-(J) may be purchased using food instruments.
- (A)-(R) The Department proposes to list authorized brands in the Infant Fruits and Vegetables Category for the reasons discussed in subsections (a)(1)-(2).
- (3) There are no changes being made to this requirement, which was promulgated in W.R.B. 2012-02.
- (4) The Department proposes to specify infant foods that are not authorized in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
- (A) There are no changes being made to the prohibition of pouches, which was promulgated in W.R.B. 2013-02.
- (B)-(C) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
- (D) The Department proposes to prohibit infant fruits and vegetables with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate

or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

- (E) The Department proposes to prohibit infant fruits and vegetables that do not list a fruit or vegetable as the first ingredient pursuant to federal regulation. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)
- (F) The Department proposes to prohibit dried or powdered infant fruits and vegetables since they are not the type of infant fruits and vegetables that the federal regulation intends for states to issue to participants. Federal regulations describe authorized infant foods as "jarred infant foods," including "jarred infant food fruit." (7 C.F.R. § 246.10(e)(9), tbl.1, fns. 10, 13 (2015).) Dried and powdered infant fruits and vegetables are not jarred and the Department therefore proposes to prohibit them.
- (G)-(J) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

82700 WIC Authorized Food List: Infant Meats

PROPOSED REGULATION

82700 WIC Authorized Food List: Infant Meats

(a) Infant Meats Category

- (1) Any infant meat or poultry product made by the brands listed in (a)(2)(A)-(M) is authorized in the Infant Meats Category when it has all of the following characteristics:
 - (A) Meat or poultry is the single major ingredient;
 - (B) Is sold in two and a half (2.5) ounce containers other than pouches;
 - (C) Is sold individually or in multi-packs;
 - (D) Is organic or non-organic; and
 - (E) May contain added broth or gravy.
- (2) The following brands are authorized in the Infant Meats Category:
 - (A) Beech-Nut;
 - (B) First Choice;
 - (C) Full Circle;
 - (D) Gerber;
 - (E) Happy Naturals;
 - (F) Mom's Choice;
 - (G) Mom's Natural Choice;
 - (H) O Organics;
 - (I) Raley's Organic;
 - (J) Tippy Toes;
 - (K) Wild Harvest;
 - (L) Yummy Naturals; and
 - (M) Yummy Organics.
- (3) The following infant foods are never authorized for purchase as part of the Infant Meats Category:
 - (A) Infant meats in pouches;
 - (B) Infant meats with added sugars, salt, spices, fiber, or DHA;

- (C) Infant meats with artificial, reduced-calorie, or no-calorie sweeteners;
- (D) Infant meats mixed with vegetables, fruits, cereal, pasta, or rice;
- (E) Infant dinners; and
- (F) Graduates or toddler infant food.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for infant meats in all applicable food packages are as follows:

Any variety of commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy. Added sugars or salt (i.e. sodium) are not allowed. Texture may range from pureed through diced.¹⁵

¹⁵ No infant food combinations (e.g., meat and vegetables) or dinners (e.g., spaghetti and meatballs) are allowed.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the

Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82700 WIC Authorized Food List: Infant Meats

(a) Infant Meats Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82700.

(1) The Department proposes to list authorized infant meat products by brand. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*⁶, USDA instructs states to identify this food category by brand in its food list. In order to comply with this guidance, the Department proposes to authorize infant meats brands with products that meet the requirements in subsections (a)(1)(A)-(D) and (a)(3)(A)-(F) of these proposed regulations.

(A) 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), specifies that all infant meat products must contain meat or poultry as a single major ingredient. In order to comply with this regulation, the Department proposes to authorize only those infant meat products made by the brands listed in (a)(2) that meet this requirement.

(B) The Department proposes to prohibit infant meats in pouches due to the higher cost of most infant foods in pouches. Infant fruits and vegetables in pouches are typically more expensive than their counterparts that are packaged in plastic or glass. The Department has no IRI or Nielsen data on infant meats in pouches that meet the

⁶ United States Department of Agriculture, Food and Nutrition Service, *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies* (May 2014) p. 38.

federal minimum requirements in 7 Code of Federal Regulations part 246.10(e)(12) (2015); however it is reasonable to assume that the cost of these products would also be more expensive than their counterparts packaged in plastic or glass. To the best of the Department's knowledge, infant meats in pouches that meet the federal requirements for authorization in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), are not widely available. The Department proposes to include these items as not allowed. If infant meats in pouches become available, the Department will do a careful analysis of the costs associated with these products before making a decision of whether to authorize them. The Department will monitor the availability of infant meats in pouches so that should they become available analysis can be performed to decide whether they will be authorized.

(C)-(D) There are no changes being made to these requirements, which were adopted in W.R.B. 2012-02.

(2) As discussed in (a)(1) the Department proposes to list authorized infant meats by brand. The Department held an open submission period in June 2015, with the purpose of identifying brands with products that meet the federal and state requirements for infant meats. The Department proposes to authorize all of the infant meats brands that submitted products that meet the requirements. Only products made by the authorized brands that meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and the state requirements listed in subsections (a)(1)(A)-(E) and (a)(3)(A)-(F) may be purchased using food instruments.

(A)-(L) The Department proposes to authorize these brands in the Infant Meats Category for the reasons discussed in subsections (a)(1) and (2).

(3) The Department proposes to specify infant foods that are not authorized in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.

(A) The Department proposes the prohibition of pouches for the reasons described in subsection (a)(1)(B).

(B) There are no changes being made to the prohibition of infant meats with added sugars, salt, spices, fiber, or DHA, which was promulgated in W.R.B. 2012-02.

(C) The Department proposes to prohibit infant meats with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various

research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

(D)-(F) There are no changes being made to these prohibitions, which were promulgated in W.R.B. 2012-02.

82750 WIC Authorized Food List: Milk

PROPOSED REGULATION

82750 WIC Authorized Food List: Milk

(a) Milk Category:

- (1) If no other type of milk is specified on a food instrument, any brand of non-organic milk that has all of the following characteristics is authorized as part of a participant's food package in the Milk Category:
 - (A) Plain fluid cow's milk;
 - (B) One percent (1%) lowfat (light) or nonfat (fat free or skim);
 - (C) Pasteurized or ultra-pasteurized; and
 - (D) Sold in one (1) gallon containers.
- (2) Plain fluid cow's milk in half gallon containers is authorized in the Milk Category as part of a participant's food package under the following circumstances: when a participant selects a homeless food package or when the maximum monthly allowance cannot be met by issuing one (1) gallon containers. Plain fluid cow's milk in half gallon containers is only authorized for purchase when it meets the requirements in section (a)(1)(A) and (C) and only when half gallon is printed on a participant's food instrument.
- (3) Whole milk is authorized in the Milk Category as part of the standard food package issuance to one-year-old children (12 through 23 months). Whole milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C), and (D) and only when it is the type of milk printed on a participant's food instrument. Half gallon containers of whole milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
- (4) Two percent (2%) milk is authorized in the Milk Category as part of the participant food package issued to one-year-old children (12 through 23 months) for whom overweight or obesity is a concern when prescribed by a competent professional authority, based on an individual nutritional assessment. Two percent (2%) milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C) and (D) and only when it is the type of milk printed on a participant's food instrument. Half gallon containers of two percent (2%) milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
- (5) Lactose-free milk in half gallon containers is authorized in the Milk Category as part of a participant's food package when requested by a

participant. Lactose free milk in half gallon containers is authorized for purchase when it meets the requirements in section (a)(1)(A)-(C) and only when half gallon lactose-free milk is printed on a participant's food instrument. Whole lactose-free milk in half gallon containers is authorized in the Milk Category as part of standard food package issuance to one-year-old children when half gallon whole lactose-free milk is printed on a participant's food instrument.

- (6) Evaporated milk in twelve (12) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Evaporated milk that is one percent (1%) lowfat or nonfat (fat free or skim) in twelve (12) ounce containers is authorized for purchase when it meets the requirements in sections (a)(1)(B)-(C) above and only when it is the type and fat-level of milk printed on a participant's food instrument. Whole evaporated milk in twelve (12) ounce containers is authorized for purchase when it meets the requirements in section (a)(1)(C) above and only when whole evaporated milk is printed on a participant's food instrument.
- (7) Powdered dry milk in nine and six tenths (9.6) ounce and twenty-five and six tenths (25.6) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Pasteurized powdered dry milk that is nonfat (fat free or skim) in nine and six-tenths (9.6) ounce and twenty-five and six-tenths (25.6) ounce containers is authorized for purchase only when it is the type of milk printed on a participant's food instrument.
- (8) The following types of milk are never authorized for purchase in the Milk Category:
 - (A) Unpasteurized (raw) milk;
 - (B) Acidophilus milk;
 - (C) Buttermilk;
 - (D) Calcium-fortified milk;
 - (E) Flavored milk, including but not limited to chocolate or strawberry;
 - (F) Goat's milk;
 - (G) Soy milk;
 - (H) Non-dairy milk substitutes;
 - (I) Milk with added DHA;
 - (J) Milk sold in pint sized containers;
 - (K) Milk in glass bottles;

- (L) Sweetened condensed or filled milk;
- (M) Ultra heat treated (UHT) shelf-stable milk; and
- (N) Organic milk.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for milk in all applicable food packages are as follows:

Must conform to FDA standard of identity for whole, reduced fat, lowfat, or nonfat milks (21 CFR 131.110). Must be pasteurized. May be flavored or unflavored. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dry.

Dry whole milk must conform to FDA standard of identity (21 CFR 131.147). Nonfat dry milk must conform to FDA standard of identity (21 CFR 131.127).

Cultured milks must conform to FDA standard of identity for cultured milk, e.g. cultured buttermilk, kefir cultured milk, acidophilus cultured milk (21 CFR 131.112).

Acidified milk must conform to FDA standard of identity for acidified milk, e.g., acidified kefir milk, acidified acidophilus milk or acidified buttermilk (21 CFR 131.111).

All reduced fat, lowfat, and nonfat cow's milk types and varieties must contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup).

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82750 WIC Authorized Food List: Milk

(a) Milk Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82750.

- (1) (A)-(D) There are no changes being made to the authorization of pasteurized or ultra-pasteurized plain fluid cow's milk sold in one gallon containers, which was promulgated in W.R.B. 2012-02.
- (2) The Department proposes to add clarifying language to identify circumstances in which half gallons of pasteurized or ultra-pasteurized 1% or nonfat milk are issued as part of a participant's food package.

Half gallons are issued to participants receiving homeless packages. Federal regulation allows states to "make food package adjustments to better accommodate participants who are homeless. At the state agency's option, these adjustments would include, but not be limited to, issuing authorized supplemental foods in individual serving size containers to accommodate lack of food storage or preparation facilities." (7 C.F.R. § 246.10(b)(ii) (2015).) The Department is proposing to exercise its option to issue half gallon containers of milk to homeless participants, which

spreads out their monthly milk benefit into more containers per month. In the homeless food packages, food benefits are spread out over more food instruments. Prescribing smaller quantities more frequently helps alleviate food spoilage issues for homeless participants.

The Department also prescribes half gallon containers when a participant's maximum monthly allowance cannot be met when issuing whole gallons only. For example, a woman issued a standard pregnant with no cheese food package should receive 22 quarts of milk each month. (7 C.F.R. § 246.10(e)(10), tbl. 2 (2015).) Issuing whole gallons only will not allow this participant to receive her maximum monthly allowance. In this case, the participant must receive 5 gallons and one half gallon of milk to receive her maximum monthly allowance of milk.

- (3) There are no changes being made to the authorization of pasteurized or ultra-pasteurized whole milk in one gallon containers, which was promulgated in W.R.B. 2012-02. Clarifying language is being proposed to indicate that whole milk is the standard issuance to one-year-old children (12 through 23 months), which is mandated by federal regulation. (7 C.F.R. § 246.10(e)(10), tbl. 2, fn. 7, and (e)(11), tbl. 3, fn. 9 (2015).)

The Department proposes to add clarifying language to identify circumstances in which pasteurized or ultra-pasteurized half gallons of whole milk are issued as part of a participant's food package. Half gallons of whole milk are issued to one-year-old participants receiving homeless packages or when a one-year-old participant's maximum monthly allowance cannot be met when issuing only whole gallons as described in subsection (a)(2) above.

- (4) The Department proposes to authorize pasteurized or ultra-pasteurized 2% milk as part of the food package issued to one-year-old children (12 through 23 months) for whom overweight or obesity is a concern. As required by federal regulation, 2% milk will only be authorized for these children when prescribed by a competent professional authority, based on individual nutritional assessment. (7 C.F.R. § 246.10(e)(10), tbl. 2, fn. 7, and (e)(11), tbl. 3, fn. 9 (2015).) The prescription of 2% milk to one-year-old children for whom overweight or obesity is a concern aligns with the Department's nutrition goal of limiting added fat intake in efforts to safeguard participants' health against issues such as heart disease, increased rates of cancer, and weight gain, which can lead to high blood pressure, diabetes, and other health-related problems. This proposal also aligns with the Department's participant-education campaigns that highlight limiting fat intake; therefore, the Department finds it reasonable to reduce the fat intake of these participants by offering reduced fat milk as an alternative to whole milk in order to safeguard participants' health.

The Department proposes to add clarifying language to identify circumstances in which half gallons of pasteurized or ultra-pasteurized 2% milk are issued as part of a participant's food package. Half gallons of 2% milk are issued to one-year-old participants for whom overweight or obesity is a concern that are receiving homeless packages or when these participants' maximum monthly allowance cannot be met when issuing only whole gallons for the same reasoning described in subsection (a)(2) above.

- (5) The Department proposes to add clarifying language to explain the circumstances under which lactose free milk in half gallons is issued to participants. Lactose free milk is authorized in half gallon containers because lactose free milk is not widely available in gallon containers.
- (6) Evaporated milk in 12 ounce cans was authorized in the Milk Category regulations in W.R.B. 2012-02. The Department proposes to change the method of issuance from allowing fluid cow's milk food instruments to be exchanged for evaporated milk at the store, to allowing participants to purchase evaporated milk only when "evaporated milk" is printed on a participant's food instrument.

Currently, evaporated milk is not printed on the food instrument, and it does not have its own Maximum Allowable Department Reimbursement (MADR) rate (see WIC Bulletin Regulations section 60000(a)(7)); instead, evaporated milk uses the fluid cow's milk MADR.

The Department has received a multitude of complaints from WIC authorized vendors over the last several years complaining that MADRs do not always fully reimburse them for the cost of evaporated milk. Pursuant to federal regulation exchange rates, a participant receives five 12 ounce cans of evaporated milk in exchange for one gallon of fluid cow's milk. The Department used IRI, Inc. data from 2013 to investigate these complaints. The data showed that the cost of five 12 ounce cans of evaporated milk is significantly more expensive than one gallon of fluid cow's milk, with the average price a fluid gallon of milk to be \$3.92, while the average price for five 12 ounce cans of evaporated milk was \$5.90. The cost differential supports WIC authorized vendors' assertions that the MADR is not always high enough to cover the higher cost of the evaporated milk. Printing "evaporated milk" on its own food instrument will allow the Department to monitor the cost of evaporated milk and set MADR rates that will be based on the redemption of evaporated milk instead of fluid cow's milk, enabling WIC authorized vendors to be adequately reimbursed for the sale of these items.

- (7) Powdered dry milk in 9.6 ounce and 25.6 ounce containers was authorized in the Milk Category regulations in W.R.B. 2012-02. The

Department proposes to change the method of issuance from allowing fluid cow's milk food instruments to be exchanged for powdered dry milk at the store, to allowing participants to purchase powdered dry milk only when powdered dry milk is printed on a participant's food instrument. Implementing this change will enable the Department to monitor the cost of powdered dry milk and set MADRs specifically for this type of milk. Most vendor complaints about MADRs not covering costs were for evaporated milk and the Department is unsure if powdered dry milk experiences the same MADR issues as evaporated milk. Though it is unknown if a problem exists, making this change, however, will ensure that the Department is able to provide MADRs for powdered dry milk that cover its cost.

(8) The Department specifies milk products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.

(A)-(H) There are no changes to these requirements, which were promulgated in W.R.B. 2012-02.

(I) The Department will not allow milk with added DHA. Federal regulation requires that milks authorized by the Department must conform to the FDA standard of identity for whole, reduced fat, lowfat, or nonfat milks in 21 Code of Federal Regulations part 131.110. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).) Subsection (c) of the FDA standard of identity for milk includes a list of safe and suitable optional ingredients that may be used in milks; DHA is not included. Milk with added DHA, therefore, does not meet the federal requirement of meeting the FDA standard of identity and is not allowed as a WIC Authorized supplemental food.

(J)-(N) There are no changes to these requirements, which were promulgated in W.R.B. 2012-02.

82800 WIC Authorized Food List: Peanut Butter

PROPOSED REGULATION

82800 WIC Authorized Food List: Peanut Butter

- (a) Peanut Butter Category
 - (1) Any brand of peanut butter is authorized in the Peanut Butter Category when it has all of the following characteristics:
 - (A) Conforms to the F.D.A. standard of identity for peanut butter in 21 Code of Federal Regulations part 164.150;
 - (B) Is sold in sixteen (16) to eighteen (18) ounce containers; and
 - (C) Is of regular or low sodium content.
 - (2) Authorized peanut butters may be any texture, such as:
 - (A) Creamy;
 - (B) Smooth;
 - (C) Crunchy;
 - (D) Super crunchy;
 - (E) Chunky;
 - (F) Super chunky; and/or
 - (G) Old fashioned or natural.
 - (3) The following varieties of peanut butter are never authorized for purchase as part of the Peanut Butter Category:
 - (A) Honey nut roasted peanut butter
 - (B) "Grind your own" peanut butter;
 - (C) Peanut butter spread;
 - (D) Lowfat or reduced fat peanut butter;
 - (E) Peanut butter with added ingredients, such as jams, jellies, chocolate, marshmallows, or honey;
 - (F) Peanut butter with added supplements, such as omega-3 fatty acids;
 - (G) Peanut butter with artificial, reduced-calorie, or no-calorie sweeteners; and
 - (H) Organic peanut butter.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for peanut butter in all applicable food packages are as follows:

Peanut butter and reduced fat peanut butter (must conform to FDA Standard of Identity (21 CFR 164.150)); creamy or chunky, regular or reduced fat, salted or unsalted forms are allowed. Peanut butters with added marshmallows, honey, jelly, chocolate or similar ingredients are not authorized.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments .

. . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82800 WIC Authorized Food List: Peanut Butter

(a) Peanut Butter Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82800.

(1) The requirement allowing any brand of peanut butter was promulgated in W.R.B. 2012-02; there are no changes being made to this requirement.

(A) The Department is adding this provision to clarify the definition of "peanut butter" and to ensure that pursuant to federal regulation peanut butters authorized by the Department meet the FDA standard of identity for peanut butter. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)

(B)-(C) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

(2) The requirement allowing any texture of peanut butter was promulgated in W.R.B. 2012-02.

(A)-(G) Though the Department will still allow any texture of peanut butter, the list of allowed texture examples is being expanded to help participants and vendors identify WIC authorized peanut butters. There appears to be no uniformity in the peanut butter industry regarding naming of textures; therefore, the Department added examples to the list clarify that all textures are allowed, regardless of name. For example super crunchy and super chunky are essentially the same texture; the proposed additions to the regulation clarify that either is allowed.

(3) The Department specifies peanut butter products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.

(A)-(D) There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.

(E) The Department proposes to prohibit peanut butter with added ingredients, such as jams, jellies, chocolate, marshmallows, or

honey. This requirement is being made to ensure that peanut butters authorized by the Department conform to the requirements in 7 Code of Federal Regulations part 246.10(e)(12) (2015), which prohibits the authorization of peanut butters with these ingredients.

(F) There are no changes being made to this requirement, which was promulgated in W.R.B. 2012-02.

(G) The Department proposes to prohibit peanut butter with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

(H) There is no change being made to the prohibition of organic peanut butter, which was promulgated in W.R.B. 2012-02.

82850 WIC Authorized Food List: Soy

PROPOSED REGULATION

82850 WIC Authorized Food List: Soy

(a) Soy Category

- (1) The following soy-based beverage products are authorized in the Soy Category:
 - (A) 8th Continent Soymilk
 1. Original flavor; and
 2. Sold in refrigerated half-gallon containers.
 - (B) Pacific Ultra Soy
 1. Original flavor; and
 2. Sold in shelf-stable quart-sized containers.
 - (C) Silk Soymilk
 1. Original flavor; and
 2. Sold in refrigerated half gallons or refrigerated quart-sized containers.
 - (D) WESTSOY Organic Plus Soymilk
 1. Plain flavor; and
 2. Sold in shelf-stable half gallons and quart-sized containers.
- (2) All authorized soy-based beverages are authorized both individually and in multi-packs.
- (3) The following types of soy-based beverages are never authorized for purchase as part of the Soy Category:
 - (A) Flavored soy-based beverage, such as chocolate or vanilla; and
 - (B) Light, lowfat, fat free, and non-fat soy-based beverage.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for soy-based beverage in all applicable food packages are as follows:

Must be fortified to meet the following nutrient levels: 276 mg calcium per cup, 8 g protein per cup, 500 IU vitamin A per cup, 100 IU vitamin D per cup, 24 mg magnesium per cup, 222 mg phosphorus per cup, 349 mg potassium per cup, 0.44 mg riboflavin per cup, and 1.1 mcg vitamin B12 per cup, in accordance with fortification guidelines issued by FDA. May be flavored or unflavored.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82850 WIC Authorized Food List: Soy

(a) Soy Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82850.

(1) For these proposed regulations, the Department sought submissions in August 2014 and June 2015 from soy-based beverage companies for unflavored soy-based beverages in shelf-stable or refrigerated forms in quarts or half gallons that met the federal requirements in 7 Code of Federal Regulations part 246.10(e)(12) (2015), and the “cannot buys” specified in the Soy Category regulation promulgated in W.R.B. 2012-02. Flavored soy-based beverage was prohibited in the “cannot buy” requirements in W.R.B. 2012-02. The Department will maintain this prohibition in these regulations and is proposing to authorize only unflavored soy-based beverages.

Additional requirements for submissions were that soy-based beverages must be packaged in either quart or half-gallon containers and can be in either shelf-stable or refrigerated forms. The Department authorized two brands of soy-based beverages in these sizes and forms in W.R.B. 2012-02 and proposes to authorize new brands in these sizes and forms. The Department surveyed websites for a wide variety of soy-based beverages and all companies produce these products in either shelf-stable or refrigerated forms and in quarts or half gallons. To provide participants with the widest variety of unflavored soy-based beverages, the Department plans to continue to allow both quarts and half gallons sizes in either shelf-stable or refrigerated form. The Department is proposing to authorize all unflavored soy-based beverages that meet the federal requirements in either refrigerated or shelf-stable forms in half gallons or quarts that were submitted during these periods.

(A) 1.-2. There are no changes being made to the authorization of these products, which were authorized by W.R.B. 2012-02.

(B) 1. The name of the allowable Pacific Ultra Soy soy-based beverage has been changed from “plain” to “original” flavor. In its submission to the Department, the manufacturer represented that no flavor change was made to the actual product; however, a change was made to the name of the product’s flavor. The Department is updating the name of the authorized product in regulation to reflect this change.

2. There is no change being made to the size and form of the authorized containers of Pacific Ultra Soy. This regulation was promulgated in W.R.B. 2012-02.

- (C) The Department is proposing to add Silk Soymilk to the list of authorized soy-based beverages.
 - 1. The Department proposes to add Silk Original Flavor Soymilk as an authorized soy-based beverage. This unflavored soy-based beverage complies with the federal requirements for soy-based beverages.
 - 2. The Department proposes to allow Silk Original Flavor Soymilk in refrigerated half gallons or refrigerated quart-sized containers for reasons described in subsection (a)(1) above.
- (D) The Department is proposing to add WESTSOY Original Flavor Organic Plus Soymilk as an authorized soy-based beverage.
 - 1. The Department proposes to allow WESTSOY Original Flavor Organic Plus Soymilk. This unflavored soy-based beverage complies with the federal requirements for soy-based beverages.
 - 2. The Department proposes to allow WESTSOY original flavor Organic Plus soy-based beverage in shelf-stable half gallons and quart-sized containers for reasons described in (a)(1) above.
- (2) The Department did not specify whether multi-packs (of quarts or half gallons) were allowed in W.R.B. 2012-02. The Department is proposing to authorize quarts and half gallons in multi-packs because it anticipates that allowing multi-packs could result in cost savings for the Department. For example, suggested retail price data submitted by a manufacturer during the Department's open submission periods demonstrates that the price of multi-packs is cheaper than the combined price of multiple single containers. The suggested retail price for this manufacturer's single half gallon is \$3.28. The suggested retail price for the two-pack of the same product is \$5.88, a price that is approximately 10 percent cheaper than two single half gallon containers purchased together.
- (3) The Department specifies soy-based beverage products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.
 - (A) There is no change to the prohibition of flavored soy-based beverage, which was promulgated in W.R.B. 2012-02.
 - (B) This proposed regulation removes the reference to 8th Continent light or fat free soy-based beverage and proposes to disallow all light, lowfat, fat free, and non-fat soy-based beverages. The

Department proposes to prohibit the authorization of all light, lowfat, fat free, and non-fat soy-based beverages because they do not meet the nutrient requirements specified in federal regulation. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)

82900 WIC Authorized Food List: Tofu

PROPOSED REGULATION

82900 WIC Authorized Food List: Tofu

(a) Tofu Category

- (1) The following tofus, as identified below by brand/product name and texture, in sixteen (16) ounce packages are authorized in the Tofu Category:

(A) Azumaya

1. Extra Firm
2. Firm
3. Silken

(B) House Foods

1. Premium Extra Firm
2. Premium Firm
3. Premium Medium Firm

(C) Nasoya

1. Organic Silken

(D) O Organics

1. Organic Sprouted Super Firm

(E) Wo Chong

1. Firm
2. Silken
3. Soft

- (2) The following types of tofu are never authorized for purchase as part of the Tofu Category:

- (A) Tofu with added fats, sugars, sweeteners (artificial, reduced-calorie, or no-calorie), oils, sodium, flavoring, or seasoning;
- (B) Cubed, dried, baked, or fried tofu; and
- (C) Tofu that is sold in bulk and not pre-packaged.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for tofu in all applicable food packages are as follows:

Calcium-set tofu prepared with calcium salts (e.g., calcium sulfate). May not contain added fats, sugars, oils, or sodium. Tofu must be calcium-set, i.e., contain calcium salts, but may also contain other coagulants, i.e., magnesium chloride.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82900 WIC Authorized Food List: Tofu

- (a) Tofu Category regulations were promulgated in W.R.B. 2012-02. This section has been moved to Section 82900.

- (1) On January 30, 2015, USDA FNS released guidance urging state agencies to “authorize only 16 ounce packages to . . . ensure that participants obtain their maximum allowance.” As a result, the Department proposes to change package-size requirements of tofu to allow only 16 ounce containers in order to ensure that participants receive their maximum allowances.

The Department compiled the list of proposed authorized tofu brands and names by holding open submission periods in August 2014 and January 2015 for which all manufacturers known to the Department were sent letters detailing how to submit their products to the Department for consideration to be authorized brands and products. These letters were also posted on the Department’s website in order to ensure the process for submitting tofu products was made public and open to all interested parties. After USDA issued their guidance urging states to issue tofu in packages that ensured that participants received the full monthly allowances, the Department held another open submission period in June 2015. The June 2015 open submission period letter detailed the Department’s change in size requirements, encouraging manufacturer’s to submit all eligible 16 ounce products.

The Department proposes to list authorized tofu brands and product names in the list of authorized foods to ensure that participants purchase products that meet the minimum requirements for tofu listed in federal regulation at 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and the Department’s additional requirements that are detailed in the Department’s proposed tofu regulation in subsections (a)(1) and (a)(2)(A)-(C).

- (2) The Department proposes to specify tofu products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.

- (A) There are no changes being made to the Department's prohibitions of tofu with added fats, sugars, oils, sodium, flavoring, and seasoning, which were promulgated in W.R.B. 2012-02.

The Department proposes to prohibit tofu with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

- (B)-(C) There are no changes being made to the Department's prohibitions of cubed, dried, baked, or dried tofu and tofus sold in bulk that are not pre-packaged, which were promulgated in W.R.B. 2012-02.

82950 WIC Authorized Food List: Whole Grains

PROPOSED REGULATION

82950 WIC Authorized Food List: Whole Grains

- (a) Whole Grains Category
 - (1) Brown Rice Subcategory
 - (A) Any brand of brown rice is authorized in the Brown Rice Subcategory of the Whole Grains Category when it has all of the following characteristics:
 - 1. Is sold in bulk or in sixteen (16) ounce packages;
 - 2. Is of any variety of brown rice, such as basmati and jasmine;
 - 3. Is short, medium, or long grain; and
 - 4. Is regular, quick, or instant.
 - (B) The following types of rice are never authorized for purchase as part of the Brown Rice Subcategory:
 - 1. Ready-to-serve rice;
 - 2. Brown rice mixed with any other type of rice; and
 - 3. Organic brown rice.
 - (2) Bulgur Subcategory
 - (A) Any brand of bulgur is authorized in the Bulgur Subcategory of the Whole Grains Category when it has the following characteristics:
 - 1. Is sold in bulk or in sixteen (16) ounce packages; and
 - 2. Is organic or non-organic.
 - (3) Corn Tortillas Subcategory
 - (A) The following soft corn tortillas (white or yellow), identified by brand and product name, in sixteen (16) ounce packages are authorized in the Corn Tortillas Subcategory of the Whole Grains Category:
 - 1. Acapulco Tortilleria Mexicatessen — King Size White Corn Tortillas
 - 2. Carlita — Corn Tortillas Soft Taco Style
 - 3. Chi-Chi's — White Corn Taco Style Tortillas
 - 4. Don Pancho — White Corn Tortillas

5. Early On — White Corn Tortillas
6. Early On — Yellow Corn Tortillas
7. El Comal — Corn Tortillas
8. Fiesta — Corn Tortillas
9. Guerrero — Tortillas de Maiz Blanco
10. Herdez — White Corn Tortillas Soft Taco Size
11. La Banderita — Corn Tortillas
12. La Banderita — Grande Corn Tortillas
13. La Burrita — Corn Tortillas
14. La Fe Tortilleria — Corn Tortillas King Size
15. La Mexicana — Corn Tortillas
16. La Perla Mexicana — King Size White Corn Tortillas
17. La Perla Mexicana — King Size Yellow Corn Tortillas
18. La Rosa — Corn Tortillas La Grande
19. La Rosa — Yellow Corn Tortillas La Grande
20. La Tapatia — Premium Corn Tortillas
21. La Tapatia — White Corn Tortillas/Tortillas Blancas
22. Marcela Valladolid — White Corn Tortillas
23. Mi Rancho — Mama's White Corn Tortillas
24. Mi-Rancho Tortillas — Soft White Corn Tortillas
25. Mission — Yellow Corn Tortillas Extra Thin
26. Northgate Gonzalez Market — White Corn Tortillas de Maiz
27. Northgate Gonzalez Market — Yellow Corn Tortillas de Maiz
28. Ozuna — Corn Tortillas
29. Romero's— Stone Ground Corn Tortillas Large King Size
30. Romero's — Whole Grain Corn Tortillas
31. Santa Fe Tortilla Company — White Corn Tortillas
32. Santa Fe Tortilla Company — Yellow Corn Tortillas
33. Sol De Oro — Premium Corn Tortillas
34. Vallarta Supermarkets — Vallarta Tortilla de Maiz
35. Vallarta Supermarkets — Vallarta Tortilla de Maiz Amaril

- (B) The following type of Corn Tortillas is never authorized for purchase as part of the Corn Tortillas Subcategory:
 - 1. Organic Corn Tortillas.
- (4) Oatmeal or Oats Subcategory
 - (A) Any brand of oatmeal or oats is authorized in the Oatmeal or Oats Subcategory of the Whole Grains Category when it has all of the following characteristics:
 - 1. Is sold in bulk or in sixteen (16) ounce packages;
 - 2. Is plain;
 - 3. Is of any variety of oatmeal or oats, including old fashioned or crystal wedding;
 - 4. Is rolled, cut, or steel cut; and
 - 5. Is regular-cooking, instant-cooking, or quick-cooking.
 - (B) The following types of oatmeal or oats are never authorized for purchase as part of the Oatmeal or Oats Subcategory:
 - 1. Individual and flavored oatmeal packets; and
 - 2. Organic oatmeal or oats.
- (5) Whole Grain Barley Subcategory
 - (A) Any brand of whole grain barley is authorized in the Whole Grain Barley Subcategory of the Whole Grains Category when it has the following characteristics:
 - 1. Is sold in bulk or in sixteen (16) ounce packages; and
 - 2. Is organic or non-organic.
 - (B) The following type of barley is never authorized for purchase as part of the Whole Grain Barley Subcategory:
 - 1. Pearled barley.
- (6) Whole Wheat Bread Subcategory
 - (A) Any brand of whole wheat bread (loaves, buns, or rolls) is authorized in the Whole Wheat Bread Subcategory of the Whole Grains Category when it has all of the following characteristics:
 - 1. Is sold in sixteen (16) ounce packages; and
 - 2. The package has "100% Whole Wheat" printed on the front label.

- (B) Whole wheat bread (loaves, buns, or rolls) made by an in-store bakery is allowed if it meets the requirements of subsection (A).
 - (C) The following type of whole wheat bread is never authorized for purchase as part of the Whole Wheat Bread Subcategory:
 - 1. Organic whole wheat bread.
- (7) Whole Wheat Pasta
- (A) The following whole wheat pastas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Pasta Subcategory of the Whole Grains Category:
 - 1. Allegra — Whole Wheat Spaghetti
 - 2. Barilla — Whole Grain Penne
 - 3. Barilla — Whole Grain Spaghetti
 - 4. Bella Terra Organic — Organic Whole Wheat Capellini
 - 5. Bella Terra Organic — Organic Whole Wheat Spaghetti
 - 6. Essential Everyday — Whole Wheat Elbow Macaroni
 - 7. Essential Everyday — Whole Wheat Penne Rigate
 - 8. Essential Everyday — Whole Wheat Rotini
 - 9. Essential Everyday — Whole Wheat Spaghetti
 - 10. Essential Everyday — Whole Wheat Thin Spaghetti
 - 11. Full Circle — Organic Whole Wheat Angel Hair
 - 12. Full Circle — Organic Whole Wheat Spaghetti
 - 13. Great Value — Whole Wheat Spaghetti
 - 14. Hodgson Mill — Whole Wheat Angel Hair
 - 15. Hodgson Mill — Whole Wheat Elbows
 - 16. Hodgson Mill — Whole Wheat Spaghetti
 - 17. Hodgson Mill — Whole Wheat Spirals
 - 18. Hodgson Mill — Whole Wheat Thin Spaghetti
 - 19. Kroger — 100% Whole Grain Penne Rigate
 - 20. Kroger — 100% Whole Grain Rotini
 - 21. Kroger — 100% Whole Grain Spaghetti
 - 22. Kroger — 100% Whole Grain Thin Spaghetti

23. O Organics — Organic Whole Wheat Penne Rigate
24. O Organics — Organic Whole Wheat Spaghetti
25. Racconto — Whole Wheat Capellini
26. Racconto — Whole Wheat Elbows
27. Racconto — Whole Wheat Farfalle
28. Racconto — Whole Wheat Linguine
29. Racconto — Whole Wheat Penne Rigate
30. Racconto — Whole Wheat Rigatoni
31. Racconto — Whole Wheat Rotini
32. Racconto — Whole Wheat Spaghetti
33. Ronzoni Healthy Harvest — 100% Whole Grain Linguine
34. Ronzoni Healthy Harvest — 100% Whole Grain Penne Rigate
35. Ronzoni Healthy Harvest — 100% Whole Grain Rotini
36. Ronzoni Healthy Harvest — 100% Whole Grain Spaghetti
37. Ronzoni Healthy Harvest — 100% Whole Grain Thin Spaghetti
38. Simple Truth Organic — Whole Wheat Penne Rigate
39. Simple Truth Organic — Whole Wheat Rotini
40. Simple Truth Organic — Whole Wheat Spaghetti
41. Simply Balanced — Organic Whole Wheat Farfalle
42. Simply Balanced — Organic Whole Wheat Fusilli
43. Simply Balanced — Organic Whole Wheat Penne Rigate
44. Simply Balanced — Organic Whole Wheat Spaghetti
45. Western Family — 100% Whole Wheat Penne Rigate
46. Western Family — 100% Whole Wheat Spaghetti

(8) Whole Wheat Tortillas Subcategory

- (A) The following whole wheat tortillas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Tortillas Subcategory of the Whole Grains Category:

1. Acapulco Tortilleria Mexicatessen — Whole Wheat Flour Tortillas
2. Carlita —100% Whole Wheat Flour Tortillas
3. Chi-Chi's — Whole Wheat Tortillas Fajita Style
4. Don Pancho — Whole Wheat Tortillas Soft Taco & Wraps Style
5. Early On — Whole Wheat Tortillas
6. El Comal — 100% Whole Wheat Flour Tortillas
7. Esperanza's Tortilleria — Whole Wheat Flour Tortillas
8. Fiesta — Whole Wheat Tortillas
9. Food Club — Whole Wheat Tortillas Fajita Style
10. Frestillas —100% Whole Wheat Tortillas
11. Guerrero — Tortillas de Harina Integral
12. Herdez — Whole Wheat Tortillas Fajita Style
13. Kroger — Soft Taco Sized 100% Whole Wheat Tortillas
14. La Banderita — Whole Wheat Flour Tortillas Fajita
15. La Banderita — 100% Whole Wheat Flour Tortillas Soft Taco
16. La Perla Mexicana — Whole Wheat Tortillas
17. La Reina — Whole Wheat Flour Tortillas
18. La Rosa — 100% Whole Wheat Flour Tortillas
19. La Victoria — Whole Wheat Tortillas Soft Taco
20. Mi Casa — Wheat Tortillas
21. Mi-Rancho Tortillas — Whole Wheat Flour Tortillas
22. Mission — 100% Whole Wheat Flour Tortillas Medium-Soft Taco
23. Ortega — Whole Wheat Tortillas
24. Ozuna — Whole Wheat Tortillas
25. Romero's — 100% Whole Wheat Grain Flour Tortillas
26. Romero's — 100% Whole Wheat Grain Flour Tortillas Regular/Soft Taco Size
27. Santa Fe Tortilla Company — Whole Wheat Tortillas

- 28. Tortilleria Santacruz — 100% Whole Wheat Flour Tortillas
 - 29. Vallarta Supermarkets — 100% Whole Wheat Tortillas
 - 30. Vallarta Supermarkets — Tortilla de Trigo/Whole Wheat Flour Tortillas
- (B) The following type of whole wheat tortillas is never authorized for purchase as part of the Whole Wheat Tortillas Subcategory:
- 1. Organic whole wheat tortillas.
- (9) The following types of whole grains are never authorized for purchase as part of the Whole Grains Category:
- (A) Whole grains that are not plain and that have added ingredients, such as fruits, nuts, or spices;
 - (B) Bread, tortillas, rice, oats, or pasta that is refrigerated or frozen;
 - (C) Refrigerated or frozen dough and mixes;
 - (D) Whole grains with artificial, reduced-calorie, or no-calorie sweeteners; and
 - (E) Homemade whole grains.
- (10) If buying whole grains in bulk, a participant shall only purchase one type of whole grain per food instrument.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for whole grains in all applicable food packages are as follows:

Whole wheat bread must conform to FDA standard of identity (21 CFR 136.180). (Includes whole wheat buns and rolls.) “Whole wheat flour”

and/or “bromated whole wheat flour” must be the only flours listed in the ingredient list.

OR

Whole grain bread must conform to FDA standard of identity (21 CFR 136.110) (includes whole grain buns and rolls).

AND

Whole grain must be the primary ingredient by weight in all whole grain bread products.

AND

Must meet FDA labeling requirements for making a health claim as a “whole grain food with moderate fat content”.³

Whole Grain Options . . .

Brown rice, bulgur, oats, and whole-grain barley without added sugars, fats, oils, or salt (i.e., sodium). May be instant-, quick-, or regular-cooking.

Soft corn or whole wheat tortillas. Soft corn tortillas made from ground masa flour (corn flour) using traditional processing methods are WIC-eligible, e.g., whole corn, corn (masa), whole ground corn, corn masa flour, masa harina, and white corn flour. For whole wheat tortillas, “whole wheat flour” must be the only flour listed in the ingredient list.

Whole wheat macaroni products. Must conform to FDA standard of identity (21 CFR 139.138) and have no added sugars, fats, oils, or salt (i.e., sodium). “Whole wheat flour” and/or “whole durum wheat flour” must be the only flours listed in the ingredient list. Other shapes and sizes that otherwise meet the FDA standard of identity for whole wheat macaroni (pasta) products (139.138), and have no added sugars, fats, oils, or salt (i.e., sodium), are also authorized (e.g., whole wheat rotini, and whole wheat penne).

³ FDA *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at

<http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm073634.htm>

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC

Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

82950 WIC Authorized Food List: Whole Grains

(a) Whole Grains Category regulations were promulgated in W.R.B. 2012-02 and 2014-02. This section has been moved to Section 82950.

(1) Brown Rice Subcategory regulations were promulgated in W.R.B. 2012-02.

(A) There is no change being made to the authorization of any brand of brown rice, as promulgated in W.R.B. 2012-02.

1. There is no change being made to the requirement allowing brown rice in bulk or 16 ounce containers, which was promulgated in W.R.B. 2012-02.
2. The Department proposes to add language that any variety of brown rice is authorized because all varieties of brown rice provide the necessary nutritional benefits for participants. W.R.B. 2012-02 did not address variety; the Department is proposing to add it now to clarify to participants and WIC authorized vendors that all varieties of brown rice, including basmati and jasmine, are authorized.
- 3.-4. There are no changes being made to the requirements allowing short, medium, or long grain brown rice that is regular, quick, or instant, which were promulgated in W.R.B. 2012-02.

- (B) 1.-3. The Department specifies brown rice products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods. The Department is not making any changes to these prohibitions, which were promulgated in W.R.B. 2012-02.
- (2) Bulgur Subcategory regulations were promulgated in W.R.B. 2012-02.
- (A) 1.-2. There are no changes being made to the authorization of any brand of organic or non-organic bulgur sold in bulk or 16 ounce packages.
- (3) Corn Tortillas Subcategory regulations were promulgated in W.R.B. 2014-02.
- (A) W.R.B. 2014-02 established that 16 ounce packages of corn tortillas that meet the minimum federal requirements, pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), are authorized. W.R.B. 2014-02 also established that the Department would maintain a non-exclusive, non-exhaustive list of brand-specific soft corn tortillas that meet these federal requirements. The Department is proposing to list all authorized brands of corn tortillas in regulation, in compliance with USDA's guidance in the May 2014 *Food Package Guidance: A Guide for FNS Regional Offices and WIC State and local agencies*.⁷ The May 2014 Food Package Guidance Handbook provides that states must identify corn tortillas by brand in its food list. For these reasons, the Department proposes to list all authorized soft corn tortillas by brand in these proposed regulations.
- 1.-35. The Department held open submission periods in November 2014 and June 2015 for manufacturers of soft corn tortillas to provide information on any products that the manufacturers wanted the Department to authorize. The Department proposes to authorize all submitted non-organic soft corn tortillas in 16 ounce packages that meet the federal requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- (B) The Department proposes to specify corn tortilla products that are not allowed in order to help WIC participants and WIC authorized

⁷ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 38.

vendors identify which products are WIC authorized supplemental foods.

1. The Department proposes to prohibit organic corn tortillas because these types of tortillas are generally more expensive than non-organic tortillas. This prohibition is in keeping with USDA's guidance encouraging state agencies to "limit organic products" to help contain food costs.⁸

(4) Oatmeal or Oats Subcategory regulations were promulgated in W.R.B. 2012-02.

(A) There are no changes being made to the requirement authorizing any brand of oatmeal or oats that meets the requirements in subsection (a)(4)(A)1.-2., which was promulgated in W.R.B. 2012-02.

- 1.-4. There are no changes being made to these requirements, which were promulgated in W.R.B. 2012-02.
5. Instant- and quick-cooking oatmeal or oats were authorized in W.R.B. 2012-02. The Department proposes to authorize regular-cooking oats in these regulations, pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).

(B) The Department specifies oatmeal and oats products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.

1. The Department is making no change to the prohibition of individual and flavored oatmeal packets, which was promulgated in W.R.B. 2012-02.
2. The Department is making no change to the prohibition of organic oatmeal, which was promulgated in W.R.B. 2012-02. The Department proposes to modify this prohibition from just "organic oatmeal" to "organic oatmeal or oats" for clarification purposes. No uniformity exists in what manufacturers name these identical products; therefore, the Department is adding the "oats" to clarify that organic oats are also prohibited.

⁸ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 34.

- (5) Whole Grain Barley Subcategory regulations were promulgated in W.R.B. 2012-02.
- (A) 1.-2. There are no changes being made to the requirements authorizing any brand of organic or non-organic whole grain barley in bulk or in 16 ounce packages, which were promulgated in W.R.B. 2012-02.
 - (B) The Department specifies barley products that are not allowed in order to help WIC participants and WIC authorized vendors to identify which products are WIC authorized supplemental foods and is making no change to the prohibition of pearled barley, which was promulgated in W.R.B. 2012-02.
- (6) Whole Wheat Bread Subcategory regulations were promulgated in W.R.B. 2014-02. These proposed regulations will replace the requirements found in W.R.B. 2014-02.
- (A) W.R.B. 2014-02 established that 16 ounce packages of whole wheat bread that meet the minimum requirements for whole wheat bread, pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), are authorized. The Department is proposing new requirements, in which any brand of bread can be purchased as long as it is in a 16 ounce package and has “100% Whole Wheat” printed on the front label. The Department is proposing this change to simplify the federal requirements into plain language that vendors and participants can easily understand and use to identify authorized whole wheat breads.
 - (B) The Department proposes to authorize whole wheat bread (loaves, buns, or rolls) made by an in-store bakery if it meets the requirements in subsection (a)(6)(A). The Department is proposing to authorize whole wheat breads made by in-store bakeries so that stores interested in selling their eligible products to WIC participants have the opportunity to do so.
 - (C) The Department proposes to specify bread products that are not allowed in order to help WIC participants and WIC authorized vendors to identify which products are WIC authorized supplemental foods. The Department is proposing to remove the prohibition of “light or lite” bread due to an amendment to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), that removed the requirement that “whole wheat must be the primary ingredient by weight” in all whole wheat bread products. Diet or light bread was prohibited because they often had water as their primary ingredient by weight. The Department is proposing to remove this prohibition and authorize all diet or light bread that meets the

requirements in subsection (a)(6)(A)(1)-(2) pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).

1. The Department proposes to prohibit organic whole wheat bread because this type of bread is generally more expensive than non-organic bread. This prohibition is in keeping with USDA's guidance encouraging state agencies to "limit organic products" to help contain food costs.⁹
- (7) The Department proposes to add the Whole Wheat Pasta Subcategory to the Whole Grains Category. Federal WIC Regulation, 7 Code of Federal Regulations part § 246.10 (2015), was amended to include whole wheat pasta as an additional whole grains option, to be authorized at a state agency's discretion, in the *Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Final Rule*, published March 4, 2014. The Department proposes to authorize whole wheat pasta as a lower cost alternative to whole wheat bread, as described below.

Cost

The Department used manufacturer suggested retail price (MSRP) data for 16 ounce whole wheat pastas that met the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), which were submitted by manufacturers during the Department's August 2014 submission period. In the August 2014 submission period, the Department requested product information for whole wheat pasta to help the Department determine whether it would authorize whole wheat pasta as a whole grains option. The Department used this data to compare the cost of whole wheat pasta to the cost of whole wheat bread (loaves, buns, and rolls)¹⁰. The following table shows the average prices for whole wheat pasta (organic and non-organic) and non-organic whole wheat bread.

⁹ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 34.

¹⁰ Whole wheat bread (loaves, buns, and rolls) are the most popular participant whole grains option. UCSF Institute for Health and Aging, California WIC Participant 2010 Survey of Food Shopping and Consumption Habits (2010) pp. 46-47.

	Average MSRP
Whole Wheat Pasta, Non-Organic Submissions	\$1.91
All Whole Wheat Pasta Submissions, Including Organic	\$2.10
Whole Wheat Pasta, Organic Submissions Only	\$2.46
Whole Wheat Bread, Non-Organic (loaves, buns, and rolls)	\$3.29

Based on the average MSRPs shown above, the Department proposes to authorize 16 ounce organic and non-organic whole wheat pasta since their prices are significantly lower than the average price of non-organic whole wheat bread, the standard whole grain option that it would be replacing. As a lower-cost alternative to the more popular whole wheat bread, the proposed authorization of whole wheat pasta could also lead to a reduction in food costs in keeping with USDA's instructions on cost containment stating that state agencies "... have the authority to make adjustments to WIC foods for administrative convenience and to control costs."¹¹

(A) The Department is required to be brand specific for whole wheat pasta pursuant to USDA'S May 2014 *Food Package Guidance: A Guide for FNS Regional Offices and WIC State and local agencies*.¹²

The Department proposes to authorize only 16 ounce packages of whole wheat pasta, since USDA guidance¹³ mandates that state agencies "authorize WIC foods in package sizes that provide participants their full authorized food benefit." Federal regulations require that participants issued whole grains receive either a maximum monthly allowance of one pound (16 ounces) or two pounds (32 ounces) total of whole grains. (7 C.F.R. § 246.10(e)(10), tbl. 2, and (e)(11), tbl. 3 (2015).) Packages in 16

¹¹ United States Department of Agriculture, Food and Nutrition Service, *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies* (May 2014) p. 7.

¹² United States Department of Agriculture, Food and Nutrition Service, *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies* (May 2014) p. 38.

¹³ United States Department of Agriculture, Food and Nutrition Service, *Women Infants and Children (WIC): Questions and Answers about the WIC Food Packages* <<http://www.fns.usda.gov/sites/default/files/wic/20140508-WICFoodPkg-QuestionsAnswers.pdf>> (as of August 1, 2015).

ounce sizes evenly divide into these maximum monthly allowances, providing participants their full authorized food benefit.

1.-46. In these proposed regulations the Department plans to include a list of authorized whole wheat pastas that meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015). For this proposed regulation, the Department held open submission periods for whole wheat pasta in August 2014, November 2014, and June 2015. The Department proposes to authorize all submitted whole wheat pastas that meet the federal requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and state requirements and prohibitions listed in subsections (a)(7)(A) and (a)(9).

(8) Whole Wheat Tortilla regulations were promulgated in W.R.B. 2014-02.

(A) W.R.B. 2014-02 established that 16 ounce packages of whole wheat tortillas where whole wheat flour is the only flour listed in the ingredient list are authorized. The Department is proposing to list all authorized whole wheat tortillas by product and brand name in compliance with USDA's guidance in their May 2014 *Food Package Guidance: A Guide for FNS Regional Offices and WIC State and local agencies*¹⁴ that states must identify whole wheat tortillas by brand in its food list.

1.-35. The Department held open submission periods for whole wheat tortillas in November 2014 and June 2015. The Department proposes to authorize all submitted non-organic whole wheat tortillas in 16 ounce packages that meet the federal requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015). On August 28, 2014, USDA circulated guidance via e-mail regarding the flour requirement for whole wheat tortillas in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015). USDA interprets its requirement that "whole wheat flour be the only flour listed in the ingredient list" is to ensure that tortillas made entirely from whole wheat flour be authorized in the WIC program, not tortillas made with enriched wheat flour . . . a product that contains a small amount of flour such as rice or soy flour in the ingredient list, for which the contribution of the non whole wheat flour ingredient is

¹⁴ United States Department of Agriculture, Food and Nutrition Service, *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies* (May 2014) p. 38.

negligible and is required for a processing reason, such as to prevent the tortillas from sticking together, are allowed, at State agency option.” The Department proposes to authorize whole wheat tortillas that contain negligible amounts of other flours when the presence of these small amounts of other flours is required for processing and does not compromise the nutritional integrity of these products.

- (B) The Department proposes to specify whole wheat tortilla products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 - 1. The Department proposes to prohibit organic whole wheat tortillas because these types of tortillas are generally more expensive than non-organic whole wheat tortillas. This prohibition is in keeping with USDA’s guidance encouraging state agencies to “limit organic products” to help contain food costs.¹⁵
- (9) The Department specifies whole grain products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are WIC authorized supplemental foods.
 - (A) There is no change being made to this requirement, which was promulgated in W.R.B. 2012-02.
 - (B) There is no change being made to the prohibition of refrigerated or frozen rice, which was promulgated in W.R.B. 2012-02. There is also no change being made to the prohibition of frozen oats, which was promulgated in W.R.B. 2012-02. The Department proposes to prohibit refrigerated oats due to the high costs typically associated with these products. The Department proposes to prohibit refrigerated or frozen bread, tortillas, and pasta due to the high costs typically associated with these products. Prohibiting these products will help limit food costs, in keeping with USDA’s instructions on cost containment stating that state agencies “have the authority to make adjustments to WIC foods for administrative convenience and to control costs.”¹⁶

¹⁵ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 34.

¹⁶ United States Department of Agriculture, Food and Nutrition Service, Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies (May 2014) p. 34.

(C) There is no change being made to the prohibition of refrigerated or frozen dough and mixes, which was promulgated in W.R.B. 2012-02.

(D) The Department proposes to prohibit whole grains with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

(E) The Department proposes to prohibit homemade whole grains in these regulations because of the inability of the Department to adequately monitor that the manufacturer of these products is a permitted cottage food operation pursuant to Health and Safety Code section 114365. The Department also proposes to prohibit these products due to the difficulty of ensuring that these products consistently comply with the federal requirements for authorized whole grains in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).

(10) There are no changes being made to this requirement, which ensures that if buying whole grains in bulk, a participant shall only purchase one type of whole grain per food instrument, which was promulgated in W.R.B. 2012-02.

83000 WIC Authorized Food List: Yogurt

PROPOSED REGULATION

83000 WIC Authorized Food List: Yogurt

(a) Yogurt Category

- (1) Whole cow's milk yogurt is authorized in the Yogurt Category as the standard yogurt for issuance to one-year-old (12 through 23 months) children. Whole cow's milk yogurt is authorized for purchase only when whole yogurt is printed on the participant's food instrument.
- (2) Lowfat and nonfat cow's milk yogurt are authorized in the Yogurt Category as part of the food packages issued to the following types of participants and only when lowfat or nonfat yogurt is printed on the participant's food instrument:
 - (A) Children twenty-four (24) months of age or older;
 - (B) Pregnant and partially breastfeeding women;
 - (C) Postpartum women;
 - (D) Fully breastfeeding women; and
 - (E) Children aged one-year-old (12 through 23 months) for whom overweight and obesity is a concern and when prescribed by a competent professional authority based on an individual nutritional assessment.
- (3) The following cow's milk yogurts, as identified by brand and product name, fat level, and flavor, in thirty-two (32) ounce containers are authorized in the Yogurt Category:
 - (A) Alta Dena
 1. Plain (nonfat, lowfat, or whole)
 2. Strawberry (lowfat)
 3. Vanilla (lowfat)
 - (B) Coburn Farms
 1. Plain (lowfat)
 - (C) Dannon
 1. All Natural Plain (nonfat, lowfat, or whole)
 2. All Natural Vanilla (lowfat)
 - (D) Essential Everyday
 1. Blended Plain (lowfat)

- 2. Blended Strawberry (lowfat)
- 3. Blended Vanilla (lowfat)
- (E) Food Club
 - 1. Plain (fat free)
- (F) Great Value
 - 1. Plain (nonfat)
 - 2. Strawberry (lowfat)
 - 3. Vanilla (lowfat)
- (G) Kroger
 - 1. Blended Plain (lowfat)
 - 2. Plain (nonfat)
- (H) LALA
 - 1. Plain (lowfat)
- (I) Lucerne
 - 1. Plain (fat free)
 - 2. Strawberry (lowfat)
- (J) Market Pantry
 - 1. Plain (nonfat)
- (K) Mountain High
 - 1. Original Plain (whole)
 - 2. Plain (fat free, lowfat)
 - 3. Original Strawberry (whole)
 - 4. Original Vanilla (whole)
 - 5. Vanilla (fat free, lowfat)
- (L) Springfield
 - 1. Premium Plain (lowfat)
- (M) Tillamook
 - 1. Plain & Simple (lowfat)
- (N) Western Family
 - 1. Plain (nonfat, lowfat)
 - 2. Strawberry (lowfat)

- (O) Yoplait
 - 1. Plain (nonfat)
 - 2. Original Strawberry (lowfat)
 - 3. Original Vanilla (lowfat)
- (4) The following yogurts are never authorized for purchase as part of the Yogurt Category:
 - (A) Any type, brand, fat level, or flavor of yogurt not listed in (a)(3), including but not limited to Greek yogurt, lactose-free yogurt, soy yogurt, and goat's milk yogurt;
 - (B) Yogurt with mix-in ingredients, such as granola, candy pieces, honey, or nuts;
 - (C) Drinkable yogurts;
 - (D) Yogurt with artificial, reduced-calorie, or no-calorie sweeteners; and
 - (E) Organic yogurt.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.10(b)(1)(i) (2015): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2015): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for yogurt in all applicable food packages are as follows:

Yogurt must be pasteurized and conform to FDA standard of identity for whole fat (21 CFR 131.200), lowfat (21 CFR 131.203), or nonfat (21 CFR 131.206); plain or flavored with ≤40 g of total sugars per 1 cup yogurt. Yogurts that are fortified with vitamin A and D and other nutrients may be allowed at the State agency's option. Yogurts sold with accompanying mix-in ingredients such as granola, candy pieces, honey, nuts and similar ingredients are not authorized. Drinkable yogurts are not authorized.

State:

Health and Safety Code section 123290: The Department . . . shall . . . designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

STATEMENT OF REASONS

83000 WIC Authorized Food List: Yogurt

- (a) On March 4, 2014, 7 Code of Federal Regulations part 246.10 (2015), was amended to include cow's milk yogurt as a new milk alternative option in lieu of 32 ounces of milk, to be authorized at state agency discretion. The Department is proposing to authorize yogurt as a WIC authorized supplemental food for the reasons detailed below.

Suitable Milk Alternative

The Department proposes to authorize yogurt as a WIC authorized supplemental food. It is a suitable alternative to milk to supplement a participant's dairy consumption.

Yogurt is a milk alternative for people who do not otherwise drink sufficient amounts of fluid milk, due to avoidance of milk because of cultural, religious,

or other reasons, such as lactose malabsorption. Calcium is the primary micronutrient obtained through the consumption of milk and milk products, the health benefits of which include building and maintaining bone strength and promoting proper function of the heart, muscles, and nerves. In *WIC Food Packages: Time for a Change* (a publication used by the USDA to determine the food requirements for their final rule regulations), the Institute of Medicine (IOM) recommended yogurt be added as a milk substitute in women's and children's food packages:

Although milk and milk products provide the most concentrated source of calcium in the U.S. diet, a high prevalence of lactose maldigestion and low cultural acceptability have been widely cited as reasons for the low consumption of dairy products among people of color. (Pobocik et al., 2003; Auld et al., 2002; Jackson and Savaiano, 2001; Horswill and Yap, 1999; Story and Harris, 1989; Fishman et al., 1988.) Studies show that women of color of childbearing age, particularly Asians and African Americans, are especially at risk for low intakes of dietary calcium. (Siega-Riz and Popkin, 2001; Klesges et al., 1999; Wu-Tso et al., 1995.) Milk and cheese are not a part of traditional food patterns of many cultural groups. (NAWD, 2000; NWA, 2003; Kittler and Sucher, 2004.) In public comments, yogurt, soy beverage ("soy milk"), and tofu were frequently requested calcium-rich options (NWA, 2003). For a variety of reasons, individuals with lactose maldigestion are able to tolerate yogurt better than milk. (Kolars et al., 1984; Savaiano et al., 1984; Smith et al., 1985; Lerebours et al., 1989; Martini et al., 1991; Wynckel et al., 1991; Kotz et al., 1994, Galvão et al., 1995, 1996.)¹⁷

The Department proposes to add yogurt as a milk alternative because it could increase dairy consumption among WIC participants, thus benefitting their health by increasing their intake of nutrients associated with dairy products, such as calcium. The Department reached this conclusion by reviewing data showing that a significant percentage of participants are not purchasing the full amount of milk allowed but would likely purchase yogurt were it offered. The Department conducted a survey with California WIC participants in 2010, entitled *2010 Food Shopping and Consumption Survey*, in which participants

¹⁷ Institute of Medicine Committee to Review the WIC Food Packages, *WIC Food Packages: Time for a Change* (2006) Washington, D.C.: National Academies Press, p. 119.

were asked to think about the foods on their WIC checks and indicate which foods they buy less than the amount allowed or not at all. Participants were allowed to select all foods that applied, and 31.2 percent of survey respondents selected milk as a food for which they were either not buying the full amount or were not at all purchasing. Participants were also given several dairy combination choices, including one with yogurt, and, when asked which option they would prefer to receive from WIC, 78.6 percent chose the option that included a quart of yogurt.

To assess the feasibility and effectiveness of offering yogurt to WIC participants, the Department initiated a 2009 pilot study, entitled *Randomized, Controlled Trial to Examine the Impact of Providing Yogurt to Women Enrolled in WIC*, in conjunction with researchers from the Children's Hospital and Research Center in Oakland and the Dr. Robert C. and Veronica Atkins Center for Weight and Health at UC Berkeley. The full results of this pilot study were published in the *Journal of Nutrition Education and Behavior* in May/June 2010 and reported participant acceptance of yogurt and ease of implementation of yogurt as a WIC authorized supplemental food.

Participants in the pilot study received coupons that could be redeemed for free yogurt. Approximately 91 percent of participants in the pilot study who used the yogurt coupons reported that they would be interested in substituting yogurt for some of their milk.

The Department concludes that data from the survey and pilot study show that participants who are not currently consuming all of their milk would likely be interested in consuming yogurt provided by WIC. This could benefit participants nutritionally because of the possible increase in consumption of nutrients found in dairy.

- (1) The Department is proposing to authorize whole milk yogurt as a milk alternative for issuance to one-year-old (12 through 23 month old) children pursuant to 7 Code of Federal Regulations part 246.10(e)(10), table 2, footnote 10 (2015).
- (2) The Department is proposing to authorize lowfat and nonfat yogurt as a milk alternative for issuance in compliance with federal regulation for participant issuance.
 - (A)–(D) The Department proposes to issue lowfat and nonfat yogurt to children 24 months of age or older, pregnant women, partially breastfeeding women, and fully breastfeeding women, as required by 7 Code of Federal Regulations part 246.10(e)(10), table. 2, footnote 10 (2015), which specifies that lowfat and nonfat yogurts are the only types of yogurt authorized for children greater than or equal to 24 months of age and women.

(E) The Department proposes to allow children 12 through 23 months for whom overweight or obesity is a concern to receive lowfat and nonfat (reduced-fat) yogurt when prescribed by a Competent Professional Authority (CPA). The Department proposes to require that all reduced-fat yogurt issued to children 12 through 23 months be prescribed by a CPA, based on an individual nutritional assessment in compliance with 7 Code of Federal Regulations part 246.10(e)(10), table 2, footnote 10 (2015).

The Department is proposing to allow the option of providing reduced-fat yogurts to children 12 through 23 months for whom overweight and obesity is a concern in order to align with the American Academy of Pediatrics guidelines, which state that children at risk of being overweight—or whose families have a history of obesity, heart disease, or high cholesterol—should receive reduced-fat milks (in this case, fat-reduced yogurt). Because yogurt is a substitute for milk, and the Food and Drug Administration (FDA) standard of identity for percentage of fat in reduced fat yogurts matches the percent of fat in reduced fat milks specified in 21 Code of Federal Regulations parts 131.203 and 131.206, the Department deems it reasonable to provide reduced-fat yogurts to children 12 through 23 months for whom overweight and obesity is a concern, to align with the milk provision for these participants.

Additionally, this option aligns with the Department's nutrition goal of limiting added-fat intake in efforts to safeguard participants' health against issues such as heart disease, increased rates of cancer, and weight gain, which can lead to high blood pressure, diabetes, and other health problems. The Department's participant-education campaigns highlight limiting fat intake, and the Department finds it reasonable to reduce the fat intake of these participants by offering fat-reduced yogurts as an alternative to whole yogurt in order to safeguard the participant's health.

(3) The Department plans to authorize yogurt products that meet the minimum requirements for yogurt listed in federal regulation at 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and the Department's additional requirements, specified in the bulleted list below:

- Authorized yogurts must be packaged in 32 ounce (quart-sized) containers.
- Plain, strawberry, and vanilla are the only authorized yogurt flavors.
- Authorized yogurts must contain less than 35 grams of sugar per cup.

- Authorized yogurts may not contain artificial, reduced-calorie, or no-calorie sweeteners.
- Authorized yogurts must be regular-textured (non-Greek).
- Authorized yogurts must be non-organic.

Authorized Container Size

The Department proposes to authorize yogurt in 32 ounce containers only. The Department plans to authorize this container size because it is a widely produced size in the yogurt industry. Additionally, federal regulations require that participants receiving yogurt receive a maximum monthly allowance of one quart (32 ounces) of yogurt; therefore, offering 32 ounce containers will provide participants with their full authorized food benefit. (7 C.F.R. § 246.10(e)(10), tbl. 2, fn.10, and (e)(11), tbl. 3, fn. 12 (2015).) Moreover, authorizing 32 ounce containers instead of smaller containers is cost effective, based on suggested retail price data provided by manufacturers who submitted yogurt products to the Department during its open submission periods for yogurt. Analysis of this suggested retail price data shows the average cost of yogurts in containers less than 32 ounces is significantly higher than yogurts in 32 ounce containers. The average cost of yogurt in smaller sizes is \$0.14 per ounce, whereas the average cost of yogurts (non-organic and non-Greek) in 32 ounce containers is \$0.09 per ounce. Not allowing yogurts in smaller containers will help to contain food costs, while providing participants with the nutrition and associated health benefits that yogurt consumption provides.

Fat Levels

The Department's proposed regulation authorizes specific fat levels, in compliance with federal regulations, which specify which fat levels participants may receive. (7 C.F.R. § 246.10(e)(10), tbl. 2, fn. 10, and (e)(11), tbl. 3, fn. 12 (2015).)

Authorized Flavors

The Department proposes to authorize yogurt in the following flavors only: plain, strawberry, and vanilla.

Plain

The Department proposes to authorize plain yogurt as a WIC authorized supplemental food. The Department finds it an appropriate choice for participants. Although it was not one of the pilot study's more popular yogurt flavors, with only 6.9 percent of total redemption being for plain yogurt, 2014 Nielsen dollar-shares data show it is a popular choice, because of all yogurt purchased, plain yogurt is tied with vanilla yogurt for second place in dollar sales, with 12 percent of all dollar sales for yogurt being for plain yogurt.

Additionally, pilot study participants reported high use of the educational brochure distributed as part of the pilot study, which included recipes for how to incorporate plain yogurt into meals and snacks. Of pilot study participants surveyed, 84 percent reported that they used the brochure information to include plain yogurt in meals and 85 percent reported including it in snacks, suggesting that participants—particularly those in certain cultural groups—may use plain yogurt as an ingredient if it were offered to them by WIC, which could result in health benefits associated with calcium intake.

Moreover, plain yogurt was one of the most frequently manufacturer-submitted flavors during the Department's open submission period, indicating it should be convenient for participants to locate it for purchase should they prefer plain yogurt. These factors together make plain yogurt an appropriate WIC authorized supplemental food that could result in health benefits associated with calcium intake.

Strawberry

The Department proposes to also authorize strawberry yogurt as a WIC authorized supplemental food. The pilot study indicates that flavored yogurt is far preferred over plain yogurt, with over 90 percent of study participants indicating they liked flavored yogurt "a lot," whereas less than 20 percent reported liking plain yogurt "a lot." The yogurt pilot study indicates strawberry was the most popular flavor out of the five offered flavors, with 47.1 percent of total coupons redeemed for strawberry yogurt. Nielsen 2014 dollar sales also indicated that strawberry is the number one flavor choice of all yogurts, with 14 percent of all dollar sales for yogurt being for strawberry yogurt.

Additionally, strawberry was one of the most frequently manufacturer-submitted flavors during the Department's open submission period, indicating it would be convenient for participants to locate it for purchase. The Department concludes that because of the popularity and availability of strawberry yogurt, authorizing strawberry yogurt as a WIC authorized supplemental food is appropriate because it could provide health benefits associated with calcium intake for WIC participants.

Vanilla

The Department also proposes to authorize vanilla yogurt as a WIC authorized supplemental food. Although it was not one of the most popular flavors offered during the yogurt pilot study, with 9.2 percent of the total percentage of the pilot's yogurt coupons redeemed for vanilla, 2014 Nielsen dollar sales data show that it is tied with plain as the second-most-popular flavor of all yogurt flavors, with 12 percent of all dollar sales for yogurt being for vanilla yogurt.

Additionally, vanilla was one of the most frequently manufacturer-submitted flavors during the Department's open submission periods, indicating it should be convenient for participants to locate it for purchase. The Department concludes that due to its popularity and its availability, authorizing vanilla yogurt as a WIC authorized supplemental food is appropriate because it could provide health benefits associated with calcium intake for WIC participants.

Authorized Sugar Level

The Department proposes to authorize only yogurts containing less than 35 grams per cup, a stricter limitation than that set by federal regulation in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), which allows up to 40 grams of total sugar per cup. The Department proposes to further limit sugar levels in yogurt because sugar is not a nutrient, participants do not nutritionally require foods with high levels of sugar, and limiting sugar intake aligns with the Department's education goals of limiting sugar consumption (excessive sugar intake potentially leads to insulin resistance, a risk factor for diabetes, and also leads to increased triglyceride levels, a risk factor for heart disease).

Yogurts contain naturally occurring sugars and some contain added sugars (the amounts of which varies by flavor and brand). Added sugar in the diet is a nutrition topic currently receiving a lot of attention from the scientific community and is also a concern of large health agencies. The IOM does not have an official recommendation for added-sugar intake because sugar is not an essential nutrient. The USDA, in its "2010 Dietary Guidelines for Americans" (DGA 2010), describes naturally-occurring sugars and added sugars as follows: "Sugars are found naturally in fruits (fructose) and fluid milk and milk products (lactose). The majority of sugars in typical American diets are sugars added to foods during processing, preparation, or at the table. These 'added sugars' sweeten the flavor of foods and beverages...sugars found naturally in foods are part of the food's total package of nutrients and other healthful components. In contrast, many foods that contain added sugars often supply calories, but few or no essential nutrients and no dietary fiber."¹⁸ The DGA 2010 recommendations include limiting intake of sugar and solid fats combined to 5 percent to 10 percent of daily caloric intake. The World Health Organization (WHO), in its 2015 Guideline: Sugar intake for adults and children¹⁹ decreased its recommendations for added sugar from 10 percent to 5 percent of total daily caloric intake. For an average woman,

¹⁸ United States Department of Agriculture, Dietary Guidelines for Americans (2010) p. 27.

¹⁹ World Health Organization, Guideline: Sugar intake for adults and children (2015), p. 4.

the recommendation of 5 percent of total daily intake equals about 25 grams of added sugar per day. For an average pregnant or breastfeeding woman, 5 percent of total calories equals approximately 32 grams of added sugar per day. At this time, there are no recommendations for children's intake, although it would be lower than the recommendations for adults.

The Department analyzed added sugars in yogurt as well as total sugars when determining a sugar threshold recommendation for yogurt. Local WIC agency staff encouraged the Department to restrict the amount of sugar allowed in yogurt to 30 grams, a restriction that would essentially eliminate all flavored yogurts from being authorized, leaving only plain yogurts as authorized. Eliminating yogurts other than plain could result in discouraging consumption of yogurt, because the pilot study showed that flavored yogurts are far preferred over plain yogurt. Because of the benefits of allowing flavors, the Department does not want to limit authorized flavors to plain only and has decided to set a sugar limit of less than 35 grams of total sugar per cup. This sugar level would result in less sugar consumption but still allow almost all products in plain, strawberry, and vanilla flavors that were submitted during the Department's submission periods to be authorized, which would encourage yogurt consumption.

Additionally, limiting the total sugar to less than 35 grams of total sugar per cup will limit added sugar to no more than 21 grams of added sugar per cup, based on analysis of eligible yogurts submitted during the open submission periods. For example, one of the eligible flavored yogurts submitted with a higher total sugar content—34 grams of total sugar—contains 18 grams of added sugar, such as sucrose (white sugar) and fructose (i.e., high fructose corn syrup) and 16 grams of naturally occurring sugars, such as lactose, the predominant milk/dairy sugar.

The only other WIC food category in which added sugar is specified as allowed is Breakfast Cereal, with the federal regulation limiting added sugar to 21.2 grams or less per 100 grams of cereal. If a woman participant were to consume one serving of the cereal with the highest sugar content (12 grams added sugar per serving) on the Department's list of eligible cereals as well as 1 cup of yogurt with 18 grams added sugar, such as the example described above, her total added sugar consumption would equal 30 grams of sugar, less than the WHO recommendation for added sugar per day for an average pregnant or breastfeeding woman.

Although USDA and WHO only have specific recommendations for added-sugar intake, it is important to take total sugar—naturally occurring sugar and added sugar—intake into consideration when educating WIC

participants about minimizing sugar intake; therefore, because flavored yogurt contains added sugars, the Department plans to limit the amount of sugar allowed in authorized yogurts and educate participants on the sugar levels found in yogurt and how to limit excessive sugar consumption.

Authorized Brands and Product Names

The Department compiled the list of proposed authorized yogurt brands and product names by holding several open submission periods for the purpose of collecting yogurt product information to be used in analysis for whether or not to authorize yogurt as a milk alternative. Prior to these periods, all manufacturers known to the Department were sent letters detailing how to submit their products to the Department. These letters were also posted on the Department's website in order to ensure the process for submitting yogurt products was made public and open to all interested parties. The Department conducted the first open submission period in August 2014. Once the Department decided to move forward with pursuing the authorization of yogurt, it used product information from the August 2014 open submission period to compile its list of authorized brands and product names. The Department then held two additional open submission periods (in January 2015 and June 2015) in which it requested submissions for any additional products that manufacturers wanted the Department to authorize.

The Department proposes to list authorized yogurt brands and product names in the list of authorized foods to ensure that participants purchase products that meet the minimum requirements for yogurt listed in federal regulation at 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and the Department's additional requirements that are detailed in the Department's proposed yogurt regulations (a)(3)(A) through (O).

- (4) The Department proposes to specify yogurt products that are not allowed in order to help WIC participants and WIC authorized vendors identify which products are allowed as WIC authorized supplemental foods.
 - (A) The Department proposes to prohibit types, brands, fat levels, and flavors of yogurt other than the ones described in (a)(1)-(3) to ensure that participants purchase only those products that the Department has ensured meet the federal and state requirements for authorization. The Department proposes to prohibit yogurt of Greek texture (Greek yogurt) due to its high cost, as evidenced by suggested retail price information provided by manufacturers who submitted yogurt products during the Department's open submission periods. Analysis of this suggested retail price data shows that compared with regular yogurt (non-Greek), Greek yogurt is more expensive, with an average cost of \$0.15 per ounce (\$4.80 per quart). The average cost of non-organic yogurt of regular

texture is \$0.09 per ounce (\$2.88 per quart). Not authorizing Greek yogurt will help to minimize the amount of food dollars the Department will spend on yogurt, while still giving participants the nutrition benefits that yogurt consumption provides.

The Department proposes to prohibit lactose-free yogurt, soy yogurt, and goat's milk yogurt because they are not authorized by federal regulation, which only permits cow's milk yogurt as a supplemental food. (7 C.F.R. § 246.10(e)(12), tbl. 4 (2015).)

- (B) The Department proposes to prohibit yogurt with mix-in ingredients, such as granola, candy pieces, honey, or nuts pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- (C) The Department proposes to prohibit drinkable yogurts pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015).
- (D) The Department proposes to prohibit yogurt with artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners. The body of research regarding the short- and long-term health effects of artificial sweeteners for adults is inconclusive. Various research has demonstrated that the effects of artificial sweeteners may include detrimental effects to the gut microbiome. Various research has demonstrated that the effects of reduced- and/or no-calorie sweeteners that are derived from sugar, such as sugar alcohols, include gastric distress and diarrhea. Long-term effects on adults of reduced and/or no-calorie sweeteners that are obtained from natural plant sources, such as monk fruit concentrate or stevia, have not been fully studied because these products are relatively new.

To the Department's knowledge, there is no research regarding the safety or long-term effects of any of these products on young children and infants because it is extremely difficult to obtain approval and funding to study the effects of food products on very young children. Because many of these products may have a negative impact on the body, the Department chooses to take a conservative stance and not allow products that contain artificial sweeteners, reduced calorie sweeteners, or no-calorie sweeteners.

- (E) The Department proposes to prohibit organic yogurt because of the higher cost of this type of product, as evidenced by suggested retail price information provided by manufacturers who submitted yogurt products during the Department's open submission periods. Analysis of this suggested retail price data shows that organic yogurt is much more expensive, with an average cost of \$0.19 per ounce (\$5.92 per quart), than non-organic yogurt of regular texture

(non-Greek), which has an average cost of \$0.09 per ounce (\$2.88 per quart). Organic yogurt is more than twice as expensive as non-organic yogurt of regular texture and is not a cost-effective option. Not allowing organic yogurt will help to minimize the amount of food dollars the Department will spend on yogurt while still providing participants with the nutrition benefits that yogurt consumption provides.