



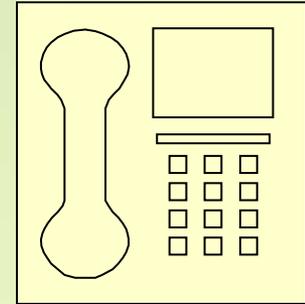
Regulatory Alert 2013-01 Stakeholder Workgroup Consultation Webinar

Thursday, July 11, 2013



Webinar Tools

- Use *6 to mute and unmute your phone
- Raise your hand during the feedback periods to ask questions/provide input
- In case you are experiencing technical difficulties, please call (916) 928-8504
- You may review the Vendor Authorization Criteria Regulatory Alert at this address:
<http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>



Agenda

- Review the June 14, 2013 “Regulatory Alert 2013-01: Adopt Vendor Authorization Criteria”
- Receive input on the adoption of the Vendor Authorization Criteria



Background

- September 29, 2012: Assembly Bill (AB) 2322 signed into law amending or adding sections 123280, 123285, 123312, and 123322 to the California Health and Safety Code.
- Legislation enabled WIC to adopt federal requirements and specified department requirements into State regulation through an Expedited Regulatory Process.



Regulatory Alert 2013-01

- “Regulatory Alert 2013-01: Adopt Vendor Authorization Criteria”, posted to the WIC website on June 14, 2013, proposes to adopt the California WIC Vendor Authorization Criteria into California Regulation, pursuant to Health and Safety (H&S) Code Section 123322 and in accordance with the federal requirements governing the WIC Program.



Process and Timeline

- Public posting of proposed action. Regulatory Alert and Vendor Authorization Criteria Attachment: June 14, 2013
- Conduct Stakeholder Workgroup Meeting: July 11, 2013
- Public Comment Period: June 24, 2013 – July 19, 2013
- Public posting of final action on WIC website (no later than 120 days from the end of the comment period): No later than November 15, 2013



Questions



70000 Vendor Authorization Criteria

- Federal Regulations require:



- The state to authorize an appropriate number and distribution of vendors (7 C.F.R. §246.12(g)(1)), and implement a criteria for authorization (7 C.F.R. §246.12(g)(3))
- Vendors to enter into an agreement to be authorized and comply with the authorization criteria at all times (7 C.F.R. §246.12(h)(1)(i))
- Vendors must meet the authorization criteria at all times or be terminated from program participation (7 C.F.R. §246.12(h)(3)(xxiv))



Input



70100 Business Integrity

- Federal Regulations (7 C.F.R. §246.12(g)(3)(ii)):
 - Require consideration of vendors' business integrity before authorization.
 - Prohibit authorization of vendors with specified civil judgment convictions within six years of submitting the application, unless the Department determines that participant access is impacted.
- 70100 is needed to align state regulations with federal requirements and ensure that WIC vendors meet standards of business integrity.
- Owners and directors of vendors and vendor applicants must display business integrity because of their decision making role in the vendor's business.



Definition: Participant Access

- State Regulations (C.C.R. §40740(h)) defines “adequate participant access” as the following:
 - The presence of another food vendor in the same geographic area as either the violating food vendor or the local agency clinic site closest to the violating food vendor
 - The absence of geographic barriers that prevent participants from redeeming their food instruments at the other food vendor location described above



Input



70200 California Retail Food Facility Code (Health and Safety Code 113700 et. Seq.)



- All authorized vendors are considered a retail food facility under Health and Safety Code 113789 because they store, sell, or otherwise provide food for human consumption. 70200 is needed to safeguard public health and provide consumers, including WIC participants, food that is safe.
- All vendors and vendor applicants must maintain a valid permit on the premises to operate a retail food facility as required by California Retail Food Facility Code (Health and Safety Code Section 114381).
- Vendors are required to:
 - Provide proof of the permit
 - Notify the Department of the suspension or revocation of their permit within ten (10) business days



Input



70300 Cash Register

- Federal and State regulations require:
 - Vendors to keep inventory records for auditing purposes (7 C.F.R. § 246.12(h)(3)(xv))
 - The state to document the types, quantities, and prices of food purchased during compliance investigations (7 C.F.R. § 246.12(j)(6)(ii)(C))
- 70300 is necessary for the Department to monitor vendors in inventory audits and compliance investigations



70300 Cash Register (continued)

- Vendors must
 - Use a cash register for all sales transactions and print a daily transaction summary (Z-tape)
 - Give a receipt to all WIC customers for all transactions



Input



70400 Certify that Application Information is True and Correct

- Federal regulations (7 C.F.R. §246.12(h)(3)(xvi)) require the Department to terminate a vendor providing false application information.
- 70400 supports the business integrity requirements for vendor information used in authorization.
- It includes flexibility for typographical errors and mistakes that do not reflect the vendor's integrity.



Input



70500 Circumvention of WIC Sanction

- Federal Regulations (7 C.F.R. § 246.12(g)(7)):
 - Vendors shall be denied authorization if the store has been sold by its previous owners in an attempt to circumvent a WIC sanction
 - The Department may consider factors such as:
 - Whether a store was sold to a relative by blood or marriage of the previous owner(s), or
 - Whether a store was sold to an individual or organization for less than its fair market value





70500 Circumvention of WIC Sanction (continued)

- Applicants that own, or previously owned a store or business serving a penalty based on a WIC sanction
- Previous owners with a history of an outstanding claim or current WIC sanction who retain a role in the operation of the store, such as acting as a manager, director, officer or shareholder
- This rule also enables the Department to request information and conduct background checks if a vendor applicant is suspected of circumventing a WIC sanction



Input



70600 Competitive Price Criteria

- Federal regulations require WIC to:
 - Establish competitive price criteria to evaluate the prices vendors are charging the Program (7 C.F.R. §246.12(g)(1))
 - Collect vendor shelf prices at least every 6 months (7 C.F.R. §246.12(h)(3)(xxiv))
- Health and Safety Code 123310 requires:
 - The Department to establish criteria for authorization comparing the prices a vendor charges for foods in relation to vendors in their same peer group



70600 Competitive Price Criteria (continued)

- The Market Basket
 - 1) 12 oz. Breakfast Cereal
 - 2) 18 oz. Breakfast Cereal
 - 3) 16 oz. Cheese (any type)
 - 4) 16 oz. Corn Tortillas
 - 5) 1 lb. Bag of Dry Beans, Peas, or Lentils
 - 6) 1 Dozen Large Eggs (chicken only)
 - 7) 64 oz. Shelf-Stable Bottled Juice
 - 8) 1 Gallon Whole Milk
 - 9) 1 Gallon Lower fat Milk
 - 10) Milk-based infant formula currently under contract with the Department
 - 11) 16 – 18 oz. Peanut Butter
 - 12) 16 oz. Whole Wheat Bread Loaf



70600 Competitive Price Criteria (continued)

Market Basket Example

- Vendor has 10 units of 1-pound cheese products for sale
- Smoked cheddar, 1-pound round \$7.99
- Generic brand Colby, 1-pound block \$3.99
- High = \$7.99
- Low = \$3.99





70600 Competitive Price Criteria (continued)

Vendor Market Basket

The average of the highest priced items and lowest priced items in the Market Basket





70600 Competitive Price Criteria (continued)

Average Overall Market Basket

The average Vendor Market Basket of all vendors in a peer group



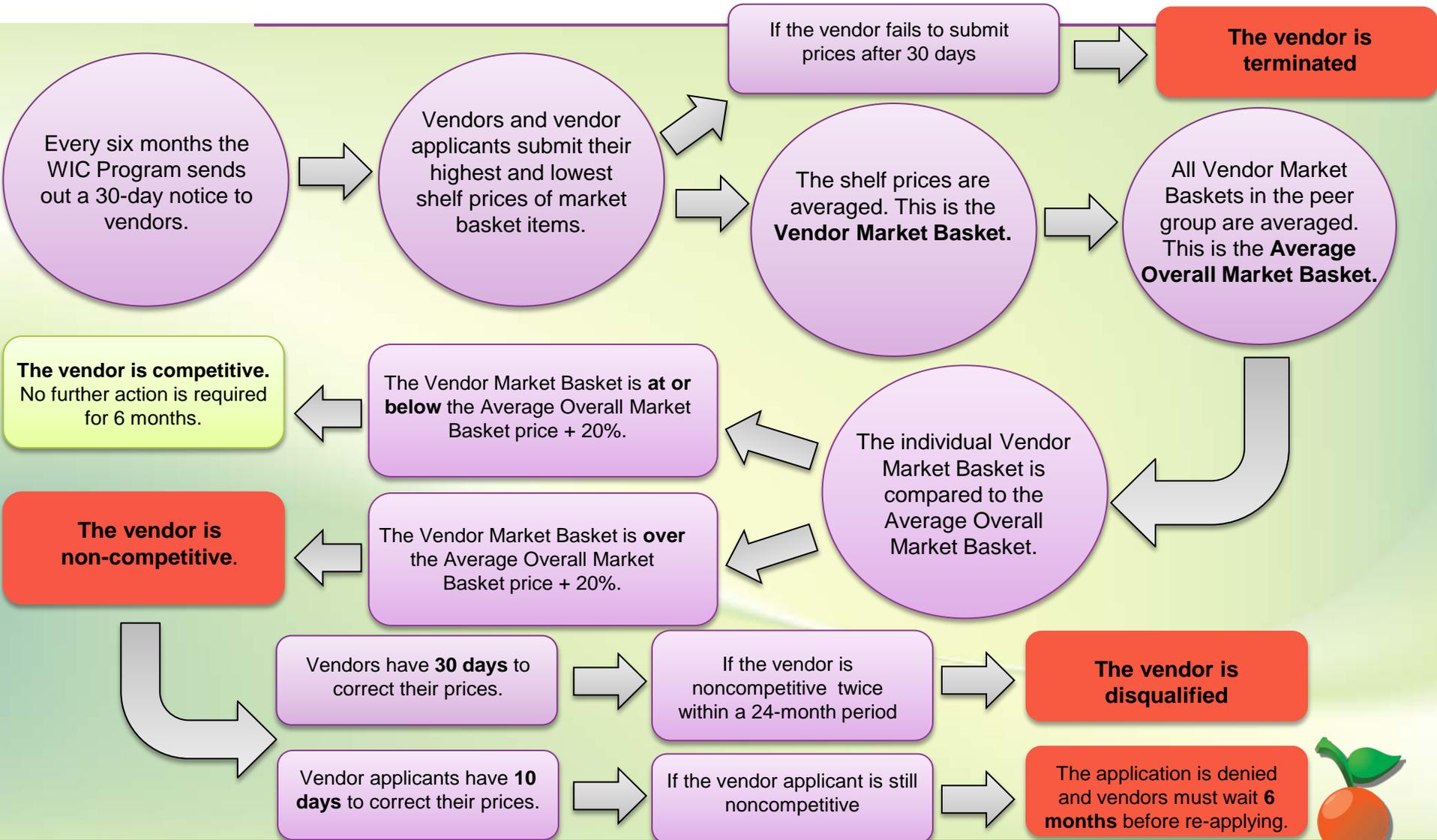
70600 Competitive Price Criteria (continued)

Average Overall Market Basket Example

If the Average Overall Market Basket price for a peer group is \$100, an individual Vendor Market Basket in this peer group that exceeds \$120 is non-competitive



70600 Competitive Price Criteria (continued)



Input



70700 Compliance with Title VI of the Civil Rights Act

- Federal Regulations require the Department to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program (7 C.F.R. § 246.8)
- WIC is a federally funded supplemental nutrition program open to eligible low to moderate income families regardless of their race, nationality, or other characteristics
- 70700 is needed to comply with federal regulations



Input



70800 Incentive Item Requirements

- Federal Regulations:
 - Specifies incentive items states may allow and those which are prohibited for above-50-percent vendors (7 C.F.R. § 246.12(g)(3)(iv))
 - Require vendors to offer the same courtesies to participants as they would to non-WIC customers (7 C.F.R. § 246.12(h)(3)(iii), USDA Policy Memorandum (2012-3, March 27, 2012))
- In addition to Federal regulations, Section 70800:
 - Allows above-50-percent vendors to offer specified incentive items, so long as the combined value is less than \$2.00



70800 Incentive Item Requirements (continued)

- Specifies incentive items offered to all customers that are allowed to be offered by non above-50-percent vendors



- Examples include: free or reduced price food or other items; cash or cash gift cards; lottery tickets; buy one, get one free or buy one, get one at a reduced price promotions; free amounts added to an item by manufacturers coupon, store loyalty cards, and sales specials for supplemental foods; or free or reduced prices services or minor customer courtesies.
- Specifies sanctions for vendors found to be out of compliance with this section



Input



70900 Infant Formula

- Federal regulations mandate the Department to include a requirement for authorized vendors and vendor applicants to purchase all authorized infant formula only from *approved* infant formula suppliers (7 C.F.R. § 246.12(g)(11))
- Vendors must purchase infant formula from:
 - A manufacturer of infant formula registered with the Food and Drug Administration
 - A wholesaler, distributor, or retailer within California that has a current, valid seller's permit number that the vendor has verified through the California Board of Equalization
 - A wholesaler, distributor, or retailer outside of California that is a licensed supplier of infant formula in that state and is included on that state WIC agency's infant formula supplier list
- 70900 is needed to comply with federal regulations



Input



71000 Inventory Records

- Federal regulations (7 C.F.R. §246.12(h)(3)(xv)) require vendors to maintain inventory records. Federal regulations (7 C.F.R. §246.12(h)(3)(xxiv)) and State law (H.S.C. §123310) also require the Department to ensure vendors' compliance with program rules and conduct routine monitoring visits and investigations.
- 71000 is needed to ensure that vendors maintain records that are essential to the Department's ability to conduct audits and comply with federal oversight requirements.
- Required records include, but are not limited to: inventory purchase records, sales and use tax returns and transfer records.
- Food Instrument transactions are tied to one specific vendor location, so each audit will apply to only one store location.



Input



71100 Minimum Stocking Requirements

- Federal Regulations require the state to establish minimum stocking requirements for vendors (7 C.F.R. §246.12(g)(1)(i))
- The foods required in the Minimum Stocking Requirements are based on the federal WIC food packages
- The required amounts are based on:
 - The most commonly prescribed food package for that food item
 - Two participant prescriptions each of the most common food packages



71100 Minimum Stocking Requirements (continued)

- Major changes:
 - Tofu, soy beverage, lactose free milk, and Prosobee Infant Formula
 - Overall reduction in the required amounts of supplemental foods

- See a side-by-side comparison:

<http://www.cdph.ca.gov/programs/wicworks/Documents/Regulatory%20Resources/MSRComparison2013.pdf>



Input





71200 Minimum Technology Requirements

- Federal regulations (7 C.F.R. §246.2) allow the Department to use electronic signatures for authorization documents.
- 71200 is needed to support the Department's transition from paper-based to electronic communication.
- Vendors must access the Vendor WIC Information Exchange (VWIX) to submit shelf prices for competitive price criteria requirements.



Input





71300 No Conflict of Interest Between the Vendor and the Department or any WIC Local Agency

- Federal regulations mandate the Department to ensure that no conflict of interest occurs between the vendor and the Department or any WIC local agency (7 C.F.R. §246.12(t))
- 71300 is needed to comply with federal regulations



71300 No Conflict of Interest Between the Vendor and the Department or any WIC Local Agency (continued)

- Conflict of interest exists when a vendor has a relative or an agent in a position that would allow them to influence participant choices or influence Departmental policies or procedures.
- The relative or agent cannot be on the staff of:
 - Any WIC Local Agency
 - The Department



Input





71400 Restrictions and Allowed Uses of the WIC Acronym and WIC Logo

- Federal mandate (WIC Policy Memorandum #2009-1):
 - WIC acronym and logo are service marks of the USDA. The California WIC service mark is the property of the State of California
 - WIC service marks may not be used in store and business names
 - Vendors may not apply stickers, tags, or labels containing the service marks to WIC authorized supplemental foods





71400 Restrictions and Allowed Uses of the WIC Acronym and WIC Logo (continued)

- The new requirements for the California WIC logo, are similar to those previously outlined in the Graphics Standards Manual
- Logos will continue to be available on VWIX
- Changes to the current allowed uses of the WIC acronym and WIC logo include, but are not limited to the following:
 - Vendors may print signs and shelf talkers, as specified in Section 71400



Input



71500 Store Location and Hours

- The Department is requiring authorized vendors to operate at least six days per week, for at least eight hours each day, and at least four of those hours must be during core business hours (9:00am – 5:00pm).
- Federal regulations (7 C.F.R. §246.12(j)(2-4)) require the Department to conduct routine monitoring visits and compliance investigations each fiscal year.
- 71500 is needed to ensure participant access to authorized foods and enable the Department to conduct visits for federal vendor oversight requirements.



Input





71600 Vendors Disqualified from SNAP/CalFresh will not be Authorized Unless Denying Authorization would Result in Inadequate Participant Access

- California WIC is notified by CalFresh when a store is disqualified from the CalFresh Program
- Federal Regulations (7 C.F.R. § 246.12(g)(3)(iii)):
 - The Department may not authorize a vendor applicant that is disqualified from the Supplemental Nutrition Assistance Program (known as CalFresh in California)
 - The only exception is if there is a participant access issue in the area



Definition: Participant Access

- State Regulations (C.C.R. §40740(h)) defines “adequate participant access” as the following:
 - The presence of another food vendor in the same geographic area as either the violating food vendor or the local agency clinic site closest to the violating food vendor
 - The absence of geographic barriers that prevent participants from redeeming their food instruments at the other food vendor location described above



Input



71700 Vendors Must be SNAP/CalFresh Authorized

- Vendors will be required to be SNAP/ CalFresh Authorized



- SNAP/CalFresh staple foods include:
 - Meat, poultry or fish
 - Bread or cereal
 - Vegetables or fruits
 - Dairy products
- SNAP/CalFresh staple foods compliment the nutritional goals of the WIC authorized foods
- Ensures participant access to nutritious staple foods that will complement WIC authorized supplemental foods



Input



71800 Vendor Training

- Federal regulations (7 C.F.R. §246.12(i)(1)), require vendors to attend training annually and participate in an interactive training at pre-authorization and once every three years thereafter.
- 71800 is needed to ensure compliance with federal requirements and supports effective tracking of vendor training.
- This section also requires vendors to certify their participation in annual training.
- Vendor training will support cost-containment efforts by reducing violations through vendor education and lowering oversight and enforcement costs.



Input



71900 Visible Prices Posted

- Federal regulations require WIC to:
 - Consider vendor applicant shelf prices for authorization (7 C.F.R. §246.12(g)(4))
 - Collect vendor shelf prices at least every 6 months (7 C.F.R. §246.12(g)(4)(ii)(B))
- 71900 is necessary:
 - So participants can choose foods that are competitively priced
 - To determine vendor prices for compliance investigations



71900 Visible Prices Posted (continued)

- Visible prices can be:
 - On the individual WIC supplemental food items
 - On the shelf directly below the product
 - On the display directly displaying the food items
- Vendors that fail to post shelf prices twice within a 24 month period will be disqualified for one year



Input



Important Dates

- July 19, 2013
 - Close public comment period
 - Please send your comments to:
WICRegulations@cdph.ca.gov
- No later than November 15, 2013
 - Final action on WIC website
 - No later than 120 days from the end of the comment period



Final Action

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

WICRegulations - Windows Internet Explorer

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

File Edit View Favorites Tools Help

Convert Select

Favorites Suggested Sites Web Slice Gallery

WICRegulations

Final Rule

Bulletins adopted as regulations for the California WIC Program:

- [Regulatory Bulletin 2012-02: Adoption of California WIC Authorized Food List Shopping Guide \(PDF\)](#)
- [Regulatory Bulletin 2012-01: Adoption of Federal Mandatory Requirements \(PDF\)](#)

Resources

- [Regulatory Alert 2012-02: Adopt California WIC Authorized Food List Shopping Guide \(PDF\)](#)
- [Regulatory Alert 2012-02 Stakeholder Workgroup Presentation \(PDF\)](#)

Statutes and Regulations Governing the California WIC Program

- [Federal Regulations](#) - Title 7, Part 246
- [Health and Safety Code](#) - Section 123275 - 123355
- [California Regulations](#) - Title 22, Division 2, Subdivision 6, Chapter 6

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