



TOMÁS J. ARAGÓN, MD, DrPH  
Director and State Public Health Officer

State of California—Health and Human Services Agency  
California Department of Public Health



GAVIN NEWSOM  
Governor

May 28, 2021

REGULATORY ALERT 2021-01

## 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 WIC Bulletin Regulations section 82400, WIC Authorized Food List: Eggs, 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 on June 10, 2021 to receive input on the amendments to the WIC Authorized Food List regulations. If you are interested in participating in this stakeholder workgroup, please send an email by close of business on June 4, 2021 with the subject line reading "WIC Authorized Food List Amendments Stakeholder RSVP" to [WICregulations@cdph.ca.gov](mailto:WICregulations@cdph.ca.gov), with the following information included in the body of the email:

Name:

Company Name (if applicable):

Address:

Email 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 June 7, 2021 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 stakeholders regarding the adoption of the proposed action. The comment period will be open for 21 calendar days, closing on June 18, 2021. Send your comments electronically, with the Regulatory Alert number in the subject line, to the following email address: [WICregulations@cdph.ca.gov](mailto:WICregulations@cdph.ca.gov).

*PLEASE NOTE:* All information submitted with your written comments on these proposed regulations becomes public information. Please do not include any confidential information, including personal contact information or other private information, in your comments.

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 amend the following California regulation via regulatory bulletin.

Article 5. WIC Authorized Food List

*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 other than cage-free eggs, such as ~~cage-free~~, vitamin-enriched, pastured, low cholesterol, or DHA-enriched eggs; ~~and~~
  - (D) Organic eggs; and
  - (E) Eggs sold within California that do not have all legally required labeling, markings, or statements on the container or package.

### **Nature of the Regulation**

This proposed regulation would amend existing egg regulations to repeal the current prohibition against the authorization of cage free eggs and add a new provision prohibiting the authorization of eggs sold within California for which the container or package does not display all legally-required markings.

### **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](https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/LawsandRegulations.aspx) posted at: <https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/LawsandRegulations.aspx>.

**Questions and Additional Information:**

If you have any questions, please contact CDPH at [WICregulations@cdph.ca.gov](mailto:WICregulations@cdph.ca.gov).



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

Attachment 1

**WIC Authorized Food List  
Amendments  
and  
Statement of Reasons**

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

**May 28, 2021**

Health and Safety Code section 123322 authorizes the California Department of Public Health (Department) to establish regulations regarding 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 is proposing to amend WIC Bulletin Regulation section 82400, WIC Authorized Food List: Eggs, as specified in Regulatory Alert 2021-01.

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## 82400 WIC Authorized Food List: Eggs

### PROPOSED REGULATION

#### Article 5. WIC Authorized Food List

##### *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 other than cage-free eggs, such as ~~cage-free~~, vitamin-enriched, pastured, low cholesterol, or DHA-enriched eggs; and
  - (D) Organic eggs; and
  - (E) Eggs sold within California that do not have all legally required labeling, markings, or statements on the container or package.

### AUTHORITY

#### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2020): (b) *State agency responsibilities*: State agencies may: (i) 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) (2020): (b) *State agency responsibilities*: . . . (2) State agencies must: (i) Identify the brands of foods and package sizes that are acceptable for use in the Program in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2020): (e) *Food packages*. . . (12) *Minimum requirements and specifications for supplemental foods*: Table 4 describes the minimum requirements and specifications for supplemental foods in all food packages: . . .

## EGGS

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 25990, subdivision (b)(3): (b) A business owner or operator shall not knowingly engage in the sale within the state of any of the following:

. . . (3) Shell egg that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner.

Health and Safety Code section 25991, subdivision (e)(5): (e) "Confined in a cruel manner" means any one of the following acts: . . . (5) After December 31, 2021, confining an egg-laying hen with less than the amount of usable floorspace per hen required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing or in an enclosure other than a cage-free housing system.

Health and Safety code section 25993, subdivisions (a), (c): (a) The Department of Food and Agriculture and the State Department of Public Health shall jointly promulgate rules and regulations for the implementation of this act. . . . (c) The provisions of this chapter relating to cruel confinement of covered animals and sale of products shall supersede any conflicting regulations, including conflicting regulations in Chapter 6 (commencing with Section 40601) of Subdivision 6 of Division 2 of Title 22 of the California Code of Regulations.

Health and Safety Code section 123322, subdivisions (a)(3), (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 . . . the department may . . . 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**

### *82400 WIC Authorized Food List: Eggs*

(a)(2)(C) The Department is proposing to repeal the current prohibition against the authorization of cage-free eggs. Pursuant to Health and Safety Code section 25990, subdivision (b)(3), there will be new prohibitions against business owners or operators knowingly engaging in the sale of shell eggs within California that the business owner or operator knows or should know are the product of an animal that was confined in a “cruel manner.” For egg-laying hens, confinement in a cruel manner means that the egg-laying hens were confined “with less than the amount of usable floorspace per hen required by the 2017 edition of the United Egg Producers’ Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing or in an enclosure other than a cage-free housing system.” (Health & Saf. Code, § 25991, subd. (e)(5).) These new prohibitions will take effect on January 1, 2022 and will supersede any conflicting regulations that apply to the WIC Program. (Health & Saf. Code, §§ 25991, subd. (e)(5), 25993, subd. (c).) The Department is proposing to repeal the current prohibition against the authorization of cage free eggs in the WIC Bulletin Regulations to avoid conflicts with Health and Safety Code section 25990 et seq. The Department plans to implement this proposed change prior to the January 1, 2022 effective date in order to accommodate vendors that may choose to stop selling non-cage-free eggs, partially or completely, prior to January 1, 2022. Implementing this change early will help maintain authorized egg availability for WIC participants.

(a)(2)(E) The Department is proposing to prohibit the authorization of eggs sold within California that do not have all legally required labeling, markings, or statements on the container or package. This prohibition will help ensure that WIC funds are not being used to purchase eggs sold within the state that do not comply with applicable laws, including California laws such as food safety regulations, farm animal treatment laws, and any regulations implementing Health and Safety Code section 25990 et seq., as described in Health and Safety Code section 25993, subdivision (a). Legal requirements for labeling, markings, and statements on egg containers or packages are designed to convey that eggs that are for commercial sale in California comply with these laws.