



June 14, 2013

RON CHAPMAN, MD, MPH
Director and Public Health Officer

EDMUND G. BROWN JR.
Governor

REGULATORY ALERT 2013-01

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Supplemental Nutrition Program for Women, Infants, and Children (WIC) to inform WIC stakeholders of the Program’s plan 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 (included below in Authority).

Attachment 1 of this notice provides reasons for the proposed action.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, CDPH will meet by webinar consultation with stakeholders between July 11 and July 17, 2013 to receive input on the adoption of the Vendor Authorization Criteria. If you are interested in participating in the stakeholder workgroup, please send an e-mail by close of business on June 21, 2013 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.)

The California WIC Program will contact you by June 27, 2013 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.

Comment Period

CDPH will accept written comments from affected stakeholders regarding the adoption of the Vendor Authorization Criteria. The comment period will be open for 25 calendar days, from June 24–July 19, 2013. 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If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.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 rule into California regulation via regulatory bulletin.

Article 4.

70000 Vendor Authorization Criteria. (a) When authorizing a vendor the Department shall assign a peer group to new vendor applicants for purposes of authorization. For determining ongoing compliance with authorization criteria the Department shall apply the criteria based on the vendor's currently assigned peer group. For purposes of this article, the Department is defined as, the California Department of Public Health and the California WIC Program. "WIC" is defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.

(b) In order to be authorized for participation in the program all vendors must enter into a vendor agreement with the Department.

(c) The Department shall apply the vendor authorization criteria in this article to all vendors at any time during the authorization period and to vendor applicants. Vendor applicants will be denied authorization for failure to meet the vendor authorization criteria. If a vendor fails to meet the authorization criteria at any time during the authorization period, the Department shall terminate the vendor's participation in WIC.

70100 Business Integrity. (a) The Department shall consider the business integrity of vendors and vendor applicants for participation in the WIC program.

(b) Unless denial of authorization of a vendor or vendor applicant would result in inadequate participant access as defined in Title 22, California Code of Regulations, Section 40740(h), the Department shall not authorize or continue authorization of a vendor if during the last six (6) years the vendor or vendor applicant's current owners, officers, directors, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity.

(c) Activities indicating a lack of business integrity are those activities set forth in Title 7, Code of Federal Regulations, Section 246.12(g)(3)(ii).

70200 California Retail Food Facility Code (Health and Safety Code Section 113700 et. seq.). All vendors and vendor applicants must maintain a valid permit on the premises to operate a retail food facility, as required by the California Retail Food Facility Code (Health and Safety Code Section 114381) and, upon request, provide proof of the permit to the Department for the

authorization period. All authorized vendors must notify the Department of the suspension or revocation of their permit within ten (10) business days. Failure to notify the Department of the suspension or revocation of a vendor's permit within ten (10) business days will result in the termination of the vendor's agreement. Closure of a vendor store based on permit suspension or revocation will result in the termination of a vendor's agreement.

70300 Cash Register. (a) Each vendor and vendor applicant must maintain and use a cash register system in conducting all business sales transactions.

(b) The cash register system must calculate, record, and print a summary of all sales transactions conducted during each business day showing the transfer of goods for money or monetary equivalents.

(c) The cash register system must automatically print an itemized receipt of each transaction. The receipt must be given to the customer at each transaction.

(d) The summary of all sales transactions from the cash register system must have the vendor's name and address, the transaction date, the quantity purchased, the sale price of the item purchased, the amount of tax charged, and the indication of tax status. Cash register receipt detail and daily summaries are part of the standard business records vendors are required to maintain for a minimum of three (3) years and are subject to both verification and Program audit.

70400 Certify that Information Provided on the Vendor Application is True and Correct. All vendors and vendor applicants must certify that the information provided during the application and authorization process is true and correct. If the Department determines that the vendor or applicant provided false information in connection with its application for authorization and the false information was material to the Department's decision to authorize the vendor, the vendor's agreement shall be terminated, or the vendor applicant denied authorization. Information is material if it could change the Department's decision regarding authorization.

70500 Circumvention of WIC Sanction. (a) The Department shall deny authorization or reauthorization if it determines that a vendor is attempting to circumvent a WIC sanction or vendor claim. (b) The Department will deny authorization to a vendor applicant for any of the following actions indicating an attempt to circumvent a WIC sanction or vendor claim:

- (1) The vendor applicant purchased or obtained any legal interest in the store from a relative by blood or marriage and the store or business has a WIC sanction currently in effect, or a vendor claim which is still outstanding

at that store location.

(2) The vendor applicant purchased or obtained any legal interest in the store or business for less than fair market value and there is a WIC sanction currently in effect, or a vendor claim is still outstanding at that location.

(3) The vendor applicant owns, previously owned, or has a legal interest in a store or business that has a WIC sanction currently in effect.

(4) The vendor applicant owns, previously owned, or has a legal interest in a store or business, including the applicant location that has an outstanding vendor claim. Failure to make payments as agreed via stipulation will be considered an outstanding vendor claim.

(5) The vendor applicant purchased or obtained any legal interest in the store or business pursuant to (1) or (2) above and allows the previous owner to retain a role in the operation of the business such as a manager, director, officer or shareholder.

(6) The vendor applicant retained legal interest in the store after a change of business type and there is a WIC sanction currently in effect or a vendor claim which is still outstanding at that location. Business type includes corporation, general partnership, limited partnership, sole proprietorship and limited-liability company.

(c) The Department may, in its sole discretion, request additional information from the vendor applicant, which may include, but is not limited to, a tax identification number, or other identifying information from the applicant and/or previous owner(s) to enable the Department to conduct a thorough background check, a bill of sale, lease agreement, bank statements or other information verifying the change in ownership of the store.

70600 Competitive Price Criteria. (a) Prices charged by the vendor or vendor applicant for a combination of all Market Basket items carried must not at any time exceed 120 percent of the Average Overall Market Basket price established by the Department for the vendor or applicant's peer group.

(b) The foods in the Market Basket may only include foods in the WIC Authorized Food List. The Market Basket shall consist of the following types of authorized foods:

(1) 12 and 18 oz. Breakfast Cereal

(2) 16 oz. Cheese (any type)

(3) 16 oz. Corn Tortillas

- (4) 1 lb. Bag of Dry Beans, Peas, or Lentils
- (5) 1 Dozen Large Eggs (chicken only)
- (6) 64 oz. Shelf-Stable Bottled Juice
- (7) 1 Gallon Milk (whole and lower fat)
- (8) Milk-based infant formula currently under contract with the Department
- (9) 16 – 18 oz. Peanut Butter
- (10) 16 oz. Whole Wheat Bread Loaf

(c) Vendors shall submit the shelf price of their highest priced and lowest priced authorized food for each of the 10 food types in the Market Basket sold in that store during a fourteen (14) day period specified by the Department. For example, if the Market Basket food type is cheese, the vendor shall submit the shelf price of their highest price cheese and the shelf price of their lowest price cheese. Vendors shall provide these shelf prices of their market basket foods every six (6) months upon request of the Department. The Department will provide a thirty (30) day notice of the request for prices and vendors must respond with their shelf prices within fourteen (14) days of the notice. Vendor applicants must submit prices for a fourteen (14) day period specified by the Department as part of the vendor application process. Only regular prices may be submitted; sale or promotional prices may not be included in the price collection. If a Market Basket item had a sale or promotional price during the fourteen (14) day period, the vendor shall determine the highest and lowest prices based on the item's price prior to the sale or promotion. Vendors that stock one type of a Market Basket item or offer same priced alternatives of that type shall submit a single price for that item as the highest and the lowest prices.

(d) The Average Overall Market Basket price will be determined by averaging the Vendor Market Basket price of all vendors in a peer group based on the current semi-annual submissions. Vendors and vendor applicants with a Vendor Market Basket price that exceeds one hundred and twenty percent (120%) of the Average Overall Market Basket price in their peer groups shall be determined noncompetitive because they do not meet the competitive price criteria.

(1) For purposes of determining whether a vendor is non-competitive and does not meet the competitive price criteria the Vendor Market Basket price shall be defined as either:

- (A) A single vendor or applicant's average price of all Market Basket items submitted by the vendor or applicant for the applicable period. The Department shall determine the average of the highest and lowest

prices of the individual Market Basket items and add the averaged prices together to determine the Vendor Market Basket price; or

(B) The sum of the regular shelf prices of the Market Basket items observed by the Department during a monitoring or compliance visit.

(e) Vendors or vendor applicants that do not meet the competitive price criteria will be issued a written notice of their failure to meet current vendor authorization criteria and of their need to correct their prices to meet the competitive price criteria. The vendor will be given thirty (30) days to correct their prices to meet the competitive criteria. Vendor applicants will be given ten (10) days to correct their prices to meet the competitive price criteria.

(1) If after thirty (30) days and within a twenty four (24) month period from the date of the notice the Department makes a subsequent determination that a vendor's prices do not comply with the competitive price criteria, the vendor shall have demonstrated a pattern of failure to meet competitive price criteria and shall be disqualified from participation in the program for a period of one year for failure to meet authorization criteria.

(2) If after ten (10) days from the date of the notice a vendor applicant's prices do not meet the competitive price criteria, the vendor applicant will be denied authorization for failure to meet the vendor authorization criteria for competitive price. The applicant will be permitted to submit another application in no less than six (6) months.

(f) A vendor who fails to submit their semi-annual price information will be issued a written notice of their failure to comply with vendor selection criteria. If after thirty (30) days from the date of the written notice, the vendor has failed to submit their semi-annual price information, the Department will terminate the vendor from participation in the program.

70700 Compliance with Title VI of the Civil Rights Act. The Department shall not authorize a vendor applicant or continue authorization of a vendor that is subject to a ruling by a federal or state enforcement agency that the vendor applicant or vendor, on the grounds of race, color, national origin, age, sex or handicap, excluded from participation in, denied benefits to, or otherwise subjected to discrimination any Program participant in the process of obtaining Program benefits from that vendor.

70800 Incentive Item Requirements. (a) The Department shall not authorize or continue authorization of an above-50-percent vendor, or make payments to an above-50-percent vendor, which provides or indicates an intention to provide prohibited incentive items to customers.

(1) Above-50-percent vendors are those vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, or vendor applicants likely to meet this criterion.

(2) Evidence of intent to provide prohibited incentive items to customers includes the following:

- (A) Advertisement of the availability of the prohibited incentive items;
- (B) Promotion through signage and labeling of prohibited incentive items on store shelves and/or on the store premises;
- (C) Verbal and written accounts of prohibited incentives items being offered; or
- (D) Offering prohibited incentive items during compliance monitoring, as witnessed by Department staff.

(3) Pursuant to 7 C.F.R. § 246.12(g)(3)(iv)(B), prohibited incentive items for these vendors include:

- (A) Services which result in a conflict of interest or the appearance of such conflict for the above-50-percent vendor, such as assistance with applying for WIC benefits;
- (B) Lottery tickets provided to customers at no charge or below face value;
- (C) Cash gifts in any amount for any reason;
- (D) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;
- (E) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit; have a value of less than \$2.00;
- (F) Food, merchandise or services of greater than nominal value provided to the customer;
- (G) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;
- (H) Any kind of incentive item which incurs a liability for the WIC Program; or
- (I) Any kind of incentive item which violates any Federal, State, or local law or regulations.

(4) Allowable incentive items for above-50-percent vendors include:

(A) One or any combination of the following; as long as the combined total value is less than two dollars:

1. Prepackaged WIC authorized fresh fruit and vegetables, purchased from a wholesaler.
2. Fourteen (14)-ounce to sixteen (16)-ounce cans of any brand or variety of mature beans, mature peas, or lentils, purchased from a wholesaler.
3. Any variety of prepackaged uncooked, plain, dried, mature beans, peas, or lentils purchased from a wholesaler.
4. Commercially made, prepackaged, 100 percent corn tortillas, purchased from a wholesaler.
5. Commercially made, prepackaged, 100 percent whole wheat bread, purchased from a wholesaler. Package must state "100% Whole Wheat" on the front label.
6. Five (5)-or six (6)-ounce cans of chunk light, water-packed tuna purchased from a wholesaler.
7. WIC authorized supplemental foods offered as part of a taste testing sample to a participant family.

(B) Minor customer courtesies of the retail food trade, such as bagging supplemental foods for the participant and assisting the participant with loading the supplemental foods into his/her vehicle. Minor customer courtesies do not include delivery of the supplemental foods to another location.

(b) The Department shall not authorize or continue authorization of a vendor that is not an above-50-percent vendor which provides incentive items solely to WIC participant customers. Incentive items provided by non above-50-percent vendors must be offered to all customers.

(1) Incentive items for vendors who are not above-50-percent vendors are defined as

- (A) Free or reduced price food or other items;
- (B) Cash or cash gift cards;
- (C) Lottery tickets;
- (D) Buy one, get one free;
- (E) Buy one, get one at a reduced price;

(F) Free amounts added to an item by manufacturer coupons, store loyalty cards, and sales specials for supplemental foods; or

(G) Free or reduced price services and minor customer courtesies of the retail food trade, such as bagging supplemental foods for the participant and assisting the participant with loading the supplemental foods into his/her vehicle.

(c) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with incentive item requirements. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with incentive item requirements, the vendor shall have demonstrated a pattern of failure to comply with incentive item requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

70900 Infant Formula. Authorized vendors and vendor applicants must purchase all authorized infant formula only from the following suppliers:

(a) A manufacturer of infant formula registered with the Food and Drug Administration;

(b) 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; and

(c) 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 list of authorized suppliers of infant formula.

(d) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with infant formula purchasing requirements. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with infant formula purchasing requirements, the vendor shall have demonstrated a pattern of failure to comply with infant formula purchasing requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

71000 Inventory Records. (a) Each vendor, defined in Section 40635, must maintain adequate inventory purchase records, including adequate transfer records if inventory is moved between stores.

(b) If a vendor owns more than one vendor store, including multiple stores under a Master Vendor Agreement, separate inventory purchase records

including transfer records, must be maintained for each store location.

Inventory purchase records, including transfer records for each individual store under one ownership will be reviewed separately and will not be combined for purposes of audit to determine if a vendor is claiming reimbursement for the sale of a volume of supplemental food which exceeds the vendor inventory purchase documentation for a specific period of time as identified in the audit.

(c) All vendors must maintain inventory purchase records and transfer records for a period of three (3) years and provide agents of the State, the Department, and the Comptroller General of the United States access to these records.

(d) Inventory purchase records include all of the following:

(1) Records showing all WIC authorized supplemental food purchases, wholesale and retail, in the form of invoices. Each invoice or receipt shall:

(A) Be prepared entirely by the wholesaler, distributor, or retailer from whom the WIC vendor made the purchase;

(B) Indicate the date of purchase, the name of the seller, and the name of the WIC vendor who made the purchase;

(C) Be specific when identifying WIC food items- for example; "milk" is not an adequate identification. It must be specified as to the type of milk, such as "fluid", "dry", or "evaporated" and whether it is "whole", "lowfat", or "nonfat", etc. Similarly, "fruit juice" is not an adequate identifier. The type of juice, e.g., "orange" or "apple" must be indicated, and the brand must also be identified;

(D) Identify the quantity and container size of each WIC food item purchased from the wholesaler, (number of containers, cans, boxes, etc., and number of ounces, pounds, etc., per container); and

(E) Indicate the unit price for each WIC food item purchased.

(2) Sales and use tax return, if required by federal and state law

(3) Books of account

(4) Other records that can be used to verify WIC authorized supplemental food item purchases or proper peer group assignment including, but not limited to, check registers and bank statements.

(5) Transfer records. Transfer records must:

(A) Be created at the time the food products are shipped from the location of original delivery to the following vendor store location;

(B) Indicate the date of the transfer;

(C) Indicate the address and store name where the food item is being

shipped from;

(D) Indicate the address and store name where the food item is being shipped to;

(E) Be specific when identifying WIC food items – for example; “milk” is not an adequate identification. It must be specified as to the type of milk, such as “fluid”, “dry”, or “evaporated” and whether it is “whole”, “lowfat”, or “nonfat”, etc. Similarly, “fruit juice” is not an adequate identifier. The type of juice, e.g., “orange” or “apple” must be indicated, and the brand must also be identified; and

(F) Identify the quantity and container size of each WIC food item purchased from the wholesaler (number of containers, cans, boxes, etc., and number of ounces, pounds, etc., per container).

(e) If a vendor fails to maintain the required inventory and transfer records, including separate inventory and transfer records for each vendor location owned, the Department shall terminate the vendor’s agreement.

71100 Minimum Stocking Requirements. (a) For participation in the Program, all vendor and vendor applicant locations must at all times maintain on the premises of the vendor applicant or authorized location the amounts listed in subsection (b)(1)-(15) below of WIC authorized supplemental foods, adopted as the WIC Authorized Food List and Shopping Guide by WIC Regulatory Bulletin.

(b) Inventory must be stocked on store shelves in the public area available for purchase unless quantities of stock allowed in storage on the premises of that store location are specified in subsections (b)(10), (12), and (13). For purposes of this regulation, inventory shall not include inventory on order that has not been delivered. Each vendor and applicant vendor must stock, at a minimum, the following:

(1) Bottled Juice and Concentrate.

(A) Eight (8) sixty-four (64) ounce bottles of authorized shelf stable juice.

(B) Ten (10) eleven and a half (11.5) or twelve (12) ounce containers of authorized frozen juice concentrate.

(2) Breakfast Cereal. At least one hundred forty-four (144) total ounces, of any four (4) different types or brands of authorized cereal. Of the total ounces one (1) type must be of twelve (12) ounce size box and one (1) type must be of eighteen (18) ounce box. Two (2) of the types or brands must be listed as whole grain cereals on the WIC Authorized Food List and Shopping Guide.

(3) Canned Fish. Either

(A) Twelve (12) five (5) ounce cans or ten (10) six (6) ounce cans of authorized types of tuna; or

(B) Four (4) fifteen (15) ounce cans of authorized types of sardines; or

(C) Twelve (12) five (5) ounce cans, ten (10) six (6) ounce cans, or four (4) fourteen and three quarters (14.75) ounce cans of authorized types of salmon.

(4) Cheese. At least four (4) one (1) pound packages of any combination of types of cheese.

(5) Dry Beans, Peas, or Lentils. At least six (6) pounds of any combination of authorized dry beans, peas, or lentils, in either one (1) pound packages or six (6) pounds in bulk.

(6) Eggs. At least four (4) one (1) dozen containers of authorized types of eggs.

(7) Fresh Bananas. Eight (8) fresh yellow bananas.

(8) Fruits and Vegetables.

(A) Thirty-two dollars (\$32) worth of a combination of five (5) authorized varieties of fresh fruits and five (5) varieties of authorized fresh vegetables. Dollar amount is based on the vendor shelf price.

(B) Thirty-two dollars (\$32) worth of a combination of three (3) varieties of authorized frozen fruits and (3) varieties of authorized frozen vegetables. Dollar amount is based on the vendor shelf price.

(C) Thirty-two dollars (\$32) worth of a combination of three (3) authorized varieties of canned fruits and three (3) varieties of authorized canned vegetables. Dollar amount is based on the vendor shelf price.

(9) Infant Cereal. Two (2) sixteen (16) ounce containers and two (2) eight (8) ounce containers of any authorized brand and type of infant cereal.

(10) Infant Formula. Authorized milk-based infant formula in the following quantity:

(A) Twenty (20) authorized size containers of authorized milk-based infant formula in powdered form. Of the twenty (20) containers, no less than ten (10) must be on the shelf, and no less than ten (10) shall be in storage on the premises.

(11) Infant Fruits and Vegetables. Either

(A) Fifty-six (56) four (4) ounce containers; or

(B) Sixty-four (64) three and a half (3.5) ounce containers.

(12) Infant Meats. Sixty-two (62) two and a half (2.5) ounce containers of

authorized infants meats. Of the sixty-two (62) containers at least thirty-one (31) must be on the shelf and no less than thirty-one (31) shall be in storage on the premises.

(13) Milk.

- (A) Six (6) one (1) gallon containers of authorized fluid whole milk;
- (B) Fourteen (14) one gallon containers of 2%, 1%, or nonfat authorized fluid milk. Of the fourteen (14) one (1) gallon containers, ten (10) must be on the shelf and no less than four (4) shall be in storage on the premises;
- (C) Two (2) half-gallon containers of any combination of 2%, 1%, or nonfat authorized fluid milk;

(14) Peanut Butter. At least four (4) sixteen (16) to eighteen (18) ounce containers of authorized types of peanut butter.

(15) Whole Grain.

- (A) At least two (2) one pound packages of 100% whole wheat bread loaves; and
- (B) At least two (2) one pound packages of white or yellow soft corn tortillas; and
- (C) At least two (2) one pound packages or two (2) pounds of bulk oatmeal or oats; or two (2) one (1) pound packages or two (2) pounds of bulk brown rice.

(c) A vendor who fails to meet the stocking requirements in this section at any time shall be issued a written notice of the vendor's failure to meet authorization criteria. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor subsequently fails to meet the stocking requirements of this section the vendor shall have demonstrated a pattern of failure to meet minimum stocking requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

71200 Minimum Technology Requirements. All vendors and vendor applicants must have access to a computer or other electronic device that has the ability to:

- (a) Access the internet, and
- (b) Receive and send emails, and
- (c) Use web-based applications, and
- (d) Apply an electronic signature to official documents.

71300 No Conflict of Interest Between the Vendor and the Department or any WIC Local Agency. The Department shall not authorize a vendor applicant or continue authorization of a vendor if the Department makes a determination that a conflict of interest exists with the Department or a local agency. For purposes of this article, local agency is defined to include all employees of local agencies pursuant to Title 22, California Code of Regulations, Section 40641. A conflict of interest exists when:

- (a) The vendor could profit by having a relative or an agent who is on the staff of a local agency or the Department who could refer participants to the vendor's store; or
- (b) The vendor could profit by having a relative or an agent who is on the staff of the Department who could make Departmental decisions or influence Department policies and procedures related to program vendors.

71400 Restrictions and Allowed Uses of the WIC Acronym and WIC Logo. (a) For the purpose of this section and all contracts, instructions, forms and other documents related hereto, the following terms are defined:

(1) General Definitions

(A) Point of Display. Point of Display items are used to identify WIC authorized supplemental foods and where the food items are located or shelved. Point of Display items include shelf-talkers and signs.

(2) Printing and Image Definitions

(A) CMYK. CMYK, also known as process color, four- or full color, refers to the four process colors (cyan, magenta, yellow and black) used to create all colors in standard color printing. This process is one of two allowed printing processes for reproduction of the California WIC logo. The CMYK process can create thousands of clear, vibrant colors; therefore this option is permitted and is the preferred image file for vendors to reproduce the California WIC logo.

(B) EPS Format. EPS, Encapsulated PostScript, is a method for creating logos and other line-art illustrations using mathematical vectors to define the lines and curves that make up the logo or other artwork. These vectors retain proportion within the artwork regardless of how it is resized without loss of detail or distortion. This format is the only allowable option permitted for all reproduction of the California WIC logo.

(C) Spot Color. Spot Color refers to an image file which uses individual Pantone colors instead of CMYK process to reproduce the California WIC logo. It takes four separate Pantone colors to print the logo and the

results will not be as rich in color as the CMYK process defined above. This format is one of two allowed options permitted for all reproduction of the California WIC logo. The black and white EPS image file is a variant of the spot color logo that uses a single color (black) to create the California WIC logo.

(D) Vector. Graphic images created by a computer program and stored in file format as a series of numbers which define shape, position and color of EPS images. Vectors are object-oriented and work as a whole unit together. The mathematic property of the vectors allows increase and decrease in image size without distortion.

(E) White Space Required for Newspaper Ad or Insert. Visual area surrounding logo which must be free of typeset, color, or other imagery to prevent detracting from the appearance of the logo. White space is literally space around the logo which is white.

(b) The federal WIC logo and the WIC acronym are registered service marks of the United States Department of Agriculture (USDA). The federal WIC logo and the California WIC logo are the property of the Federal and State Governments. Vendors shall use of the WIC acronym and logo only as permitted in this Section 71400:

(1) Vendors and vendor applicants shall not use the federal WIC logo or acronym or the State WIC logo or acronym or close facsimiles thereof, in total or in part in any manner only without prior written consent of the Department, except when printing signs and shelf talkers pursuant to the requirements in subsection (d)(3).

(2) The Department shall deny authorization or shall not continue authorization of a vendor or applicant whose name or logo includes the WIC acronym, the federal WIC logo, the California WIC logo, or close facsimiles thereof, in total or in part, either in the official name in which the vendor is registered or in the name under which it does business, if different. This includes, but is not limited to, using the letters "W", "I", and "C" in that order next to one another in the vendor or vendor applicant's name, or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters.

(3) Vendors and vendor applicants must not attach or affix in any manner the WIC acronym, the federal WIC logo, or the California WIC logo on any authorized food or incentive item.

(4) Vendors and vendor applicants may use the California WIC logo only on materials produced or approved by the Department including shelf talkers,

posters, signs, decals or stickers.

(5) Vendors may reproduce the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor's store, as specified in subsection (d) below.

(c) Upon prior written approval by the Department vendors are permitted to print the California WIC logo pursuant to the printing and formatting requirements specified in this Section 71400. When using the California WIC logo, the vendor shall use only the California WIC logo files that are available for download on the Vendor WIC Information eXchange website ("VWIX") at: <https://vwix.ca.gov>. These are the only image file options available to WIC authorized vendors for printing the California WIC logo image; no other image file formats are allowed.

(1) Vendors shall print the California WIC logo image using the CMYK process or spot color image file options, as defined in subsection (a) above and in color as specified in subsections (c)(1)(B)-(C) below:

(A) The California WIC logo and tagline may appear in a single color, but only in black on white.

(B) The CMYK combination, a permitted and preferred option, which produces a full-color image of the California WIC logo shall be as follows:

1. Purple: fifty (50) percent cyan, ninety (90) percent magenta, and zero (0) percent black.
2. Red: zero (0) percent cyan, ninety-one (91) percent magenta, eighty-seven (87) percent yellow, and zero (0) percent black.
3. Lime: forty-three (43) percent cyan, zero (0) percent magenta, seventy-nine (79) percent yellow, and zero (0) percent black.
4. Green: seventy-five (75) percent cyan, zero (0) percent magenta, one-hundred (100) percent yellow, and zero (0) percent black.

(C) Pantone colors, a permitted option of the CMYK combination, is used to produce a full-color image of the California WIC logo shall be as follows:

1. Purple: pantone 258
2. Red: pantone 179
3. Lime: pantone 368
4. Green: pantone 361

(2) When printing the California WIC logo, vendors must ensure the California WIC logo remains intact each time it is printed. The California WIC logo includes the WIC acronym and tagline "Families grow healthy with WIC". The vendor shall not use the tagline as a separate graphic element. Shelf talkers are the only exception and may be printed without the tagline.

(3) When printing the California WIC logo, vendors must not distort the California WIC logo. When enlarging or scaling it down, vendors shall keep the logo proportionate in size. Change to the size must be the same percentage increase in both height and width. For example, if the height of the logo image is increased 25 percent the width must also be increased 25 percent.

(4) When printing the California WIC logo, vendors must print only the California WIC logo and not add any additional graphics or text around the logo. Exception: upon approval by the Department additional graphics or text may be allowed when printing the California WIC logo in general circulation newspaper ads or inserts that advertise the vendor's store when used as specified in subsection (b)(5).

(5) When printing the California WIC logo, vendors must maintain integrity of the California WIC logo when printing in newspaper ads or inserts by using the "white space" around the logo as downloaded from VWIX. White space means visual area free of typeset or other imagery to prevent detracting from the appearance of the logo.

(6) Vendors shall not wrap text around the white space surrounding California WIC logo. Vendors shall always leave enough white space around the logo to prevent "crowding" by other elements.

(7) Vendors shall print the California WIC logo in a white box when the logo is placed on a background color or photograph. Vendors shall not print the logo on a solid background color, screen or tint of a color, or a photographic or illustrative background if the background shows through the logo.

(8) Vendors shall not enclose the California WIC logo in other framing shapes including, but not limited to circles or ellipses.

(d) Vendor uses of the California WIC logo. The California WIC logo shall not be used in any media other than print as specified in this subsection (d).

(1) Posters. The Department may provide vendors with posters which include the California WIC logo to identify a store as authorized to accept food instruments from participants for the sale of supplemental foods. Only posters provided by the Department may include the WIC acronym or logo. Department supplied posters may only be displayed on store walls and boards or in window displays. Vendors may not print or display posters with

the federal WIC logo, the WIC acronym, or the California WIC logo.

(2) Decals. The Department may provide vendors with decals to identify a store as authorized to accept food instruments from participants for the sale of supplemental foods. Only decals provided by the Department may be used if the decals include the WIC acronym or logo. Department supplied decals may only be affixed to windows or doors. Vendors may not print or display decals with the federal WIC logo, the WIC acronym, or the California WIC logo.

(3) Point of Display Items

(A) Signs. The Department may provide vendors with signs to identify WIC authorized supplemental foods and where the food items are located or shelved. Department supplied signs may only be affixed on displays to identify where food items are located or to emphasize fruits and vegetables as a food item choice. Vendors may not print or display signs with the federal WIC logo, the WIC acronym, or the California WIC logo.

1. When printing signs for WIC authorized foods a vendor may only use the following image containing the California WIC logo, available on VWIX and represented below. Vendors may resize the following logo for sign use up to 6 inches in height, without distorting the proportion of the logo image. This image is available for use as a sign or decal on VWIX.

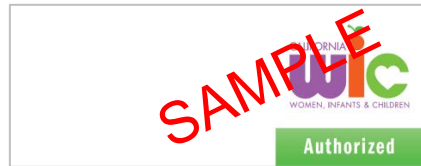
A. Logo for Signs



(B) Shelf Talkers. Vendors are permitted to display shelf talkers to identify WIC authorized supplemental foods. Shelf talkers may only be affixed to shelves to identify where food items are located or shelved. Shelf talkers may be supplied by the Department or printed by a vendor with approval from the Department pursuant to subsection (c)(3)(B)(3) below.

1. Shelf talkers printed by a vendor that identify WIC authorized supplemental foods must comply with the printing and formatting requirements specified in subsection (c).
2. Shelf talkers for WIC authorized foods must be printed in color.
3. When printing shelf talkers for WIC authorized foods a vendor may only use one of the following images containing the California WIC logo, available on VWIX and represented below. Vendors may not resize or make any other changes to the images available for use as shelf talkers on VWIX.

A. Right Shelf Talker



B. Left Shelf Talker



C. Standard Shelf Talker



(4) Newspaper Ad or Inserts Requirements. Upon approval of the Department, vendors may print the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor's store (Ex. Weekly store ad).

- (A) Newspaper ads or inserts printed by a vendor must comply with the printing and formatting requirements specified in subsection (c).
- (B) Newspaper ads or inserts may be printed in color or in black. The black and white logo may only be used in black and white newspaper ads or inserts.
- (C) When printing newspaper ads or inserts a vendor may only use one of the following logos, available on VWIX and represented

below. The following logos may not be printed larger than 1/8 of the total size of the ad or insert:

1. Color Logo



2. Black and White Logo



(e) All vendors wishing to print or use the WIC logo pursuant to the requirements of this Section 71400 shall submit a sample of the proposed use prior to printing or publication to the Department for approval. The Department will review the proposed use for compliance with this Section 71400 and issue a determination as to whether the use is approved within 10 business days of receipt of request for approval.

(f) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with restrictions on the use of the WIC acronym and logo. If after 30 days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with restrictions on the use of the WIC acronym and logo, the vendor shall have demonstrated a pattern of failure to comply with restrictions on the use of the WIC acronym and logo and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

71500 Store Location and Hours. (a) All vendors and vendor applicants must have a fixed location for each vendor store from which food instruments are

transacted and authorized foods provided to participants, and

(b) All vendor stores must be open at least eight (8) hours per day, six (6) days per week. Of the eight (8) hours, at least four (4) of the hours that the vendor is open must be core hours. Core hours are defined as 9:00 a.m. to 5:00 p.m.

71600 Vendors Disqualified from SNAP/CalFresh will not be Authorized Unless Denying Authorization would result in Inadequate Participant Access. Unless denying authorization of a vendor applicant would result in inadequate participant access, the Department shall not authorize a vendor applicant that is currently disqualified from the SNAP/CalFresh Program or that has been assessed a SNAP/CalFresh civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired. Inadequate participant access shall be determined by the criteria specified in Title 22, California Code of Regulations, Section 40740 (h)(1).

71700 Vendors Must be SNAP/CalFresh Authorized. Vendors and vendor applicants must be authorized for participation in the SNAP/CalFresh Program at the time of application and at all times during the term of the vendor agreement.

71800 Vendor Training. (a) Prior to authorization and at least once every three (3) years after authorization while authorized, vendor applicants and vendors or their designated representative must attend an interactive training and successfully pass an examination upon completion of the training as required by Title 22, California Code of Regulations, Section 40733.

(b) All vendors or their designated representatives must also participate in annual training provided by the Department as required by Title 22, California Code of Regulations, Section 40733. Each vendor must certify completion of the annual training by returning, within thirty (30) days of their receipt of the annual training, a statement certifying their participation in the annual training and their understanding of the materials.

(1) The Department will provide written notice to an authorized vendor that fails to complete the annual training.

(2) The vendor will be provided thirty (30) days from the date of the notice to complete the training and certify their participation in the annual training and their understanding of the materials.

(c) Failure to complete the annual and interactive training and certify their participation in the annual training and their understanding of the materials thirty (30) days from the date of the written notice will result in the Department terminating the vendor's agreement.

71900 Visible Posted Prices. (a) All vendors and vendor applicants are required to post prices of all WIC authorized supplemental foods so that the prices are visible to customers.

(1) Prices must be posted on the individual WIC authorized supplemental food item, or

(2) Prices must be posted on the shelf on which the WIC authorized supplemental food is placed, directly below the product, or

(3) If the supplemental foods are part of a display, the prices must be posted on the display.

(b) A vendor who fails to meet the price posting requirements of this section at any time shall be issued a written notice of the vendor's failure to meet authorization criteria. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor subsequently fails to meet the price posting requirements of this section, the vendor shall have demonstrated a pattern of failure to meet price posting requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

Nature of the Regulation

The Department proposes adoption of the regulations set forth in Attachment 1 of this notice. To become or continue as an authorized vendor, vendors must meet and maintain authorization criteria, including vendor selection criteria, established by the United States Department of Agriculture (USDA) and the California WIC Program (7 CFR 246.12 (g), (h)). The vendor must be in compliance with authorization criteria throughout the agreement period. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of reassessment and must terminate the agreements with vendors who do not meet the criteria (7 CFR 246.12 (h)(3)(xxiv)).

Authorization criteria for WIC vendors are based on the objectives of cost containment, participant access, and program integrity. When authorizing a vendor the Department shall assign a peer group to new applicants for purposes of authorization. For determining ongoing compliance with authorization criteria the WIC Program shall apply the criteria based on the vendor's existing peer group.

Reason for the Regulation

The reasons for the Vendor Authorization Criteria are included in Attachment 1 of this notice.

Authority

Federal:

The Child Nutrition Act of 1966, title 42 of the United States Code (U.S.C.), 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 (WIC Program) 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, state WIC Programs are funded and administered by the United States Department of Agriculture (USDA), Food and Nutrition Service, pursuant to Title 7 of the Code of Federal Regulations (7 CFR), Section 246.

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

State:

In California, the Special Supplemental Nutrition Program for Women, Infants and Children was established under the authority of the California Health and Safety Code (H&S Code) Sections 123275 through 123355. The regulations for the State's administration of the WIC Program are contained in title 22 of the California Code of Regulations (CCR), Chapter 6, 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 the California WIC Program at WICRegulations@cdph.ca.gov.



Kim Frinzell, RD
Deputy Division Chief
Vendor Management & Statewide Training Services
Women, Infants, and Children (WIC) Program

Attachment 1

Vendor Authorization Criteria and Statement of Reasons

California Women, Infants, and Children Supplemental Nutrition Program

June 14, 2013

Health & Safety Code § 123322 authorizes the California Department of Public Health to establish regulations regarding vendor authorization criteria of the California Women, Infants, and Children Supplemental Nutrition Program 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 adopting the vendor authorization criteria, specified in Regulatory Alert 2013-01, into California regulation.

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70000 Vendor Authorization Criteria

PROPOSED REGULATION

70000 Vendor Authorization Criteria. (a) When authorizing a vendor the Department shall assign a peer group to new vendor applicants for purposes of authorization. For determining ongoing compliance with authorization criteria the Department shall apply the criteria based on the vendor's currently assigned peer group. For purposes of this article, the Department is defined as, the California Department of Public Health and the California WIC Program. "WIC" is defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.

(b) In order to be authorized for participation in the program all vendors must enter into a vendor agreement with the Department.

(c) The Department shall apply the vendor authorization criteria in this article to all vendors at any time during the authorization period and to vendor applicants. Vendor applicants will be denied authorization for failure to meet the vendor authorization criteria. If a vendor fails to meet the authorization criteria at any time during the authorization period, the Department shall terminate the vendor's participation in WIC.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The state agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(1)(i): *Vendor agreements.* The State agency must enter into written agreements with all authorized vendors.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with Federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70000 (a) 7 C.F.R. § 246.12(g)(4) requires state agencies to establish a peer group system and select vendors for authorization based on competitive price within each peer group. California law (Health & Safety Code § 123310) requires the Department to compare vendors within a peer group for authorization. In order to comply with these requirements when authorizing a vendor the Department shall assign a peer group to vendor applicants for purposes of authorization (7 C.F.R. § 246.12(g)(4)). For determining ongoing compliance with authorization criteria the Department shall apply the criteria based on the vendor's existing peer group.

(b) 7 C.F.R. § 246.12(h)(1)(i) requires state agencies to enter into written agreements with all authorized vendors. In order to comply with this requirement, the Department is requiring all vendors to enter into and comply with the terms of the vendor agreement as part of its vendor selection criteria.

(c) This section is being adopted in order to comply with federal requirements regarding vendor authorization. Federal regulations require that vendors and vendor applicants comply with the vendor selection criteria and that current vendors are in compliance with vendor selection criteria at all times during the authorization period.

70100 Business Integrity

PROPOSED REGULATION

70100 Business Integrity. (a) The Department shall consider the business integrity of vendors and vendor applicants for participation in the WIC program.

(b) Unless denial of authorization of a vendor or vendor applicant would result in inadequate participant access as defined in Title 22, California Code of Regulations, Section 40740(h), the Department shall not authorize or continue authorization of a vendor if during the last six (6) years the vendor or vendor applicant's current owners, officers, directors, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity.

(c) Activities indicating a lack of business integrity are those activities set forth in Title 7, Code of Federal Regulations, Section 246.12(g)(3)(ii).

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(g)(3)(ii): *Business integrity.* The State agency must consider the business integrity of a vendor applicant. In determining the business integrity of a vendor applicant, the State agency may rely solely on facts already known to it and representations made by the vendor applicant on its vendor application. The State agency is not required to establish a formal system of background checks for vendor applicants. Unless denying authorization of a vendor applicant would result in inadequate participant access, the State agency may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. The State agency may add other types of convictions or civil judgments to this list.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any

time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70100 (a) The Federal regulations require the Department to consider the business integrity of a vendor applicant before authorization (7 C.F.R. § 246.12(g)(3)(ii)). Therefore, the Department is adopting these federal standards to verify that the vendor promotes and maintains business integrity. If the vendor does not comply with the business integrity criteria, the Department will terminate the vendor from the program.

(b) Federal regulations require that, unless denying authorization of a vendor applicant would result in inadequate participant access, the Department may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity (7 C.F.R. § 246.12(g)(3)(ii)). The Department has adopted these requirements. In addition, in recognition of the role that directors play in the management of a company, the Department is adding directors to the list of individuals associated with a vendor that must display business integrity. In order to conform to federal standards the Department is adopting the federal definition of activities which indicate a lack of business integrity: fraud, antitrust violations, embezzlement, theft, forgery, bribery,

falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice (7 C.F.R. § 246.12(g)(3)(ii)).

This regulation also includes a definition and criteria for determining adequate participant access.

The Department is adopting the participant access criteria set out in Cal. Code Regs., tit. 22, § 40740(h) for use in all vendor authorization determinations in order to promote consistency for vendors. This standard finds participant access to be adequate when: A) there is another WIC authorized vendor in the same geographic areas and B) there are no geographic barriers that prevent participants from redeeming their food instruments at the other vendor location. In a rural area the same geographic area is defined as: the area within a five-mile radius of the vendor or the local agency. In an urban area the same geographic area is defined as: the area within a two-mile radius of the vendor or the local agency clinic closest to the vendor.

(c) Federal regulations mandate that the Department include a requirement for vendors to demonstrate business integrity as a selection criterion for vendor authorization. The Department is defining a lack of business integrity in accordance with 7 C.F.R. § 246.12(g)(3)(ii).

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

PROPOSED REGULATION

70200 California Retail Food Facility Code (Health and Safety Code Section 113700 et. seq.). All vendors and vendor applicants must maintain a valid permit on the premises to operate a retail food facility, as required by the California Retail Food Facility Code (Health and Safety Code Section 114381) and, upon request, provide proof of the permit to the Department for the authorization period. All authorized vendors must notify the Department of the suspension or revocation of their permit within ten (10) business days. Failure to notify the Department of the suspension or revocation of a vendor's permit within ten (10) business days will result in the termination of the vendor's agreement. Closure of a vendor store based on permit suspension or revocation will result in the termination of a vendor's agreement.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The State agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 113703 (California Retail Food Code): The purpose of this part is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented through adoption of science-based standards.

Health & Safety Code § 114387 (California Retail Food Code): Any person who operates a food facility shall obtain all necessary permits to conduct business, including,

but not limited to, a permit issued by the enforcement agency. In addition to the penalties under Article 2 (commencing with Section 114390), violators who operate without the necessary permits shall be subject to closure of the food facility and a penalty not to exceed three times the cost of the permit.

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70200 Although the food delivery system in the United States may be considered one of the safest systems in the world, foodborne illness is still a major public health concern. The Center for Disease Control and Prevention (CDC) estimates that each year roughly 1 in 6 Americans (or 48 million people) get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases.¹ Foodborne illness and disease originate from a variety of sources. According to the CDC, the five major foodborne illness risk factors are:

¹ Center for Disease Control and Prevention (CDC). 2012 (October 12). *CDC Estimates of Foodborne Illness in the United States*. Available at: <http://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html>. Accessed on: March 13, 2013.

- Food from Unsafe Sources
- Inadequate Cooking
- Improper Holding Temperatures
- Contaminated Equipment
- Poor Personal Hygiene²

All authorized vendors are considered a retail food facility under Health and Safety Code § 113789(a) because they store, sell, or otherwise provide food for human consumption. Retail food facilities, such as those operated by vendors could pose public health risks to participants and the general public if they are not monitored and inspected on a regular basis. These health risks to WIC participants include those listed above, with the exception of inadequate cooking because no authorized foods are prepared or cooked.

The Department is requiring vendors to maintain a valid health permit that complies with the California Retail Food Facility Code because these permits safeguard public health and provide to consumers, inclusive of WIC participants, food that is safe, unadulterated, and honestly presented through adoption of science-based standards. It is the responsibility of the State or local health departments to conduct routine inspections of retail food establishments in their jurisdictions for compliance with the California Retail Food Facility Code. During their inspection, health permits are issued or renewed when facilities pass their established plan review. The Department requires vendors to notify the Department about suspensions or revocations of their health permit within 10 business days to ensure that major health violations come to the immediate attention of the Department. Failure of a vendor to notify the Department within the allotted time frame will result in termination in order to ensure that the Department is aware of a store's unavailability to provide foods to participants in an area which might create an access issue. In addition, this provision should be enforced because vendors may use situations of lapses in their health permits to redeem food instruments using unauthorized channels, a program violation. Vendors must rectify any problems resulting in the suspension or revocation of their health permit prior to reapplication. Closure of the vendor store will result in termination of the vendor's participation in the program because the vendor will be unable to fulfill the requirements of providing authorized foods to participants if the store has closed.

² U.S. Food and Drug Administration. 2006. April. Chapter 1 - Introduction, Managing Food Safety: A Regulator's Manual For Applying HACCP Principles to Risk-based Retail and Food Service Inspections and Evaluating Voluntary Food Safety Management Systems. Available at: <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/ManagingFoodSafetyHACCPPrinciples/Regulators/ucm078165.htm#purpose>. Accessed on: March 13, 2013.

70300 Cash Register

PROPOSED REGULATION

70300 Cash Register. (a) Each vendor and vendor applicant must maintain and use a cash register system in conducting all business sales transactions.

(b) The cash register system must calculate, record, and print a summary of all sales transactions conducted during each business day showing the transfer of goods for money or monetary equivalents.

(c) The cash register system must automatically print an itemized receipt of each transaction. The receipt must be given to the customer at each transaction.

(d) The summary of all sales transactions from the cash register system must have the vendor's name and address, the transaction date, the quantity purchased, the sale price of the item purchased, the amount of tax charged, and the indication of tax status. Cash register receipt detail and daily summaries are part of the standard business records vendors are required to maintain for a minimum of three (3) years and are subject to both verification and Program audit.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(3)(xv): This section requires vendors to maintain inventory records used for Federal tax reporting purposes. The State agency can require vendors to maintain other records.

7 C.F.R. § 246.12(j)(6)(ii)(C): The State agency is required to document the types and quantities of items purchased, shelf prices or prices charged to other customers for compliance investigations.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123315: This section requires vendors to maintain records that substantiate the volume and prices charged to the state department through food instruments for three years.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70300 (a) Federal rules require state agencies to ensure vendors' compliance with all program rules and to conduct compliance buy investigations and/or inventory audits. Vendors and vendor applicants are required to use a cash register for all sales transactions because the transaction records are used in financial audits and are part of the standard business records WIC vendors are required to maintain for three years.

(b) Vendors must record all of their daily transactions for inventory audit reviews. California WIC will conduct inventory audits to ensure that vendor's purchase, and provide to WIC participants, food products equal to the amount of payments paid. A cash register system which can calculate, record and print a daily summary of all transactions provides the necessary documentation for WIC audit purposes.

(c) A receipt must be printed and given to the customer at each transaction so the customer has proof of the transaction. These receipts are used in compliance investigations to determine vendor overcharging activities. A cash register system which automatically prints itemized receipts provides the necessary documentation for program investigations.

(d) The Department is requiring authorized vendors to use a cash register system which provides a summary of daily transactions which includes the vendor's name and address so the Department designee can verify that the sales took place at the vendor store and not at another address. The transaction date must be in the summary of daily transactions the inventory on each day of business can be tracked. The quantity purchased must be in the summary so the Department designee can monitor how many items were sold and how it affected the inventory records. The sale price of the item purchased must be in the summary of daily transactions so the

Department designee can verify the price charged for WIC authorized supplemental foods to WIC participants with the vendor's food instrument. The amount of tax charged and the indication of tax status must be in the summary of daily transactions so the Department designee can verify the vendor's taxable and nontaxable sales reported in the Board of Equalization report forms. Health and Safety Code § 123315 requires vendors to maintain records that will verify the quantity and prices charged to the state for at least three years.

70400 Certify that Information Provided on the Vendor Application is True and Correct

PROPOSED REGULATION

70400 Certify that Information Provided on the Vendor Application is True and Correct. All vendors and vendor applicants must certify that the information provided during the application and authorization process is true and correct. If the Department determines that the vendor or applicant provided false information in connection with its application for authorization and the false information was material to the Department's decision to authorize the vendor, the vendor's agreement shall be terminated, or the vendor applicant denied authorization. Information is material if it could change the Department's decision regarding authorization.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(3)(xvi): *Termination.* The State agency will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors

with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70400 Federal regulations mandate that the Department terminate a vendor if it determines that the vendor has provided false information in connection with its application for authorization. This requirement supports the integrity of the information provided by a vendor applicant. This section requires that the misrepresentation be material to the Department's determination to authorize the vendor. This allows for the possibility that a vendor may make a typographical or other inconsequential error that would not have affected the Department's decision to authorize the vendor, and which should not result in termination.

70500 Circumvention of WIC Sanction

PROPOSED REGULATIONS

70500 Circumvention of WIC Sanction. (a) The Department shall deny authorization or reauthorization if it determines that a vendor is attempting to circumvent a WIC sanction or vendor claim.(b) The Department will deny authorization to a vendor applicant for any of the following actions indicating an attempt to circumvent a WIC sanction or vendor claim:

(1) The vendor applicant purchased or obtained any legal interest in the store from a relative by blood or marriage and the store or business has a WIC sanction currently in effect, or a vendor claim which is still outstanding at that store location.

(2) The vendor applicant purchased or obtained any legal interest in the store or business for less than fair market value and there is a WIC sanction currently in effect, or a vendor claim is still outstanding at that location.

(3) The vendor applicant owns, previously owned, or has a legal interest in a store or business that has a WIC sanction currently in effect.

(4) The vendor applicant owns, previously owned, or has a legal interest in a store or business, including the applicant location that has an outstanding vendor claim. Failure to make payments as agreed via stipulation will be considered an outstanding vendor claim.

(5) The vendor applicant purchased or obtained any legal interest in the store or business pursuant to (1) or (2) above and allows the previous owner to retain a role in the operation of the business such as a manager, director, officer or shareholder.

(6) The vendor applicant retained legal interest in the store after a change of business type and there is a WIC sanction currently in effect or a vendor claim which is still outstanding at that location. Business type includes corporation, general partnership, limited partnership, sole proprietorship and limited-liability company.

(c) The Department may, in its sole discretion, request additional information from the vendor applicant, which may include, but is not limited to, a tax identification number, or other identifying information from the applicant and/or previous owner(s) to enable the Department to conduct a thorough background check, a bill of sale, lease agreement, bank statements or other information verifying the change in ownership of the store.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(7): *Sale of store to circumvent WIC sanction*. The State agency may not authorize a vendor applicant if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The State agency may consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70500 (a) Federal regulations mandate that the Department may not authorize or reauthorize a vendor applicant if it determines that a vendor is attempting to circumvent a WIC sanction or vendor claim. The Department is implementing this requirement to assure that sanctions imposed for program violations are enforced.

(b) The following describes reasons why the Department will deny authorization to a vendor applicant in regard to circumvention of WIC sanction.

(1)-(2) Federal regulations allow the Department to consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value. The Department

will consider both factors in determining whether the vendor applicant is attempting to circumvent a WIC sanction. The existence of a sanction or an outstanding vendor claim currently in effect supports the finding that the store was sold to circumvent a WIC sanction or vendor claim. This is because the Department will be unable to enforce the sanction or collection of the claim against the new owner.

(3)-(4) The Department will not allow vendors to apply for reauthorization or authorization of new or additional stores when they have an outstanding vendor claim, or currently have a WIC sanction in effect. Allowing these vendors to apply for new or additional stores undermines the enforcement of the sanction since the vendor can open another store. This also undermines the collection of vendor claims which puts the Department at financial risk because of the lack of the ability to collect the moneys owed.

(5)-(6) The Department has included these requirements as part of its authorization criteria to ensure that the vendors who are authorized are compliant vendors with an ownership that has complete understanding of the Department's requirements and is willing to comply with them. Existence of a sanction or outstanding vendor claim demonstrates the previous owner has failed to understand or comply with the Program requirements.

(c) The Department is reserving the right to request additional information from the vendor applicant so that the Department can obtain all of the necessary information to make a determination that a vendor is attempting to circumvent a sanction or vendor claim. Due to the large volume of vendors in California, additional information may be necessary to determine possible vendor connections and sale information.

70600 Competitive Price Criteria

PROPOSED REGULATIONS

70600 Competitive Price Criteria. (a) Prices charged by the vendor or vendor applicant for a combination of all Market Basket items carried must not at any time exceed 120 percent of the Average Overall Market Basket price established by the Department for the vendor or applicant's peer group.

(b) The foods in the Market Basket may only include foods in the WIC Authorized Food List. The Market Basket shall consist of the following types of authorized foods:

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

(c) Vendors shall submit the shelf price of their highest priced and lowest priced authorized food for each of the 10 food types in the Market Basket sold in that store during a fourteen (14) day period specified by the Department. For example, if the Market Basket food type is cheese, the vendor shall submit the shelf price of their highest price cheese and the shelf price of their lowest price cheese. Vendors shall provide these shelf prices of their market basket foods every six (6) months upon request of the Department. The Department will provide a thirty (30) day notice of the request for prices and vendors must respond with their shelf prices within fourteen (14) days of the notice. Vendor applicants must submit prices for a fourteen (14) day period specified by the Department as part of the vendor application process. Only regular prices may be submitted; sale or promotional prices may not be included in the price collection. If a Market Basket item had a sale or promotional price during the fourteen (14) day period, the vendor shall determine the highest and lowest prices based on the item's price prior to the sale or promotion. Vendors that

stock one type of a Market Basket item or offer same priced alternatives of that type shall submit a single price for that item as the highest and the lowest prices.

(d) The Average Overall Market Basket price will be determined by averaging the Vendor Market Basket price of all vendors in a peer group based on the current semi-annual submissions. Vendors and vendor applicants with a Vendor Market Basket price that exceeds one hundred and twenty percent (120%) of the Average Overall Market Basket price in their peer groups shall be determined noncompetitive because they do not meet the competitive price criteria.

(1) For purposes of determining whether a vendor is non-competitive and does not meet the competitive price criteria the Vendor Market Basket price shall be defined as either:

(A) A single vendor or applicant's average price of all Market Basket items submitted by the vendor or applicant for the applicable period. The Department shall determine the average of the highest and lowest prices of the individual Market Basket items and add the averaged prices together to determine the Vendor Market Basket price; or

(B) The sum of the regular shelf prices of the Market Basket items observed by the Department during a monitoring or compliance visit.

(e) Vendors or vendor applicants that do not meet the competitive price criteria will be issued a written notice of their failure to meet current vendor authorization criteria and of their need to correct their prices to meet the competitive price criteria. The vendor will be given thirty (30) days to correct their prices to meet the competitive criteria. Vendor applicants will be given ten (10) days to correct their prices to meet the competitive price criteria.

(1) If after thirty (30) days and within a twenty four (24) month period from the date of the notice the Department makes a subsequent determination that a vendor's prices do not comply with the competitive price criteria, the vendor shall have demonstrated a pattern of failure to meet competitive price criteria and shall be disqualified from participation in the program for a period of one year for failure to meet authorization criteria.

(2) If after ten (10) days from the date of the notice a vendor applicant's prices do not meet the competitive price criteria, the vendor applicant will be denied authorization for failure to meet the vendor authorization criteria for competitive price. The applicant will be permitted to submit another application in no less than six (6) months.

(f) A vendor who fails to submit their semi-annual price information will be

issued a written notice of their failure to comply with vendor selection criteria. If after thirty (30) days from the date of the written notice, the vendor has failed to submit their semi-annual price information, the Department will terminate the vendor from participation in the program.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General*. The state agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(4): *Vendor selection criteria: competitive price*. These regulations require the State agency to establish a vendor peer group system and distinct competitive price criteria and allowable reimbursement levels for each peer group. The State agency must use the competitive price criteria to evaluate the prices a vendor applicant charges for supplemental foods as compared to the prices charged by other vendor applicants and authorized vendors, and must authorize vendors selected from among those that offer the program the most competitive prices. . . . In establishing competitive price criteria and allowable reimbursement levels, the State agency must consider participant access by geographic area.

7 C.F.R. § 246.12(g)(4)(ii)(B): The State agency is required to collect vendor shelf prices every six months to evaluate the vendor compliance with cost containment measures.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria*. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the

Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70600 Federal regulations mandate the Department include competitive price criteria as selection criteria for vendor authorization. Vendors are required to adhere to all selection criteria throughout their authorization and the Department must terminate a vendor that fails to fully meet the authorization criteria. Further, federal regulations require the Department to use vendor shelf price data to assess the competitiveness of vendor prices of authorized foods. Vendor shelf prices are an indicator of competitiveness in the market place and are used to assess the effectiveness of the vendor peer grouping and reimbursement rates.

Currently, the Department uses a competitive price criterion for vendor authorization and reauthorization that includes collecting shelf price data on powdered and/or concentrated infant formula from vendors and comparing the price to the Maximum Allowable Department Reimbursement rates (MADRs) for the corresponding peer group. The current Market Basket consists only of powdered and/or concentrated infant formula and is an inadequate assessment of the wide range food items offered to WIC participants. Infant formula is a high priced item, but it is an insufficient indicator of the overall vendor price trends for WIC authorized supplemental foods.

(a) Competitive cost criteria shall be based on prices charged by the vendor or vendor applicant for a combination of all authorized Market Basket items carried by the vendor. The vendor or vendor applicant's prices must not exceed 120 percent of the Average Overall Market Basket price established by the Department for the vendor or vendor applicant's peer group. The Department chose the 120 percent margin because it must establish price limitations to ensure that the California WIC Program obtains competitive prices for the supplemental foods provided to participants. WIC funding is limited and federal and state rules enforce the competitive cost requirements to ensure that the greatest number of eligible participants have access to supplemental foods. The Department has determined that a twenty percent margin is reasonable and achieves cost containment while still permitting a fair compensation to vendors in their peer groups.

(b) The Market Basket items were chosen because they are the foods most commonly redeemed with food instruments. A Department analysis conducted in the second

quarter of the 2012 State Fiscal Year showed that the Market Basket items chosen represented 80 percent of the authorized foods redeemed by participants.

(c) Vendor applicants must submit the highest and lowest shelf prices in a fourteen day period in order to determine whether or not they meet the requirements of the Average Overall Market Basket price which is required for all vendors. The fourteen-day period was chosen because it allows vendors time to record their highest and lowest prices without influence of fluctuations due to inflation or seasonal factors. The Department chose to provide notice to the vendors thirty days before the price collection because it gives the vendors adequate notice to prepare for the shelf price data collection.

The shelf prices will be collected from vendors semi-annually because federal regulations state that they must be collected at least every six months to ensure vendor compliance (7 C.F.R. § 246.12(g)(4)(ii)(B)). The evaluation will be based on high-low prices so vendors that carry a single high priced food item will not be disqualified for failing to meet the competitive price criteria as long as they also stock a variety of low cost items. Only regular prices are collected because the inclusion of the promotional prices may unintentionally lower the Average Overall Market Basket price.

(d) The Department will determine the Average Overall Market Basket price by averaging the total semi-annual Vendor Market Basket price submissions of all vendors in a peer group. The Department has determined that this method will reasonably identify prices that reflect vendor prices in that peer group.

(1)(A)-(B) The Vendor Market Basket is used to measure the vendor's price competitiveness by comparing the Vendor Market Basket price to the Average Overall Market Basket price in each vendor's peer group and to ensure compliance with Health and Safety Code § 123310. There are two definitions of Vendor Market Basket price because the Department may make a determination of that price using either the information provided semi-annually by the vendor or by prices observed by the Department during a monitoring or compliance visit. The Department includes shelf prices observed on a monitoring or compliance visit because it is necessary to have an enforcement mechanism which allows for first-hand verification of cost competitiveness.

(e) Vendors that do not meet the competitive price criteria will be disqualified for failing to meet the authorization criteria as stated in federal regulations (7 C.F.R. § 246.12(g)(3)). Before disqualification, vendors who do not meet the authorization criteria will receive a thirty-day notice of their opportunity to correct the pricing.

(1) The Department has determined that thirty days is a reasonable amount of time for the vendors to comply with program requirements while minimizing potential fiscal impact to the Program. If a vendor fails to meet cost competitive criteria twice within a twenty-four month period, this demonstrates a pattern of non-competitive prices. A twenty-four month period was chosen because the Department determined that it is a fair and reasonable time frame in which to evaluate a vendor's pricing patterns.

(2) The Department has determined that ten days is a reasonable amount of time for the vendor applicants to comply with program requirements without impeding the

application process. The Department has ninety days to review a vendor application for compliance with Program requirements before issuing an approval or denial notice. Allowing vendor applicants more than ten days to comply with this section could extend the application review time past the ninety days. Vendor applicants that fail to meet the cost competitive price requirements a second time will be denied authorization. Vendor applicants who are denied authorization for failure to meet cost competitive price requirements will have a six month waiting period to reapply. The Department determines that this is a reasonable amount of time to allow the Department time to process the other pending vendor applications.

(f) A vendor who fails to submit their semi-annual price information will be in violation of program regulations and will be terminated from participation in the Program. The Department has determined that thirty days is a reasonable amount of time for vendors comply with the program requirements while minimizing potential fiscal impact to the Program.

70700 Compliance with Title VI of the Civil Rights Act

PROPOSED REGULATION

70700 Compliance with Title VI of the Civil Rights Act. The Department shall not authorize a vendor applicant or continue authorization of a vendor that is subject to a ruling by a federal or state enforcement agency that the vendor applicant or vendor, on the grounds of race, color, national origin, age, sex or handicap, excluded from participation in, denied benefits to, or otherwise subjected to discrimination any Program participant in the process of obtaining Program benefits from that vendor.

AUTHORITY

Federal

7 C.F.R. § 246.8: Nondiscrimination. (a) *Civil rights requirements.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 C.F.R. parts 15, 15a and 15b), and FNS instructions 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. Compliance with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

- (1) Notification to the public of the nondiscrimination policy and complaint rights of participants and potentially eligible persons;
- (2) Review and monitoring activity to ensure Program compliance with the nondiscrimination laws and regulations;

7 C.F.R. § 246.12(h)(3)(xxiii): *Nondiscrimination regulations.* The vendor must comply with the nondiscrimination provisions for federally-assisted programs of the Department of Agriculture (parts 15, 15a and 15b of Title 7).

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70700 WIC is a federally funded supplemental nutrition program open to eligible low to moderate income families regardless of their race, nationality, or other characteristics. Federal regulations state that participants in the WIC Program cannot be denied benefits based on race, color, national origin, age, sex, or handicap. This authorization criterion satisfies the Federal requirements that vendors treat participants in accordance with the Federal WIC Program's civil rights requirements.

70800 Incentive Item Requirements

PROPOSED REGULATION

70800 Incentive Item Requirements. (a) The Department shall not authorize or continue authorization of an above-50-percent vendor, or make payments to an above-50-percent vendor, which provides or indicates an intention to provide prohibited incentive items to customers.

(1) Above-50-percent vendors are those vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, or vendor applicants likely to meet this criterion.

(2) Evidence of intent to provide prohibited incentive items to customers includes the following:

(A) Advertisement of the availability of the prohibited incentive items;

(B) Promotion through signage and labeling of prohibited incentive items on store shelves and/or on the store premises;

(C) Verbal and written accounts of prohibited incentives items being offered; or

(D) Offering prohibited incentive items during compliance monitoring, as witnessed by Department staff.

(3) Pursuant to 7 C.F.R. § 246.12(g)(3)(iv)(B), prohibited incentive items for these vendors include:

(A) Services which result in a conflict of interest or the appearance of such conflict for the above-50-percent vendor, such as assistance with applying for WIC benefits;

(B) Lottery tickets provided to customers at no charge or below face value;

(C) Cash gifts in any amount for any reason;

(D) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

(E) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit; have a value of less than \$2.00;

(F) Food, merchandise or services of greater than nominal value provided to the customer;

(G) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

(H) Any kind of incentive item which incurs a liability for the WIC Program; or

(I) Any kind of incentive item which violates any Federal, State, or local law or regulations.

(4) Allowable incentive items for above-50-percent vendors include:

(A) One or any combination of the following; as long as the combined total value is less than two dollars:

1. Prepackaged WIC authorized fresh fruit and vegetables, purchased from a wholesaler.
2. Fourteen (14)-ounce to sixteen (16)-ounce cans of any brand or variety of mature beans, mature peas, or lentils, purchased from a wholesaler.
3. Any variety of prepackaged uncooked, plain, dried, mature beans, peas, or lentils purchased from a wholesaler.
4. Commercially made, prepackaged, 100 percent corn tortillas, purchased from a wholesaler.
5. Commercially made, prepackaged, 100 percent whole wheat bread, purchased from a wholesaler. Package must state "100% Whole Wheat" on the front label.
6. Five (5)-or six (6)-ounce cans of chunk light, water-packed tuna purchased from a wholesaler.
7. WIC authorized supplemental foods offered as part of a taste testing sample to a participant family.

(B) Minor customer courtesies of the retail food trade, such as bagging supplemental foods for the participant and assisting the participant with loading the supplemental foods into his/her vehicle. Minor customer courtesies do not include delivery of the supplemental foods to another location.

(b) The Department shall not authorize or continue authorization of a vendor that is not an above-50-percent vendor which provides incentive items solely to WIC participant customers. Incentive items provided by non above-50-percent vendors must be offered to all customers.

(1) Incentive items for vendors who are not above-50-percent vendors are defined as:

(A) Free or reduced price food or other items;

(B) Cash or cash gift cards;

- (C) Lottery tickets;
- (D) Buy one, get one free;
- (E) Buy one, get one at a reduced price;
- (F) Free amounts added to an item by manufacturer coupons, store loyalty cards, and sales specials for supplemental foods; or
- (G) Free or reduced price services and minor customer courtesies of the retail food trade, such as bagging supplemental foods for the participant and assisting the participant with loading the supplemental foods into his/her vehicle.

(c) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with incentive item requirements. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with incentive item requirements, the vendor shall have demonstrated a pattern of failure to comply with incentive item requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

AUTHORITY

Federal

7 C.F.R. §246.12(g)(3)(iv): *Provision of incentive items*. This section specifies that a State agency may not authorize or continue authorization of an above-50-percent vendor, or make payments to an above-50-percent vendor if the vendor provides, intends to provide, or advertises prohibited incentive items to customers.

The following incentive items may be provided by above-50-percent vendors to customers, at the discretion of the State agency:

- (1) Food, merchandise, or services obtained at no cost to the vendor, subject to documentation;
- (2) Food, merchandise, or services of nominal value, i.e., having a per item cost of less than \$2, subject to documentation;
- (3) Food sales and specials which involve no cost or less than \$2 in cost to the vendor for the food items involved, subject to documentation, and do not result in a charge to a WIC food instrument for foods in excess of the foods listed on the food instrument;
- (4) Minimal customary courtesies of the retail food trade, such as helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting the customer with loading the food into a vehicle.

The following incentive items are prohibited for above-50-percent vendors to provide to customers:

- (1) Services which result in a conflict of interest or the appearance of such conflict for the above-50-percent vendor, such as assistance with applying for WIC benefits;
- (2) Lottery tickets provided to customers at no charge or below face value;
- (3) Cash gifts in any amount for any reason;
- (4) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;
- (5) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not exceed the less-than-\$2 nominal value limit;
- (6) Food, merchandise or services of greater than nominal value provided to the customer;
- (7) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;
- (8) Any kind of incentive item which incurs a liability for the WIC Program;
- (9) Any kind of incentive item which violates any Federal, State, or local law or regulations.

7 C.F.R. §246.12(h)(3)(iii): *Treatment of participants, parents/caretakers, and proxies.* This section requires vendors to offer WIC participants the same courtesies that are offered to non-WIC customers.

7 C.F.R. §246.12(h)(8): *Allowable and prohibited incentive items for above-50-percent vendors.* This section requires that the vendor agreement for an above-50-percent vendor must include the State agency's policies and procedures for allowing and prohibiting incentive items to be provided by an above-50-percent vendor to customers, consistent with 7 C.F.R. §246.12(g)(3)(iv), described above. The State agency must provide written approval or disapproval of a request from an above-percent-vendor to offer allowable incentive items to customers; the State Agency must maintain documentation for the approval process, and the State agency must define prohibited incentive items.

State

Health & Safety Code §123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

Health & Safety Code §123280(c): This section was also adopted through AB 2322 (2012). The statute states in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special

Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code §123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

STATEMENT OF REASONS

70800 (a) The Code of Federal Regulations limit the number of incentive items that may be provided by above-50-percent vendors (7 C.F.R. §246.12(g)(3)(iv)). Above-50-percent vendors are stores that derive more than 50 percent of their annual food sales revenue from WIC food instruments (FI). The regulation adopts the mandatory federal requirements and additional state requirement to ensure that the Department will not incur the cost of incentive items through high food prices and high FI redemptions from above-50-percent vendors.

- (1) This paragraph provides the Federal definition for an above-50-percent vendor as set out in 7 C.F.R. §246.2.
- (2) Actions (A)-(D) listed were chosen because they offer demonstrable proof of a vendor's intent to provide prohibited incentive items to customers.
- (3) Items (A)-(I) listed have been chosen because they match the list of prohibited incentive items for above-50-percent vendors in the Code of Federal Regulations. (7 C.F.R. §246.12(g)(3)(iv)(B)).
- (4) Items (A)1.-7. listed are all WIC authorized supplemental food items which meet the criteria for allowable incentive items in the Code of Federal Regulations (7 CFR §246.12(g)(3)(iv)(A)). The Department has specified that only WIC authorized supplemental foods may be provided as incentive items by above-50-percent vendors so that any incentives received will ensure that the Department does not pay the cost of incentive items provided by above-50 percent vendors in the form of

high food prices³, yet enhance a participant's benefits while remaining within the mission of the program.

(B) The Department has chosen to allow above-50-percent vendors to offer the normal minor customer courtesies of the retail food trade because these courtesies are unlikely to add to program costs in the form of high food prices. WIC participants can benefit from these normal retail food trade courtesies enjoyed by all customers in other stores. These normal minor customer courtesies of the retail food trade are allowed by 7 C.F.R. §246.12(g)(3)(iv).

(b) In accordance with 7 C.F.R. §246.12(h)(3)(iii), the Department determined that it is necessary to also provide requirements regarding incentive items provided by non above-50-percent vendors. This provision specifies that a vendor may not treat WIC participants differently by offering incentive items that are not offered to non-WIC customers. 7 C.F.R. §246.12(h)(3)(iii), requires vendors to offer WIC Program participants the same courtesies that are offered to non-WIC customers. Therefore, a WIC authorized vendor may not treat WIC participants differently by offering incentive items that are not offered to non-WIC customers. The regulation ensures that allowed incentive items offered by non above-50-percent vendors are offered to all customers in accordance with federal regulations.

(1) This subsection is a list that defines incentive items for non above-50-percent vendors. These items were selected because they are commonly used incentive items in food stores.

(A) Free or reduced priced food or other items offered by non above-50-percent vendors must be provided to all customers in compliance with the federal requirements not to treat WIC participants differently and so that they do not increase the FI reimbursement amount written on an FI. If a WIC supplemental authorized food is offered free or at a reduced price to all customers, the participant can receive additional food items at no additional cost to the Department since a vendor will not be likely to raise the prices solely on WIC authorized foods to offset the costs of additional food items provided to all customers.

(B) Cash or cash gift cards offered by non above-50-percent vendors must be provided to all customers in compliance with the federal requirements not to treat WIC participants differently and so that they do not affect the FI reimbursement amount written on a check or the amount of WIC authorized supplemental foods a participant is able to buy with the check. A vendor will not be likely to raise the

³ The Federal Register (Vol. 74 January 6, 2009 p. 544)

prices solely on WIC authorized foods to offset the costs of cash or gift cards provided to all customers.

(C) Lottery tickets offered by non above-50-percent vendors must be provided to all customers in compliance with the federal requirements not to treat WIC participants differently and so that they do not affect the FI reimbursement amount written on a check or the amount of WIC authorized supplemental foods a participant is able to buy with the check. A vendor will not be likely to raise the prices solely on WIC authorized foods to offset the costs of lottery tickets provided to all customers.

(D) Buy one, get one free promotions offered by non above-50-percent vendors must be provided to all customers in compliance with the federal requirements not to treat WIC participants differently and so that they do not increase the reimbursement amount written on an FI. If a WIC authorized supplemental food is promoted as buy one, get one free item, the participant can receive additional food items at no additional cost to the WIC Program. A vendor will not be likely to raise the prices solely on WIC authorized foods to offset the costs of buy one, get one free promotions provided to all customers.

(E) Buy one, get one at a reduced price promotions offered by non above-50-percent vendors must be provided to all customers in compliance with the federal requirements not to treat WIC participants differently and so that they do not increase the reimbursement amount written on an FI. If a WIC authorized supplemental food is promoted as buy one, get at a reduced price, the participant can receive additional food items at no additional cost to the WIC Program. A vendor will not be likely to raise the prices solely on WIC authorized foods to offset the cost of buy one, get one at a reduced price promotion provided to all customers.

(F) Free amounts reducing the cost of an item by a manufacturer coupon, store loyalty cards, and sales specials for supplemental foods offered by non above-50-percent vendors must be made available to all customers in compliance with the federal requirements not to treat WIC participants differently and so that they do not increase the reimbursement amount written on an FI. If a WIC authorized supplemental food is promoted free by the manufacturer, a store loyalty card, or through sales specials, the participant can receive additional food items at no additional cost to the WIC Program. A vendor will not be likely to raise the prices solely on WIC authorized foods to offset the costs of free amounts reducing the cost of an item provided to all customers.

(G) Federal regulations allow state agencies to permit above-50-percent vendors to offer minor courtesies, such as bagging foods and assisting customers with loading foods into his/her vehicle in 7 C.F.R. §246.12(g)(3)(iv)(A)(4) This section allows non-above-50-percent vendors to offer the same courtesies to their customers as above-50-percent vendors. Any other free or reduced price services offered must be made available to all customers in order to ensure the

WIC Program will not incur the cost of these services through higher prices on supplemental foods.

(c) It is essential that vendors authorized in the program comply with rules related to incentive item requirements in order to ensure participants are treated equally and to prevent price increases on WIC authorized foods to offset the costs of incentive items. The Department has determined that thirty days is a reasonable amount of time for vendors to comply with the program requirements while minimizing potential fiscal impact to the Program. If a vendor fails to meet incentive item requirements twice within a twenty four month period, this demonstrates a pattern of noncompliance with incentive item. A twenty-four month period was chosen because the Department determined that it is a fair and reasonable time frame in which to evaluate a vendor's pattern of meeting incentive item requirements.

70900 Infant Formula

PROPOSED REGULATION

70900 Infant Formula. Authorized vendors and vendor applicants must purchase all authorized infant formula only from the following suppliers:

- (a) A manufacturer of infant formula registered with the Food and Drug Administration;
- (b) 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; and
- (c) 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 list of authorized suppliers of infant formula.
- (d) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with infant formula purchasing requirements. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with infant formula purchasing requirements, the vendor shall have demonstrated a pattern of failure to comply with infant formula purchasing requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

AUTHORITY

Federal

7 C.F.R. § 246.10(g): *Infant formula manufacturer registration.* Infant formula manufacturers supplying formula to the WIC Program must be registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Such manufacturers wishing to bid for a State contract to supply infant formula to the program must certify with the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(g)(11): *List of infant formula wholesalers, distributors, and retailers licensed under State law or regulations, and infant formula manufacturers registered with the Food and Drug Administration (FDA).* The State agency must provide a list in writing or by other effective means to all authorized WIC retail vendors of the names

and addresses of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, on at least an annual basis.

- (i) *Notification to vendors.* The State agency is required to notify vendors that they must purchase infant formula only from a source included on the State agency's list, or from a source on another State agency's list if the vendor's State agency permits this, and must only provide such infant formula to participants in exchange for food instruments specifying infant formula. For the purposes of paragraph (g)(11) of this section, "infant formula" means *Infant formula, Contract brand infant formula* and *Non-contract brand infant formula* as defined in § 246.2, and infant formula covered by a waiver granted under § 246.16a(e).
- (ii) *Type of license.* If more than one type of license applies, the State agency may choose which one to use.
- (iii) *Exclusions from list.* The State agency may not exclude a State-licensed entity from the list except when:
 - (A) Specifically required or authorized by State law or regulations; or
 - (B) The entity does not carry infant formula.

7 C.F.R. § 246.12(h)(3)(ii)(B): The vendor may provide only the authorized infant formula which the vendor has obtained from sources included on the list described in paragraph (g)(11) of this section to participants in exchange for food instruments specifying infant formula.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the Federal Special Supplemental Nutrition Program for Women, Infants, and Children. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor

Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

70900 Federal regulations mandate the Department to include a requirement for vendors that sell infant formula to purchase the infant formula only from authorized infant formula suppliers. The State agency must provide a list in writing or by other effective means to all authorized WIC vendors of such suppliers (7 C.F.R. § 246.12(g)(11)).

(a) Pursuant to federal regulations, vendors may obtain infant formula from infant formula manufacturers registered with the Food and Drug Administration.

(b) If the vendor purchases infant formula from a wholesaler, distributor, or retailer within California, the vendor must verify that the supplier has a current, valid seller's permit number. This requirement helps ensure that vendors are purchasing infant formula from safe reliable sources. A California seller's permit number can be verified through the Board of Equalization (BOE). The Department provides the following methods for the vendor to verify the validity of the seller's permit number from the BOE:

- Internet Verification Service
- Automated Seller's Permit Verification Service
- Information Center
- Request by Mail

(c) Federal regulations permit vendors to purchase infant formula from suppliers from a list of suppliers approved by a state agency. California is allowing vendors to purchase infant formula from suppliers licensed by other state WIC programs since these suppliers have been determined to be safe reliable sources of infant formula by other state WIC programs.

These requirements are intended to prevent vendors from purchasing infant formula from unreliable sources. Vendors who purchase infant formula from a reliable source can avoid the re-sale of infant formula purchased from participants or stolen infant formula from being purchased with WIC food instruments. Additionally, vendors can avoid health hazards related to unreliable sourced infant formula. Health hazards include direct tampering with formula before it is sold to unsuspecting retailers, falsification of labeling to change expiration dates, counterfeiting, or improper storage. Therefore, it is essential that the Department require vendors to maintain invoices or

receipts showing *the source of their infant formula purchases to enable the Department to monitor vendor compliance.*⁴

(d) If the vendor does not obtain infant formula from the required sources, the vendor will be disqualified for failing to meet the authorization criteria as stated in federal regulations (7 C.F.R. § 246.12(g)(3)). The Department has determined that thirty days is a reasonable amount of time for vendors comply with the program requirements. If a vendor fails to meet infant formula purchasing requirements twice within a twenty four month period, this demonstrates a pattern of noncompliance with infant formula purchasing requirements. A twenty-four month period was chosen because the Department determined that it is a fair and reasonable time frame in which to evaluate a vendor's pattern of meeting infant formula purchasing requirements.

⁴ United States Department of Agriculture (USDA). 2005. All States Memorandum 05-06. Final Policy Memorandum on the Implementation of Certain WIC Vendor Provisions of P.L. 108-265.

71000 Inventory Records

PROPOSED REGULATION

71000 Inventory Records. (a) Each vendor, defined in Section 40635, must maintain adequate inventory purchase records, including adequate transfer records if inventory is moved between stores.

(b) If a vendor owns more than one vendor store, including multiple stores under a Master Vendor Agreement, separate inventory purchase records including transfer records, must be maintained for each store location. Inventory purchase records, including transfer records for each individual store under one ownership will be reviewed separately and will not be combined for purposes of audit to determine if a vendor is claiming reimbursement for the sale of a volume of supplemental food which exceeds the vendor inventory purchase documentation for a specific period of time as identified in the audit.

(c) All vendors must maintain inventory purchase records and transfer records for a period of three (3) years and provide agents of the State, the Department, and the Comptroller General of the United States access to these records.

(d) Inventory purchase records include all of the following:

(1) Records showing all WIC authorized supplemental food purchases, wholesale and retail, in the form of invoices. Each invoice or receipt shall:

(A) Be prepared entirely by the wholesaler, distributor, or retailer from whom the WIC vendor made the purchase;

(B) Indicate the date of purchase, the name of the seller, and the name of the WIC vendor who made the purchase;

(C) Be specific when identifying WIC food items- for example; "milk" is not an adequate identification. It must be specified as to the type of milk, such as "fluid", "dry", or "evaporated" and whether it is "whole", "lowfat", or "nonfat", etc. Similarly, "fruit juice" is not an adequate identifier. The type of juice, e.g., "orange" or "apple" must be indicated, and the brand must also be identified;

(D) Identify the quantity and container size of each WIC food item purchased from the wholesaler, (number of containers, cans, boxes, etc., and number of ounces, pounds, etc., per container); and

(E) Indicate the unit price for each WIC food item purchased.

(2) Sales and use tax return, if required by federal and state law

- (3) Books of account
- (4) Other records that can be used to verify WIC authorized supplemental food item purchases or proper peer group assignment including, but not limited to, check registers and bank statements.
- (5) Transfer records. Transfer records must:
 - (A) Be created at the time the food products are shipped from the location of original delivery to the following vendor store location;
 - (B) Indicate the date of the transfer;
 - (C) Indicate the address and store name where the food item is being shipped from;
 - (D) Indicate the address and store name where the food item is being shipped to;
 - (E) Be specific when identifying WIC food items – for example; “milk” is not an adequate identification. It must be specified as to the type of milk, such as “fluid”, “dry”, or “evaporated” and whether it is “whole”, “lowfat”, or “nonfat”, etc. Similarly, “fruit juice” is not an adequate identifier. The type of juice, e.g., “orange” or “apple” must be indicated, and the brand must also be identified; and
 - (F) Identify the quantity and container size of each WIC food item purchased from the wholesaler (number of containers, cans, boxes, etc., and number of ounces, pounds, etc., per container).
- (e) If a vendor fails to maintain the required inventory and transfer records, including separate inventory and transfer records for each vendor location owned, the Department shall terminate the vendor’s agreement.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria*. The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(3)(xv): *Recordkeeping*. This section requires the vendor to maintain inventory records used for Federal tax reporting purpose and any other records the State agency requires. The vendor must make these records available upon request.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria*. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71000 (a) Federal rules require state agencies to ensure vendors' compliance with all program rules and to conduct compliance buy investigations and/or inventory audits. Federal regulations mandate that vendors maintain inventory records used for Federal tax reporting purposes and any other records the State agency requires. California WIC requires that vendors maintain adequate inventory purchase records and adequate transfer documentation. Because these records are essential to the State's ability to comply with federal regulations relating to vendor inventory audits, the maintenance of separate inventory records for each store location is a requirement of vendor selection.

(b) This subsection requires that when one entity owns multiple store locations, each individual store must maintain separate inventory documentation. The Department does not combine inventory records for stores under one ownership. Due to the volume of stores and chain stores in California, it is impossible to audit all of the stores under one ownership at the same time. Therefore, California, in accordance with 7 C.F.R. § 246.2, legally defines each combination of store location and ownership as a separate vendor and requires ownership entities with more than one location to maintain individual inventory records, including transfer records, for each individual store. This ensures accuracy during an audit to protect both the vendor ownership and the Department.

(c) This subsection requires vendors to maintain inventory records for a period of three years to ensure that adequate documentation is available in the case of an audit.

(d) In conjunction with 7 C.F.R. § 246.12(h)(3)(xv), the Department requires vendors to maintain adequate inventory records showing all WIC authorized supplemental food purchases. The Department uses this section to clarify all of the documentation which is required for adequate inventory purchase records.

(1) This subsection requires vendors to receive and maintain invoices or receipts for all of their purchases. In order to ensure that the Department can clearly extract the necessary information from an invoice or receipt to ascertain exactly what food items were purchased, where the vendor purchased the food items and when the food items were purchased, California WIC requires each invoice or receipt to have specific identifying information.

(A) This subsection requires that invoices be prepared entirely by the wholesaler or retailer from whom the vendor made the purchases. This requirement ensures the authenticity of the invoice.

(B) This subsection requires that invoices indicate the date of purchase, the seller and the vendor who made the purchase. This requirement assists Department designees in making sure that the date the food was purchased is within the audit period, and that the food was actually sold to the vendor being audited. The seller's name is required to verify that the food was purchased from a valid wholesaler or retailer and provides a point of contact should the auditor have further questions regarding the invoice.

(C) This subsection requires invoices to be specific when identifying WIC authorized supplemental food items. Food items are authorized based on meeting specific nutritional criteria. Vendors may not substitute other sizes or food items. Purchases of unauthorized foods will not count toward satisfying reimbursement amounts of WIC authorized supplemental foods. Therefore, invoices must be specific as to the exact type of food that was purchased. This requirement will ensure that the vendor is adequately credited for all WIC authorized supplemental food purchases.

(D) This subsection requires invoices to be specific when identifying WIC authorized supplemental food items. Food items are authorized based on meeting specific nutritional criteria. The size and quantity of each food item allowed to be purchased by a participant is specified on each food instrument in order to meet each participant's nutritional needs. Vendors may not substitute other sizes or quantities when accepting a food instrument. Therefore, invoices must be specific as to the quantity and size of each WIC authorized supplemental food item purchased. This requirement will ensure that the vendor is adequately credited for all WIC authorized supplemental food purchases.

(E) This subsection requires that invoices include the unit price for each WIC authorized supplemental food item purchased. This assists the Department in verifying that the foods were actually purchased and not simply transferred or traded.

(2) This subsection requires sales and use tax returns documents be maintained for a period of three years. The Department uses these forms to assist in determining

appropriate peer group designation and whether a vendor is an above-50-percent vendor as mandated by federal regulations.

(3) This subsection requires vendors to maintain books of account. Books of account assist the Department in verifying appropriate peer group designations and whether a vendor is an above-50-percent vendor, as defined in federal regulation.

(4) This subsection requires vendors to maintain all documentation which may assist the Department in verifying authorized WIC food purchases. This documentation will also ensure the Department has all of the information necessary to adequately assess vendors for peer group assignment.

(5) In accordance with federal regulations, the Department requires vendors to maintain adequate inventory records showing all WIC authorized supplemental food purchases. Due to the fact that many ownership entities own more than one store location, adequate transfer records are necessary to show that each individual store location maintained the amount of WIC authorized supplemental foods to satisfy the amount of WIC redemption at that location. The Department requires transfer records include specific identifying information.

(A) This subsection requires that transfer records be created at the time the food products are shipped from one location to another. This requirement prevents vendors from creating transfer records long after a transfer has been completed or an audit finding is identified.

(B) This subsection requires that transfer records include the date when the WIC authorized supplemental food items were transferred from one location to another. This requirement assists Department designees in verifying that the date the food was purchased falls within the audit period.

(C) This subsection requires that transfer records include the address and store name from where the food item is being shipped. This requirement assists Department designees in authenticating the transfer records and verifying that the amount transferred from the location corresponds to the total amount of authorized foods purchased. This requirement will ensure that the vendor is adequately credited for all WIC authorized supplemental food purchases.

(D) This subsection requires that transfer records include the address and store name where the food item is being shipped. This requirement assists the Department designees in authenticating the transfer records and verifying that the amount transferred to the vendor corresponds to the total amount of authorized foods purchased. It also allows the auditor to verify that the food items listed on the transfer record can be credited to the vendor where they were shipped. This requirement will ensure that the vendor is adequately credited for all WIC authorized supplemental food purchases.

(E) This subsection requires invoices to be specific when identifying WIC authorized supplemental food items. Food items are authorized based in part on nutritive values. Vendors may not substitute other sizes or food items. Purchases of unauthorized foods do not count toward satisfying reimbursement amounts of

WIC authorized supplemental foods in inventory records. Therefore, transfer records must be specific as to the exact type of food that was purchased. This requirement will ensure that the vendor is accurately credited for all WIC authorized supplemental food purchases.

(F) This subsection requires invoices to be specific when identifying WIC authorized supplemental food item container size and quantity. Food items are authorized based in part on nutritive values. The size and quantity of each food item allowed to be purchased by a participant is specified on each food instrument in order to meet each participant's nutritional needs. Vendors may not substitute other sizes or quantities when accepting a food instrument. Therefore, transfer records must be specific as to the quantity and size of each WIC authorized supplemental food item purchased. This requirement will ensure that the vendor is accurately credited for all WIC authorized supplemental food purchases.

(e) This section is necessary because federal regulations require that vendors maintain compliance with vendor selection criteria throughout the authorization period. The Department will terminate the agreement of a vendor who fails to maintain adequate inventory records.

71100 Minimum Stocking Requirements

PROPOSED REGULATION

71100 Minimum Stocking Requirements. (a) For participation in the Program, all vendor and vendor applicant locations must at all times maintain on the premises of the vendor applicant or authorized location the amounts listed in subsection (b)(1)-(15) below of WIC authorized supplemental foods, adopted as the WIC Authorized Food List and Shopping Guide by WIC Regulatory Bulletin.

(b) Inventory must be stocked on store shelves in the public area available for purchase unless quantities of stock allowed in storage on the premises of that store location are specified in subsections (b)(10), (12), and (13). For purposes of this regulation, inventory shall not include inventory on order that has not been delivered. Each vendor and applicant vendor must stock, at a minimum, the following:

(1) Bottled Juice and Concentrate.

(A) Eight (8) sixty-four (64) ounce bottles of authorized shelf stable juice.

(B) Ten (10) eleven and a half (11.5) or twelve (12) ounce containers of authorized frozen juice concentrate.

(2) Breakfast Cereal. At least one hundred forty-four (144) total ounces, of any four (4) different types or brands of authorized cereal. Of the total ounces one (1) type must be of twelve (12) ounce size box and one (1) type must be of eighteen (18) ounce box. Two (2) of the types or brands must be listed as whole grain cereals on the WIC Authorized Food List and Shopping Guide.

(3) Canned Fish. Either

(A) Twelve (12) five (5) ounce cans or ten (10) six (6) ounce cans of authorized types of tuna; or

(B) Four (4) fifteen (15) ounce cans of authorized types of sardines; or

(C) Twelve (12) five (5) ounce cans, ten (10) six (6) ounce cans, or four (4) fourteen and three quarters (14.75) ounce cans of authorized types of salmon.

(4) Cheese. At least four (4) one (1) pound packages of any combination of types of cheese.

(5) Dry Beans, Peas, or Lentils. At least six (6) pounds of any combination of authorized dry beans, peas, or lentils, in either one (1)

pound packages or six (6) pounds in bulk.

(6) Eggs. At least four (4) one (1) dozen containers of authorized types of eggs.

(7) Fresh Bananas. Eight (8) fresh yellow bananas.

(8) Fruits and Vegetables.

(A) Thirty-two dollars (\$32) worth of a combination of five (5) authorized varieties of fresh fruits and five (5) varieties of authorized fresh vegetables. Dollar amount is based on the vendor shelf price.

(B) Thirty-two dollars (\$32) worth of a combination of three (3) varieties of authorized frozen fruits and (3) varieties of authorized frozen vegetables. Dollar amount is based on the vendor shelf price.

(C) Thirty-two dollars (\$32) worth of a combination of three (3) authorized varieties of canned fruits and three (3) varieties of authorized canned vegetables. Dollar amount is based on the vendor shelf price.

(9) Infant Cereal. Two (2) sixteen (16) ounce containers and two (2) eight (8) ounce containers of any authorized brand and type of infant cereal.

(10) Infant Formula. Authorized milk-based infant formula in the following quantity:

(A) Twenty (20) authorized size containers of authorized milk-based infant formula in powdered form. Of the twenty (20) containers, no less than ten (10) must be on the shelf, and no less than ten (10) shall be in storage on the premises.

(11) Infant Fruits and Vegetables. Either

(A) Fifty-six (56) four (4) ounce containers; or

(B) Sixty-four (64) three and a half (3.5) ounce containers.

(12) Infant Meats. Sixty-two (62) two and a half (2.5) ounce containers of authorized infants meats. Of the sixty-two (62) containers at least thirty-one (31) must be on the shelf and no less than thirty-one (31) shall be in storage on the premises.

(13) Milk.

(A) Six (6) one (1) gallon containers of authorized fluid whole milk;

(B) Fourteen (14) one gallon containers of 2%, 1%, or nonfat authorized fluid milk. Of the fourteen (14) one (1) gallon containers, ten (10) must be on the shelf and no less than four (4)

shall be in storage on the premises;

(C) Two (2) half-gallon containers of any combination of 2%, 1%, or nonfat authorized fluid milk;

(14) Peanut Butter. At least four (4) sixteen (16) to eighteen (18) ounce containers of authorized types of peanut butter.

(15) Whole Grain.

(A) At least two (2) one pound packages of 100% whole wheat bread loaves; and

(B) At least two (2) one pound packages of white or yellow soft corn tortillas; and

(C) At least two (2) one pound packages or two (2) pounds of bulk oatmeal or oats; or two (2) one (1) pound packages or two (2) pounds of bulk brown rice.

(c) A vendor who fails to meet the stocking requirements in this section at any time shall be issued a written notice of the vendor's failure to meet authorization criteria. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor subsequently fails to meet the stocking requirements of this section the vendor shall have demonstrated a pattern of failure to meet minimum stocking requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(3)(i): This section of the federal regulations mandate state agencies to establish minimum stocking food requirements of WIC authorized that vendors must stock at all times to be authorized.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the

Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71100 (a) Federal regulations require the Department to establish minimum stocking requirements of supplemental foods for all vendors to carry in their stores at all times. Minimum stocking requirements specify the types and quantities of WIC authorized supplemental foods that must be on the vendor's shelves or in storage on the premises at all times during business hours and available for purchase by program participants. Vendors and vendor applicants that do not meet these requirements at all times shall be disqualified from the Program.

(b) Vendors must keep the required stock on the shelves at all times except items in subsections (b)(10), (12), and (13) that have specific quantities which may be stored elsewhere on the premises.

(1) The Department has included bottled juice in its minimum stocking requirements because bottled juice is part of the federally required food for all children one to four years old and all women packages. The amount of juice is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and the Standard Pregnant are the most commonly prescribed packages for this food item. The shelf-stable and frozen concentrate juices are required to provide California WIC participants with a variety of choices while shopping. The 11.5 and 12-ounce frozen concentrate juices are allowable options for participants and vendors can choose to stock the type of frozen concentrate juice their customers typically purchase.

(2) The Department has included breakfast cereal in its minimum stocking requirements because breakfast cereal is part of the federally required food for all children one to four years old and all women packages. The total amount of 144 ounces is for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child

≥ 24 Months and the Standard Pregnant are the most commonly prescribed packages for this food item. Four different brands of cereal are required to provide California WIC participants with a variety of choices while shopping. The requirement for one type of cereal to be of a 12-ounce size box and one type to be of a 18-ounce size box is chosen to support the collection of shelf prices on Market Basket food items for the competitive price criteria. Two types of the total ounces must be two of the WAFL SG-indicated 51% or more whole grain breakfast cereals to ensure California WIC participants have access to whole grains.

(3) The Department has included canned fish in its minimum stocking requirements because canned fish is part of the federally required food package for Fully Breastfeeding women. Canned fish is also part of the California WIC food packages for fully breastfeeding, pregnant with multiples, and partial breastfeeding multiples packages. . The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Fully Breastfeeding woman is the most commonly prescribed packages for this food item. Vendors can choose to stock the type of fish their customers typically purchase.

(A) The amount of tuna is chosen because it is enough to fulfill the monthly prescription for two Fully Breastfeeding packages at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. Tuna is an allowable option for canned fish.

(B) The amount of sardines is chosen because it is enough to fulfill the monthly prescription for two Fully Breastfeeding packages at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. Sardines are an allowable option for canned fish.

(C) The amount of salmon is chosen because it is enough to fulfill the monthly prescription for two Fully Breastfeeding packages at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. Salmon is an allowable option for canned fish.

(4) The Department has included cheese in its minimum stocking requirements because cheese is part of the federally required food package for Fully Breastfeeding women. Cheese is also part of the California WIC food packages for children one to four years old and all women. This amount of cheese is enough to fulfill the monthly prescription for two Standard Child ≥ 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child ≥ 24 Months package is chosen because it is the most commonly prescribed food package for children. The Standard Pregnant women package is chosen because it is the most commonly prescribed food package for women.

(5) The Department has included dry beans, peas, or lentils in its minimum stocking requirements because dry beans, peas, or lentils are part of the federally required food for all children one to four years old and all women packages. The amount of dry beans, peas or lentils is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and Standard Pregnant are the most commonly prescribed packages for this food item.

(6) The Department has included eggs in its minimum stocking requirements because eggs are part of the federally required food for all children one to four years old and all women packages. This amount of eggs is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months package is chosen because it is the most commonly prescribed food package for children. The Standard Pregnant women package is chosen because it is the most commonly prescribed food package for women.

(7) The Department has included fresh bananas in its minimum stocking requirements because fresh bananas are a part of the Department's Infant Formula Fed 6–11 Months old food package. This amount of fresh yellow bananas is chosen because it is enough to fulfill the monthly prescription for two Infant Formula Fed 6–11 months packages at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times.

(8) The Department has included fruits and vegetables in its minimum stocking requirements because fruits and vegetables are part of the federally required food for all children one to four years old and all women packages. The requirement for vendors and vendor applicants to stock fresh, frozen, and canned fruits and vegetables is to provide California WIC participants with a variety of choices while shopping. The dollar amount of fruits and vegetables is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and the Standard Pregnant are the most commonly prescribed packages for this food item.

(A) The dollar amount of fresh fruits and vegetables is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The amount of varieties is chosen to provide California WIC participants with a variety of choices. The

dollar amount is based on the vendor's shelf price so the vendor can price inventory based on their business model.

(B) The dollar amount of frozen fruits and vegetables is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The amount of varieties is chosen to provide California WIC participants with a variety of choices. Three varieties of frozen fruits and vegetables are chosen because the Department has determined this to be a sufficient amount of options for participants. The dollar amount is based on the vendor's shelf price so the vendor can price inventory based on their business model.

(C) The dollar amount of canned fruits and vegetables is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The amount of varieties is chosen to provide California WIC participants with a variety of choices. Three varieties of canned fruits and vegetables are chosen because the Department has determined this to be a sufficient amount of options for participants. The dollar amount is based on the vendor's shelf price so the vendor can price inventory based on their business model.

(9) The Department has included infant cereal in its minimum stocking requirements because infant cereal is part of the federally required food packages for Fully Formula Fed 6-11 months, Partially Breastfed 6-11 months, and Fully Breastfed 6-11 months old. The amount of infant cereal is chosen because it is enough to fulfill the monthly prescription for two Infant Fully Formula Fed 6-11 months packages at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. The Infant Fully Formula Fed 6-11 months package has the highest participation rates of infants 6-11 months old. The 16-ounce containers and the 8-ounce containers are required because the maximum nutritional benefit for the Infant Fully Formula Fed 6-11 package is twenty-four ounces. The participants will redeem the 16-ounce containers and an 8-ounce container to equal 24 ounces.

(10) The Department has included infant formula in its minimum stocking requirements because infant formula is part of the federally required food packages for all infant packages except Fully Breastfed. The amount is enough to fulfill the monthly prescription for two Infant Fully Formula Fed 4-5 months packages at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. Vendors with limited shelf space are allowed to store ten containers of the total amount of infant formula in storage on the premises. The authorized milk-based infant formula is the most commonly chosen infant formula by California WIC participants.

(11) The Department has included infant fruits and vegetables in its minimum stocking requirements because infant fruits and vegetables are part of the federally

required food package for formula fed infants 6–11 months old and fully breastfed infants 6-11 months old. The amount of infant fruits and vegetables is chosen because it is enough to fulfill the monthly prescription for two Infant Formula Fed 6-11 months packages at all time. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. The Infant Formula Fed 6–11 months package has the highest participation rates of all infant food packages. California WIC participants are given the choice of 4-ounce or 3.5-ounce containers of infant fruits and vegetables. Vendors can choose to stock the type their customers typically purchase.

(12) The Department has included infant meats in its minimum stocking requirements because infant meats are part of the federally required food package for Infant Fully Breastfed 6–11 months old. The amount of infant meats is chosen because it is enough to fulfill the monthly prescription for two Infant Fully Breastfed 6–11 months packages at all time The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. Vendors with limited shelf space are allowed to store thirty one containers of the total amount of infant meats in storage on the premises.

(13) The Department has included milk in its minimum stocking requirements because milk is part of the federally required food for all children one to four years old and all women packages.

(A) Six gallons of authorized fluid whole milk fulfills enough milk prescribed to two monthly Standard Child \geq 12-23 packages at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 12-23 was chosen because it is the most commonly prescribed food package for children in that age group.

(B) This amount of lower fat gallons of milk is enough to fulfill the monthly prescriptions for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months was chosen because it is the most commonly prescribed food package for children in that age group that receives lower fat milk. The Standard Pregnant was chosen because it is the most commonly prescribed woman package. Vendors have a choice to stock two percent, one percent, or nonfat milk because these types of milk are authorized for WIC participants and vendors can stock the milk that their customers typically purchase. Vendors with limited shelf space are allowed to store four one gallon containers of the total amount of lower fat gallons of milk in storage on the premises.

(C) This amount of lower fat half-gallons of milk fulfills two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions of the most common food package for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Pregnant is the most commonly prescribed package for this food item.

(14) The Department has included peanut butter in its minimum stocking requirements because peanut butter is part of the federally required food for all children one to four years old and all women packages. The amount of peanut butter is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and Standard Pregnant are the most commonly prescribed packages for this food item. California WIC participants are allowed to choose 16-ounce or 18-ounce containers.

(15) The Department has included whole wheat bread in its minimum stocking requirements because whole wheat bread is the Federally-required whole grain option. Whole grain breads which meet the requirements laid out in 7 C.F.R. § 246.10 (e)(12), brown rice, bulgur, oatmeal, whole-grain barley, soft corn tortillas, and whole wheat tortillas are all allowable options.

(A) One pound packages of whole wheat bread loaves is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and the Standard Pregnant are the most commonly prescribed packages for this food item. Loaves are chosen to support the collection of shelf prices on Market Basket food items for the competitive price criteria.

(B) One pound packages of soft corn tortillas is chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and the Standard Pregnant are the most commonly prescribed packages for this food item. Soft corn tortillas are an allowable option for whole grains.

(C) One pound packages or bulk oatmeal, oats, and brown rice are chosen because it is enough to fulfill the monthly prescription for two Standard Child \geq 24 Months and two Standard Pregnant prescriptions at all times. The required amount is enough to fulfill two prescriptions each of the most common food packages for this food item because it ensures that multiple families can redeem their food instruments at all times. The Standard Child \geq 24 Months and the

Standard Pregnant are the most commonly prescribed packages for this food item. Oatmeal, oats, and brown rice are allowable options for whole grains. The vendor is able to choose between brown rice and oatmeal or oats so they can stock items their customers typically purchase.

(c) It is essential that vendors authorized in the program maintain adequate stocking of the authorized foods so that participants will be able to redeem the full quantities of foods on their food instruments. The Department has determined that thirty days is a reasonable amount of time for vendors comply with the program requirements while minimizing potential fiscal impact to the Program. If a vendor fails to meet minimum stocking requirements twice within a twenty-four month period, this demonstrates a pattern of noncompliance with minimum stocking criteria, which will result in a one-year disqualification from the Program. A twenty four month period was chosen because the Department determined that it is a fair and reasonable time frame in which to evaluate a vendor's pattern of meeting stocking requirements.

71200 Minimum Technology Requirements

PROPOSED REGULATION

71200 Minimum Technology Requirements. All vendors and vendor applicants must have access to a computer or other electronic device that has the ability to:

- (a) Access the internet, and
- (b) Receive and send emails, and
- (c) Use web-based applications, and
- (d) Apply an electronic signature to official documents.

AUTHORITY

Federal

7 C.F.R. § 246.2: Sign or signature means a handwritten signature on paper or an electronic signature. If the State agency chooses to use electronic signatures, the State agency must ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, and applicable Federal law and policy, and the confidentiality requirements in § 246.26.

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The state agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the

Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71200 Vendor access to a computer and the internet is important as the Department transitions from paper-based to electronic communications.

(a) Vendors must have access to the internet to read emails, to use web-based applications as required by the Department, and to complete official Department documents.

(b) The Department has transitioned from sending vendor alerts through the United States Postal Service (USPS) to email and website posting. Vendors and vendor applicants must be able to receive and send emails so they can read the email vendor alerts and other notifications sent from the Department. The Department saves program funding on mailing postage fees, paper, and envelopes by sending communications by email.

(c) The Department uses a web-based application called Vendor WIC Information eXchange (VWIX). Using VWIX, vendors submit their redeemed food instrument serial numbers and check the status of their submission prior to depositing food instruments into their bank. In addition VWIX provides access to important Department information. It is also necessary for vendors and vendor applicants to access the VWIX system because they are required to use VWIX to submit shelf prices for competitive price criteria. The Department will phase out the phone system that vendors use to submit their redeemed food instrument serial numbers. When vendors cannot access the phone system, they will submit their redeemed food instrument serial numbers to the online VWIX system.

(d) The Department will transition to online vendor applications in which an electronic signature will be required. Also, the online shelf price survey used to determine the Competitive Price Criteria (Section 70600) will require an electronic signature for completion. Vendors must have the ability to complete forms, provide a digital signature on official Department documents, and submit them electronically to the Department.

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

PROPOSED REGULATION

71300 No Conflict of Interest Between the Vendor and the Department or any WIC Local Agency. The Department shall not authorize a vendor applicant or continue authorization of a vendor if the Department makes a determination that a conflict of interest exists with the Department or a local agency. For purposes of this article, local agency is defined to include all employees of local agencies pursuant to Title 22, California Code of Regulations, Section 40641. A conflict of interest exists when:

- (a) The vendor could profit by having a relative or an agent who is on the staff of a local agency or the Department who could refer participants to the vendor's store; or
- (b) The vendor could profit by having a relative or an agent who is on the staff of the Department who could make Departmental decisions or influence Department policies and procedures related to program vendors.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(3)(xix): *Conflict of interest.* The State agency will terminate the agreement if the State agency identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the vendor and the State agency or its local agencies.

7 C.F.R. § 246.12(t): *Conflict of interest.* The State agency must ensure that no conflict of interest exists, as defined by applicable State laws, regulations, and policies, between the State agency and any vendor, farmer or home food delivery contractor, or between any local agency and any vendor, farmer or home food delivery contractor under its jurisdiction.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special

Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71300 Federal regulations mandate the Department to ensure that no conflict of interest occurs between the vendor and the Department or any WIC local agency. The Code of Federal Regulations specifies that if a conflict of interest occurs between the vendor and the Department or its local agencies, the Department will terminate the vendor from participation in the program (7 C.F.R. § 246.12(h)(3)(xix)). The definition of local agency is expanded from (Cal. Code Regs., tit. 22, § 40641) to include the employees of local agency to ensure no conflict of interest exists with any employees of the WIC Program.

(a) The Department has determined that a conflict of interest may exist when a member of the staff of the vendor could profit by having a relative or an agent on the staff of any WIC local agency that could refer participants to the vendor's store, because this may provide an inappropriate material advantage to a vendor.

(b) The Department has also determined that a conflict of interest may exist when a member of the staff of a vendor has a relative or an agent on the staff of the Department who makes decisions or influences policies regarding vendors, since this conflict may provide an inappropriate material advantage for the vendor.

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

PROPOSED REGULATION

71400 Restrictions and Allowed Uses of the WIC Acronym and WIC Logo. (a) For the purpose of this section and all contracts, instructions, forms and other documents related hereto, the following terms are defined:

(1) General Definitions

(A) Point of Display. Point of Display items are used to identify WIC authorized supplemental foods and where the food items are located or shelved. Point of Display items include shelf-talkers and signs.

(2) Printing and Image Definitions

(A) CMYK. CMYK, also known as process color, four- or full color, refers to the four process colors (cyan, magenta, yellow and black) used to create all colors in standard color printing. This process is one of two allowed printing processes for reproduction of the California WIC logo. The CMYK process can create thousands of clear, vibrant colors; therefore this option is permitted and is the preferred image file for vendors to reproduce the California WIC logo.

(B) EPS Format. EPS, Encapsulated PostScript, is a method for creating logos and other line-art illustrations using mathematical vectors to define the lines and curves that make up the logo or other artwork. These vectors retain proportion within the artwork regardless of how it is resized without loss of detail or distortion. This format is the only allowable option permitted for all reproduction of the California WIC logo.

(C) Spot Color. Spot Color refers to an image file which uses individual Pantone colors instead of CMYK process to reproduce the California WIC logo. It takes four separate Pantone colors to print the logo and the results will not be as rich in color as the CMYK process defined above. This format is one of two allowed options permitted for all reproduction of the California WIC logo. The black and white EPS image file is a variant of the spot color logo that uses a single color (black) to create the California WIC logo.

(D) Vector. Graphic images created by a computer program and stored in file format as a series of numbers which define shape,

position and color of EPS images. Vectors are object-oriented and work as a whole unit together. The mathematic property of the vectors allows increase and decrease in image size without distortion.

(E) White Space Required for Newspaper Ad or Insert. Visual area surrounding logo which must be free of typeset, color, or other imagery to prevent detracting from the appearance of the logo. White space is literally space around the logo which is white.

(b) The federal WIC logo and the WIC acronym are registered service marks of the United States Department of Agriculture (USDA). The federal WIC logo and the California WIC logo are the property of the Federal and State Governments. Vendors shall use of the WIC acronym and logo only as permitted in this Section 71400:

(1) Vendors and vendor applicants shall not use the federal WIC logo or acronym or the State WIC logo or acronym or close facsimiles thereof, in total or in part in any manner only without prior written consent of the Department, except when printing signs and shelf talkers pursuant to the requirements in subsection (d)(3).

(2) The Department shall deny authorization or shall not continue authorization of a vendor or applicant whose name or logo includes the WIC acronym, the federal WIC logo, the California WIC logo, or close facsimiles thereof, in total or in part, either in the official name in which the vendor is registered or in the name under which it does business, if different. This includes, but is not limited to, using the letters "W", "I", and "C" in that order next to one another in the vendor or vendor applicant's name, or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters.

(3) Vendors and vendor applicants must not attach or affix in any manner the WIC acronym, the federal WIC logo, or the California WIC logo on any authorized food or incentive item.

(4) Vendors and vendor applicants may use the California WIC logo only on materials produced or approved by the Department including shelf talkers, posters, signs, decals or stickers.

(5) Vendors may reproduce the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor's store, as specified in subsection (d) below.

(c) Upon prior written approval by the Department vendors are permitted to print the California WIC logo pursuant to the printing and formatting requirements specified in this Section 71400. When using the California WIC logo, the vendor shall use only the California WIC logo files that are

available for download on the Vendor WIC Information eXchange website (“VWIX”) at: <https://vwix.ca.gov>. These are the only image file options available to WIC authorized vendors for printing the California WIC logo image; no other image file formats are allowed.

(1) Vendors shall print the California WIC logo image using the CMYK process or spot color image file options, as defined in subsection (a) above and in color as specified in subsections (c)(1)(B)-(C) below:

(A) The California WIC logo and tagline may appear in a single color, but only in black on white.

(B) The CMYK combination, a permitted and preferred option, which produces a full-color image of the California WIC logo shall be as follows:

1. Purple: fifty (50) percent cyan, ninety (90) percent magenta, and zero (0) percent black.
2. Red: zero (0) percent cyan, ninety-one (91) percent magenta, eighty-seven (87) percent yellow, and zero (0) percent black.
3. Lime: forty-three (43) percent cyan, zero (0) percent magenta, seventy-nine (79) percent yellow, and zero (0) percent black.
4. Green: seventy-five (75) percent cyan, zero (0) percent magenta, one-hundred (100) percent yellow, and zero (0) percent black.

(C) Pantone colors, a permitted option of the CMYK combination, is used to produce a full-color image of the California WIC logo shall be as follows:

1. Purple: pantone 258
2. Red: pantone 179
3. Lime: pantone 368
4. Green: pantone 361

(2) When printing the California WIC logo, vendors must ensure the California WIC logo remains intact each time it is printed. The California WIC logo includes the WIC acronym and tagline “Families grow healthy with WIC”. The vendor shall not use the tagline as a separate graphic element. Shelf talkers are the only exception and may be printed without the tagline.

(3) When printing the California WIC logo, vendors must not distort the California WIC logo. When enlarging or scaling it down, vendors shall keep the logo proportionate in size. Change to the size must be the same percentage increase in both height and width. For example, if the height of the logo image is increased 25 percent the width must also be increased 25 percent.

(4) When printing the California WIC logo, vendors must print only the California WIC logo and not add any additional graphics or text around the logo. Exception: upon approval by the Department additional graphics or text may be allowed when printing the California WIC logo in general circulation newspaper ads or inserts that advertise the vendor's store when used as specified in subsection (b)(5).

(5) When printing the California WIC logo, vendors must maintain integrity of the California WIC logo when printing in newspaper ads or inserts by using the "white space" around the logo as downloaded from VWIX. White space means visual area free of typeset or other imagery to prevent detracting from the appearance of the logo.

(6) Vendors shall not wrap text around the white space surrounding California WIC logo. Vendors shall always leave enough white space around the logo to prevent "crowding" by other elements.

(7) Vendors shall print the California WIC logo in a white box when the logo is placed on a background color or photograph. Vendors shall not print the logo on a solid background color, screen or tint of a color, or a photographic or illustrative background if the background shows through the logo.

(8) Vendors shall not enclose the California WIC logo in other framing shapes including, but not limited to circles or ellipses.

(d) Vendor uses of the California WIC logo. The California WIC logo shall not be used in any media other than print as specified in this subsection (d).

(1) Posters. The Department may provide vendors with posters which include the California WIC logo to identify a store as authorized to accept food instruments from participants for the sale of supplemental foods. Only posters provided by the Department may include the WIC acronym or logo. Department supplied posters may only be displayed on store walls and boards or in window displays. Vendors may not print or display posters with the federal WIC logo, the WIC acronym, or the California WIC logo.

(2) Decals. The Department may provide vendors with decals to identify a store as authorized to accept food instruments from

participants for the sale of supplemental foods. Only decals provided by the Department may be used if the decals include the WIC acronym or logo. Department supplied decals may only be affixed to windows or doors. Vendors may not print or display decals with the federal WIC logo, the WIC acronym, or the California WIC logo.

(3) Point of Display Items

(A) Signs. The Department may provide vendors with signs to identify WIC authorized supplemental foods and where the food items are located or shelved. Department supplied signs may only be affixed on displays to identify where food items are located or to emphasize fruits and vegetables as a food item choice. Vendors may not print or display signs with the federal WIC logo, the WIC acronym, or the California WIC logo.

1. When printing signs for WIC authorized foods a vendor may only use the following image containing the California WIC logo, available on VWIX and represented below. Vendors may resize the following logo for sign use up to 6 inches in height, without distorting the proportion of the logo image. This image is available for use as a sign or decal on VWIX.

A. Logo for Signs



Authorized

(B) Shelf Talkers. Vendors are permitted to display shelf talkers to identify WIC authorized supplemental foods. Shelf talkers may only be affixed to shelves to identify where food items are located or shelved. Shelf talkers may be supplied by the Department or printed by a vendor with approval from the Department pursuant to subsection (c)(3)(B)(3) below.

1. Shelf talkers printed by a vendor that identify WIC authorized supplemental foods must comply with the printing and formatting requirements specified in subsection (c).

2. Shelf talkers for WIC authorized foods must be printed in color.

3. When printing shelf talkers for WIC authorized foods a vendor may only use one of the following images containing the California WIC logo, available on VWIX and represented below. Vendors may not resize or make any other changes to the images available for use as shelf talkers on VWIX.

A. Right Shelf Talker



B. Left Shelf Talker



C. Standard Shelf Talker



(4) Newspaper Ad or Inserts Requirements. Upon approval of the Department, vendors may print the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor's store (Ex. Weekly store ad).

(A) Newspaper ads or inserts printed by a vendor must comply with the printing and formatting requirements specified in subsection (c).

(B) Newspaper ads or inserts may be printed in color or in black. The black and white logo may only be used in black and white newspaper ads or inserts.

(C) When printing newspaper ads or inserts a vendor may only use one of the following logos, available on VWIX and represented below. The following logos may not be printed larger than $\frac{1}{8}$ of the total size of the ad or insert:

1. Color Logo



2. Black and White Logo



(e) All vendors wishing to print or use the WIC logo pursuant to the requirements of this Section 71400 shall submit a sample of the proposed use prior to printing or publication to the Department for approval. The Department will review the proposed use for compliance with this Section 71400 and issue a determination as to whether the use is approved within 10 business days of receipt of request for approval.

(f) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with restrictions on the use of the WIC acronym and logo. If after 30 days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with restrictions on the use of the WIC acronym and logo, the vendor shall have demonstrated a pattern of failure to comply with restrictions on the use of the WIC acronym and logo and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

AUTHORITY

Federal

7 CFR § 246.12(g)(3): *Vendor selection criteria*. The State agency must develop and implement criteria to select stores for authorization.

7 CFR § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria*. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health & Safety Code § 123322: Enacted in 2012 through AB 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

Health & Safety Code § 123280(c): This section was also adopted through AB 2322 (2012). The statute states in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health and Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Regulatory Bulletin 2012-01: The adoption of Regulatory Bulletin 2012-01 in December 2012 allows the California Department of Public Health, which administers the California WIC Program, to implement the following rule into California regulation:

All persons and entities participating in the California WIC Program, including participants, local agencies, vendors and contractors, shall be subject to all the mandatory federal requirements contained in:

- The Child Nutrition Act of 1966 and the amendments thereto (Chapter 13A (commencing with Section 1786) of Title 42 of the United States Code
- Part 246 of Title 7 of the Code of Federal Regulations

- All federal memoranda and guidance letters clarifying and interpreting the federal laws and regulations as the requirements of the WIC Program

Mandatory requirements include all federal directive language and definitions. Federal directive language includes, but is not limited to, all requirements that the State Agency “must”, “shall”, or “will” meet and all requirements that do not permit discretion by the State agency.

WIC Policy Memorandum #2009-1:⁵ This policy memorandum is a federal directive from the USDA, adopted by Regulatory Bulletin 2012-01, which provides clarification on the use of the WIC acronym and logo. The memorandum notes that the WIC acronym and the WIC logo are registered service marks of the USDA. In summary, the memorandum specifies the following:

- (1) Application of the service marks to food products or promotional materials for infant formula are not permitted;
- (2) Vendors may not use the service marks in their names. Also, vendors may not use the WIC logo in advertising or promotional literature. Vendors may use the WIC acronym in advertising and other promotional material only to inform the public that the vendor is WIC-authorized; and
- (3) Vendors may not apply stickers, tags or labels having the service marks to WIC-approved products. At the discretion of the state agency, vendors may use shelf talkers⁶ using the service marks to identify WIC-approved products, including channel strips and shelf talkers provided by manufacturers.

STATEMENT OF REASONS

71400 (a) This section defines terms that are related to the use of the WIC logo.

- (1) This section defines general terms.

(A) Point of Display refers to items such as shelf talkers and signs used by vendors to identify WIC authorized supplemental foods on store shelves, refrigerators, freezers, and fruit and vegetable displays. The definition is provided

⁵ United States Department of Agriculture (USDA). 2008 (December 31). Subject: WIC Policy Memorandum #2009-1, Clarification on the Use of the WIC Acronym and Logo. To: Regional Director, Supplemental Food Programs, and All Regions.

⁶ A shelf talker is a printed sign or card attached to a store shelf that is intended to call a shopper’s attention to a particular product.

to clarify the items vendors may use for identification and display of WIC authorized supplemental food items.

(2) This section defines printing and imaging terms as referenced in this section for use in media and in print.

(A) CMYK is the four process colors (cyan, magenta, yellow and black) used to create all colors in standard color printing. CMYK is one of two printing processes that will be used by vendors to reproduce the California WIC logo. This option is the preferred color printing process for vendors because it can create thousands of clear and vibrant colors. The Department's choice of the CMYK four color printing process is reasonable as it is widely used by the graphic arts and commercial printing industry for the reproduction of color images and text.

(B) EPS format refers to Encapsulated PostScript, a method and file type for creating logos and other line-art illustrations. The California WIC logo was designed using Adobe Illustrator in EPS format. This file type is produced by most graphics programs, including Adobe InDesign, Adobe Illustrator, and Microsoft Publisher. Because the California WIC logo was produced in this format, this file type is universally applicable for all reproduction of the California WIC logo.

(C) This describes the method of spot color, a process that uses individual Pantone colors instead of the four-color CMYK process to reproduce the California WIC logo. The Department has chosen to allow spot color as one of two approved printing processes for reproduction of the California WIC logo to allow for flexibility if the more advanced CMYK process is not available. The black and white image is also a variant of spot color that used a single color (black) to create the California WIC logo. The Department has not chosen spot color as its preferred printing process because the spot color method results in a printed image which is not as rich in color as one printed using the CMYK process.

(D) The definition of a vector is provided because it supports how computer programs resize graphic images without distorting the quality of the image.

(E) The definition of white space describes for the importance of white space in maintaining the integrity of the California WIC logo.

(b) The WIC acronym and WIC logo are registered service marks of the USDA. WIC authorized vendors are restricted in the usage of service marks in their advertisement and other promotional materials, as described for the reasons below.

(1) Restricting the use of federal WIC logo or the WIC acronym or similar variations avoids giving the impression to program participants that the vendor's business is officially endorsed and preferred by the Federal and the California WIC Program, when it is not true. The Department includes the requirement that vendors must obtain prior written consent before using the acronym or logo so that there is enforcement of the requirement.

(2) Restrictions on the WIC acronym, federal WIC logo or similar variations in total or in part in the business' name are required by the federal directive on the use of the WIC acronym and logo (WIC Policy Memorandum #2009-1) as adopted by Regulatory Bulletin 2012-01. Placing restrictions on the use of the WIC acronym, federal WIC logo, the California WIC logo or similar variations in total or in part in the business' name also avoids confusion on whether the vendor's business is officially endorsed and preferred by the federal and California WIC programs. Both the USDA, the federal agency that oversees the federal WIC Program, and the California WIC Program have experienced infringement issues with the use of WIC acronym in vendor names. One example is the use by vendors of the letters "W," "I," and "C" in that order next to one another in the vendor's name, or those letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters. This restriction protects the federal and state logos and the WIC acronym from infringement and misuse that could unfairly benefit violating vendors. The Department is including the requirement that it will not authorize or continue authorization of a vendor that uses the WIC acronym in its name contrary to these rules. This will ensure compliance with the rule and vendors out of compliance will not be obtaining an advantage of advertisement and false messages to participants about any special affiliation with WIC. Vendors out of compliance with the rules should not have an unfair advantage over vendors who follow the requirements.

(3) Under the federal directive on the use of the WIC acronym and logo (WIC Policy Memorandum #2009-1) as adopted by Regulatory Bulletin 2012-01 vendors cannot affix the WIC acronym, the federal WIC logo, or the California WIC logo on any WIC-authorized food item container. This avoids the impression that the vendor's products are officially endorsed and preferred by the federal and California WIC Programs. The Department is extending the restriction on use of the WIC acronym, the federal WIC logo, or the California WIC logo to incentive items in order to avoid the impression that a vendor's incentive items are officially endorsed and preferred by the federal and California WIC programs

(4) The Department is requiring that as a condition of authorization or continuation of participation in the WIC Program, vendors may only use the California WIC logo on materials produced or approved by the California WIC Program. This ensures that vendors do not improperly use the California WIC logo in a manner that would provide an unfair benefit to a vendor by providing a false impression to the public that the vendor has a special or favored relationship with the Program.

(5) Authorized vendors may use the California WIC logo in newspaper ads or inserts, only when approved by the California WIC Program. This ensures that vendors do not improperly use the California WIC logo in a manner that would provide an unfair benefit to a vendor by providing a false impression to the public that the vendor has a special or favored relationship with the Program.

(c) This section standardizes the California WIC logo images available for use by vendors and restricts vendors to the use of the image files made available by the Department. The Department is restricting use of its logos to those it provides in order

to ensure that all vendors are using the same logos in a manner which does not interfere with the state's right to its logo. Restricting the use of the logo to the available images also ensures that the logo is not used in a way that implies that the vendor is endorsed or preferred by the federal or California WIC programs.

(1)(A)-(C) Vendors are limited to reproducing the logo using the CMYK or spot color processes. The Department is standardizing the color representation of the logo to ensure only uniform accurate reproductions of the logo are made by vendors. These subsections prescribe the exact color combinations in CMYK format, Pantone matching system colors, and black on white colors to ensure uniform color and reproduction of the California WIC logo as developed by the Department.

(2) This is required so the California WIC logo is kept intact and not split across separate printed materials to avoid endorsements, directly or indirectly, of any commercial product, service, or enterprise.

(3) These specifications ensure that the California WIC logo is not distorted when it is enlarged or called down for printing purposes.

(4) This section ensures that the California WIC logo is not crowded by other graphics or text, except for additional graphics or text allowed in general circulation newspaper ads or inserts. This also ensures that vendors do not add unapproved text around the California WIC logo to avoid confusion of endorsements, directly or indirectly, of any commercial product, service, or enterprise. The exception is provided so vendors can use the California WIC logo in printed newspaper ads or inserts that have other content and graphics.

(5)-(8) These requirements maintain the integrity of the California WIC logo and eliminate potential crowding by other elements around the logo to avoid confusion of endorsements, directly or indirectly, of any commercial product, service, or enterprise.

(d) This section describes the approved uses of the California WIC logo. The vendors are permitted to use the logo and acronym only as stated in the regulations. This ensures that all vendors are clear about and in compliance with the requirements.

(1) Posters supplied by the Department can be used to advertise that a vendor is authorized to accept WIC food instruments but shall not be used to suggest endorsements, directly or indirectly, of any commercial product, service, or enterprise. Vendors may use only the posters supplied by the Department when displaying the WIC acronym or logo on a poster so that all vendors are using the same posters and there will be no advantage to any particular vendor. Poster placement is restricted to the walls, boards or window displays so that all vendor stores use the posters in a similar manner and participants will be familiar with their use to identify WIC products and be clear that there is not a special status for a particular store.

(2) Decals supplied by the Department can be used to advertise that a vendor is authorized to accept WIC food instruments, but shall not be used to suggest endorsements, directly or indirectly, of any commercial product, service, or

enterprise. Vendors may use only decals supplied by the Department when displaying the WIC acronym or logo on a decal so that all vendors are using the same decals and there will be no advantage to any particular vendor. Decal placement is restricted to window or doors so that all vendor stores use the decals in a similar manner and participants will be familiar with their use to identify WIC vendors and products and be clear that there is no special status for a particular store.

(3) This section describes the approved uses of California WIC logo point of display items.

(A)1.A. Signs supplied by the Department may be used to advertise that a vendor is authorized to accept WIC food instruments. Vendors may use signs supplied by the Department or print signs according to the specifications in this regulation to assure that all vendors will have adequate supply. This ensures the consistent use of the WIC acronym or logo and that all vendors are using the same signs and format and there will be no advantage to any particular vendor. Sign placement is restricted to displays, walls, or boards to identify where food items are located or to emphasize fruits and vegetables as a food item choice. Sign placement is restricted so that all vendor stores use signs in a similar manner and there will be no advantage to a particular vendor. The signs will benefit program participants since they will identify authorized foods and assist the participants in making healthy choices.

(B) Shelf talkers may be used to help the participant identify WIC authorized foods sold by the vendor. The restriction on shelf talkers placement is required so the California WIC logo is not used to advertise in a location other than the shelves or displays of a vendor store. All vendors must use the shelf talkers only on the shelves or displays near the foods they identify so that all vendors use the shelf talkers in the same manner and there will be no advantage to a particular vendor.

Shelf talkers may be provided by the Department or printed by the vendors. The Department may permit vendors to print shelf talkers according to the specifications in this regulation to assure the vendors will always have adequate supply.

1-3., A-C. Vendors must use the printing and image specifications set forth in this regulation when printing their own shelf talkers. This will ensure that all vendors will be using the same shelf talkers and there will be no benefit or advantage to any particular vendor. The participants will be familiar with the shelf talkers, easily identify WIC items in stores, and will be free of any misunderstanding about particular vendor having any special endorsement from the WIC Program.

Only the logos on VWIX designated for use as shelf talkers and represented in subsections (d)(3)(B)(3)(A-C). may be printed by vendors. This requirement ensures that all vendors will be using the same shelf talkers and there will be no benefit or advantage to any particular vendor. The participants will be

familiar with the shelf talkers, easily identify WIC items in stores, and will be free of any misunderstanding about particular vendor having any special endorsement from the WIC Program.

(4) Vendors are able to use the California WIC logo in dated, general circulation newspapers or inserts to advertise that the store accepts WIC food instruments. Vendors that print the California WIC logo must obtain prior Department approval and comply with printing restrictions so the Department avoids any confusion of endorsements, directly or indirectly, of any commercial product, service, or enterprise.

(A) The vendors are permitted to print the logo and acronym in newspaper ads and inserts only as stated in the regulations. This ensures that all vendors will be using the same logo and there will be no benefit or advantage to any particular vendor.

(B) In recognition that newspaper advertisements are commonly in black and white, the Department is permitting the use of the logo in black and white for use in newspaper ads and inserts.

(C)1-2. Only the logos on VWIX designated for use in newspaper ads and inserts as represented in subsections (d)(4)(C)(1-2) may be printed by vendors. This requirement ensures that all vendors will be using the same logos and there will be no benefit or advantage to any particular vendor. The Department is restricting the size of the California WIC logo when used in a newspaper ad or insert to $\frac{1}{8}$ the total size of the newspaper ad or insert because the Department has determined that this is a reasonable size to notify participants of the vendor's WIC authorization.

(e) The Department is providing a reasonable process to ensure that uses of the WIC acronym and logo are compliant with the requirements of this section. The Department has determined that ten business days is a reasonable period to review the proposed use for compliance with the requirements in this section. By requiring Department approval prior to printing, this section ensures that all vendors who print materials using the WIC logo or acronym are using the logo and acronym in the same manner and there will be no benefit or advantage to any particular vendor.

(f) A vendor who fails to comply with the California WIC logo restrictions in this section at any time shall be issued a written notice of the vendor's failure to meet vendor selection criteria. Federal rules require that vendors remain in compliance with vendor selection criteria at all times during their authorization. The 24-month period to establish a pattern of violations was chosen by the Department to be a sufficient amount of time to establish a pattern. The Department has determined that thirty calendar days is a reasonable amount of time for the vendor to comply with these program requirements.

71500 Store Location and Hours

PROPOSED REGULATION

71500 Store Location and Hours. (a) All vendors and vendor applicants must have a fixed location for each vendor store from which food instruments are transacted and authorized foods provided to participants, and

(b) All vendor stores must be open at least eight (8) hours per day, six (6) days per week. Of the eight (8) hours, at least four (4) of the hours that the vendor is open must be core hours. Core hours are defined as 9:00 a.m. to 5:00 p.m.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The State agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

7 C.F.R. § 246.12(j)(2): This section mandates that the State agency conduct routine monitoring visits on a minimum of five percent of the number of authorized vendors by October 1 of each fiscal year. Routine monitoring visits are conducted to ensure vendor compliance with state and federal statutes and regulations.

7 C.F.R. § 246.12(j)(4): *Compliance investigations.* (i.) *High-risk vendors.* This section mandates that the State agency conduct compliance investigations of a minimum of five percent of the number of authorized vendors by October 1 of each fiscal year. The State agency must conduct compliance investigations on all high-risk vendors up to the five percent minimum.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements

and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123315: (a) The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following: (8) Comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access and ensure program integrity.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71500 (a) Vendors and vendor applicants must have a fixed location and operating hours so WIC participants have adequate access to authorized foods. A fixed location and operating hours are also needed to allow the Department to conduct routine monitoring visits, compliance investigations, and local vendor liaison technical assistance visits. Requiring a fixed location prevents vendors from operating outside of authorized channels such as at another location or as a mobile business.

(b) The Department chose a minimum of eight hours per day as a reasonable amount of time needed to ensure that participants are able to access WIC authorized supplemental foods. This amount of time is sufficient for the Department to conduct routine monitoring visits, compliance investigations, and local vendor liaison technical assistance visits.

The Department determined that four of the eight hours must be during core business hours so that vendors and vendor applicants have the flexibility to set hours based on their business practices. This amount of time is sufficient for ensuring participant access and for the Department to conduct routine monitoring visits, compliance investigations, and local vendor liaison technical assistance visits.

The Department determined that core business hours are defined as 9:00 a.m. to 5:00 p.m. because they are common hours of operation for commercial businesses. This

amount of time is sufficient for ensuring participant access and for the Department to conduct routine monitoring visits, compliance investigations, and local vendor liaison technical assistance visits.

The Department chose six days per week because it gives at least one weekend day for participants to access WIC authorized supplemental foods if they work or do not have reliable transportation during week days. This amount of time is sufficient for the Department to conduct routine monitoring visits, compliance investigations, and local vendor liaison technical assistance visits.

71600 Vendors Disqualified from SNAP/CalFresh Will Not Be Authorized Unless Denying Authorization Would Result in Inadequate Participant Access

PROPOSED REGULATION

71600 Vendors Disqualified from SNAP/CalFresh will not be Authorized Unless Denying Authorization would result in Inadequate Participant Access. Unless denying authorization of a vendor applicant would result in inadequate participant access, the Department shall not authorize a vendor applicant that is currently disqualified from the SNAP/CalFresh Program or that has been assessed a SNAP/CalFresh civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired. Inadequate participant access shall be determined by the criteria specified in Title 22, California Code of Regulations, Section 40740 (h)(1).

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The State agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(g)(3)(iii): *Current SNAP disqualification or civil money penalty for hardship.* This section prohibits the State agency from authorizing a vendor applicant who is currently disqualified from SNAP or one that has been assessed a SNAP civil money penalty for hardship and the disqualification period has not expired, unless denying authorization of a vendor applicant would result in inadequate participant access.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71600 The United States Department of Agriculture (USDA) requires the Department to develop and implement criteria to select stores for authorization. Federal regulations require that, unless denying authorization of a vendor applicant would result in inadequate participant access, the Department may not authorize a vendor applicant that is currently disqualified from the Supplemental Nutrition Assistance Program (SNAP)/CalFresh Program⁷ or that has been assessed a SNAP/CalFresh program civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired (7 C.F.R. § 246.12(g)(3)(iii)). This regulation establishes the federal requirement and provides a definition and criteria for determining adequate participant access.

The Department is adopting the participant access criteria set out in Cal. Code Regs., tit. 22, § 40740(h) for use in all vendor authorization determinations in order to promote consistency for vendors. Cal. Code Regs., tit. 22, § 40740(h) finds participant access to be adequate when: A) there is another vendor in the same geographic area and B) there are no geographic barriers that prevent participants from redeeming their food instruments at the other vendor location. In a rural area the same geographic area is defined as: the area within a five-mile radius of the vendor or the local agency. In an

⁷ CalFresh is the name for California's Food Stamp Program. CalFresh, federally known as the Supplemental Nutrition Assistance Program (SNAP), provides assistance for California households to purchase nutritious food.

urban area the same geographic area is defined as: the area within a two-mile radius of the vendor or the local agency clinic closest to the vendor.

71700 Vendors Must be SNAP/CalFresh Authorized

PROPOSED REGULATION

71700 Vendors Must be SNAP/CalFresh Authorized. Vendors and vendor applicants must be authorized for participation in the SNAP/CalFresh Program at the time of application and at all times during the term of the vendor agreement.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The State agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71700 This regulation requires that vendors authorized by the Department must also be SNAP/CalFresh authorized. Since authorized SNAP/CalFresh vendors go through an evaluation process similar to the WIC Program, inclusion of this criterion would ensure that vendors' stock SNAP/CalFresh staple food items that are similar to WIC authorized foods.

In order to qualify for SNAP/CalFresh authorization a vendor must meet one of the following criteria:

"Offer for sale, on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories:

- meat, poultry or fish
- bread or cereal
- vegetables or fruits
- dairy products

or

More than one-half (50%) of the total dollar amount of all retail sales (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods."⁸

Vendors must offer for sale foods as required in these staple food groups to provide participants access to the nutritious food choices recommended and promoted by both SNAP/CalFresh and the WIC programs.

The SNAP staple foods complement the nutritional goals of the supplemental foods authorized by the WIC Program. Eligible foods that households can buy using SNAP benefits include breads and cereals; fruits and vegetables; meats, fish and poultry; and dairy products.⁹ The requirement that a WIC vendor maintain SNAP authorization ensures that vendors carry an assortment of nutritious SNAP staple foods in addition to the WIC supplemental foods that are designed to meet the special nutritional needs of low-income pregnant, breastfeeding, non-breastfeeding postpartum women, infants, and children up to five years of age who are at nutritional risk.

⁸ 7 C.F.R. § 278.1(b), United States Department of Agriculture (USDA). 2012 (February 16). *Supplemental Nutritional Assistance Program, Retail Store Eligibility*. Available at: <http://www.fns.usda.gov/snap/retailers/store-eligibility.htm>. Accessed: March 11, 2013.

⁹ USDA. 2013 (February 14). *Supplemental Nutritional Assistance Program, Eligible Food Items*. Available at: <http://www.fns.usda.gov/snap/retailers/eligible.htm>. Accessed: March 11, 2013.

71800 Vendor Training

PROPOSED REGULATION

71800 Vendor Training. (a) Prior to authorization and at least once every three (3) years after authorization while authorized, vendor applicants and vendors or their designated representative must attend an interactive training and successfully pass an examination upon completion of the training as required by Title 22, California Code of Regulations, Section 40733.

(b) All vendors or their designated representatives must also participate in annual training provided by the Department as required by Title 22, California Code of Regulations, Section 40733. Each vendor must certify completion of the annual training by returning, within thirty (30) days of their receipt of the annual training, a statement certifying their participation in the annual training and their understanding of the materials.

(1) The Department will provide written notice to an authorized vendor that fails to complete the annual training.

(2) The vendor will be provided thirty (30) days from the date of the notice to complete the training and certify their participation in the annual training and their understanding of the materials.

(c) Failure to complete the annual and interactive training and certify their participation in the annual training and their understanding of the materials thirty (30) days from the date of the written notice will result in the Department terminating the vendor's agreement.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(1): *Vendor authorization—General.* The state agency must authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

7 C.F.R. § 246.12(g)(3): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization.

7 C.F.R. § 246.12(h)(3)(xxiv): *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any

time and must terminate the vendor if the vendor fails to meet the current vendor selection criteria.

7 C.F.R. § 246.12(h)(3)(xi): Training. This section requires at least one representative of the vendor to participate in training annually. The training must be provided by the State and may be provided in a variety of formats, including newsletters, videos, and interactive training. The State agency must provide the vendor with at least one alternative date on which to attend the training.

7 C.F.R. § 246.12(i)(1): Retail food delivery systems: Vendor Training- (1) General Requirements. This section requires the State agency to provide training annually to at least one representative of each vendor. Prior to or at the time of a vendor's initial authorization, and at least every three years thereafter, the training must be in an interactive format that includes a contemporaneous opportunity for questions and answers. The State agency must provide the vendor with at least one alternative date on which to attend the training.

7 C.F.R. § 246.12(i)(4): Documentation. This section requires the Department to document the content of and vendor participation in vendor training.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71800 (a) Federal regulations mandate that the state WIC Programs provide interactive training to at least one representative of a vendor prior to authorization or at the time of a vendor's initial authorization, and at least once every three years thereafter. The Department must provide the vendor with at least one alternative date on which to attend the training.

The Department requires vendors to attend interactive training prior to authorization and successfully pass an examination at the completion of the training. The exam is maintained in the file and to certify that they have completed the training and understand the material. Due to the number of authorized vendors in California and the management requirements of such a large volume of vendors, the Department will provide vendors with only one alternate date prior to termination.

(b) Federal regulations mandate that at least one representative of each vendor participates in annual training. This annual training is required in federal and state regulations and ensures that the vendors are informed about the requirements and policies of the program. Due to the number of authorized vendors in California and the management requirements of such a large volume of vendors, the Department may use non-interactive formats for annual training.

In order to satisfy the federal rule and effectively track vendor participation in training, vendors are required to certify in a statement that they have completed the training and understand the material. The Department has determined that it is reasonable for a vendor to return a statement certifying their participation in and understanding of the annual training materials within 30 days of receipt of the materials.

(1)-(2) In order to secure vendor compliance with the annual training requirement it is reasonable for the Department to require a vendor to comply with the training requirement and certify their completion and understanding of the training within 30 days from the date of the written notice.

(c) The Department will terminate the agreement of a vendor who fails to participate in annual and interactive training. Pursuant to 7 C.F.R. § 246.12(g)(3), the Department must terminate the agreement of a vendor for failing to meet selection criteria. Vendors who participate in regular training and understand the materials are less likely to violate program rules resulting in lower compliance and enforcement costs incurred by the Department.

71900 Visible Prices Posted

PROPOSED REGULATION

71900 Visible Posted Prices. (a) All vendors and vendor applicants are required to post prices of all WIC authorized supplemental foods so that the prices are visible to customers.

- (1) Prices must be posted on the individual WIC authorized supplemental food item, or
- (2) Prices must be posted on the shelf on which the WIC authorized supplemental food is placed, directly below the product, or
- (3) If the supplemental foods are part of a display, the prices must be posted on the display.

(b) A vendor who fails to meet the price posting requirements of this section at any time shall be issued a written notice of the vendor's failure to meet authorization criteria. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor subsequently fails to meet the price posting requirements of this section, the vendor shall have demonstrated a pattern of failure to meet price posting requirements and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

AUTHORITY

Federal

7 C.F.R. § 246.12(g)(4): *Vendor selection criteria: competitive price.* The State agency must establish a vendor peer group system and distinct competitive price criteria and allowable reimbursement levels for each peer group. The State agency must use the competitive price criteria to evaluate the prices a vendor applicant charges for supplemental foods as compared to the prices charged by other vendor applicants and authorized vendors, and must authorize vendors selected from among those that offer the program the most competitive prices. The State agency must consider a vendor applicant's shelf prices or the prices it bids for supplemental foods, which may not exceed its shelf prices.

7 C.F.R. § 246.12(g)(4)(ii)(B): Routine collection of vendor shelf prices at least every six months following authorization to monitor vendor compliance with paragraphs (g)(4)(i)(C), (g)(4)(ii)(C), and (g)(4)(iii) of this section and to ensure State agency policies and procedures dependent on shelf price data are efficient and effective.

7 C.F.R § 246.12(i)(6)(ii)(C): The State agency must document current shelf prices or prices charged to other customers and the price for each item purchased for compliance buys. Prices can be obtained before, during, or after the compliance buy.

State

Health & Safety Code § 123280(c): Enacted in 2012 through Assembly Bill (AB) 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health & Safety Code § 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with (the statutes governing the WIC program) and with CalFresh.

Health & Safety Code § 123315: (a) The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following: (8) Comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access and ensure program integrity.

Health & Safety Code § 123322: Enacted in 2012 through Assembly Bill (AB) 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

STATEMENT OF REASONS

71900 (a) Federal regulations mandate that the state WIC Programs collect shelf prices to measure price competitiveness. The Department requires vendors and vendor applicants to submit their shelf price for infant formula at authorization and reauthorization. The Department verifies the infant formula and Market Basket item prices through on-site inspections, routine monitoring visits and local vendor liaison technical visits. The vendor's and vendor applicant's authorization can be denied when the Department is unable to verify Program compliance.

The posted prices are used to determine price competitiveness and to ensure compliance with state and federal rules and regulations. The Department records the vendor's posted shelf prices to determine vendor overcharging activities during

compliance investigations. When vendors do not post their shelf prices, the Department must use additional time and resources to determine if overcharging has occurred. The Department uses the posted prices to determine if a vendor is charging WIC participants the same prices, or lower, than other customers in compliance investigations as per 7 C.F.R. § 246.12(j)(6).

In addition, California WIC participants are taught to look at the prices of WIC authorized supplemental foods to choose the least expensive option. Participants cannot evaluate the prices of WIC authorized supplemental foods when the vendor or vendor applicant does not post the shelf prices. Prices must be posted visibly so that the participants can see them.

(1) Vendors and vendor applicants are given the option to post the prices for WIC authorized supplemental foods directly on the food items, which is a traditional grocer business practice.

(2) Vendors and vendor applicants are also given the option to post the prices for WIC authorized supplemental foods on the shelf below the food item, which is a traditional grocer business practice.

(3) Vendors and vendor applicants are also given the option to post the prices for WIC authorized supplemental foods on a display of the product, which is a traditional grocer business practice.

(b) A vendor who fails to comply with the price posting requirements in this section at any time shall be issued a written notice of the vendor's failure to meet authorization criteria. If after 30 days from the date of the notice and within a 24-month period from the date of the notice the vendor subsequently fails to meet requirements of this section the vendor shall have demonstrated a pattern of failure to comply with the price posting requirements of this section and shall be disqualified from participation in the program for a period of one year for failure to meet authorization criteria. The Department has determined that thirty calendar days is a reasonable amount of time for the vendor to comply with these program requirements.