



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



July 11, 2016

KAREN L. SMITH, MD, MPH
Director and State Public Health Officer

EDMUND G. BROWN JR.
Governor

WIC REGULATORY BULLETIN 2016-02

NOTICE OF FINAL ACTION

Subject Final Action on the Notice of Proposed Changes posted as Regulatory Alert 2016-02 on April 15, 2016 at:
<http://www.cdph.ca.gov/programs/wicworks/Documents/Regulatory%20Alert/RegulatoryAlert2016-02.pdf>

Date of Adoption The Final Action will be effective August 15, 2016.

Stakeholder Comments and Responses Please see Attachment 1 of this Regulatory Bulletin for the Stakeholder Comments and the Department Responses.

Regulation Article 4, sections 70100 and 70500
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 California Code of Regulations, title 22, section 40740, subdivision (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. These activities include:
(1) Activities set forth in 7 Code of Federal Regulations part 246.12(g)(3)(ii);
(2) Computer crimes, also known as cybercrimes, including online banking fraud, credit card fraud, identify theft, phishing and other computer or internet crimes set forth in Penal Code sections 484(e-j), 502, 530.5 and Business and Professions Code section 22948;
(3) Misprision of a felony when the felony concealed is one of the crimes set forth in 7 Code of Federal Regulations part 246.12(g)(3)(ii); and
(4) Violations of Business and Professions Code section 17533.6.



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



(c) Corporations, limited liability companies, and limited partnerships shall at all times maintain active status with the California Secretary of State's office while participating in the WIC program.

(d) The Department shall deny authorization to a vendor applicant if the vendor applicant owns, previously owned, or has a legal interest in one or more store locations that are currently serving a sanction, and the amount of stores actively serving a sanction on the contract exceeds five percent (5%) of the total number of stores under the contract. This provision shall not apply to vendors at reauthorization.

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 that 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 within the same geographic area as the one for which the vendor has submitted an application, if the vendor applicant was the owner at the time the sanction was noticed or made effective by the Department.

(A) For the purposes of this subsection, "the same geographic area" is defined in California Code of Regulations, title 22, section 40740, subdivisions (h)(2)(A-B).

(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, and the vendor applicant was the owner at the time the vendor claim was noticed or made effective by the Department. 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 that 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 the following additional information from the vendor applicant:

(1) Information, which may include, but is not limited to the following, to determine a vendor applicant's ability to meet authorization criteria:

(A) Tax identification number;

(B) Articles of incorporation for corporations or limited liability corporations (LLCs), including the list of designated officers and shareholders;

(C) For partnerships and sole proprietorships, copies of any available business documents previously filed with a municipality, city, county or state, such as a fictitious business name statement or partnership agreement;

(D) All available business licenses and/or permits (local health department, liquor, sales tax, etc.);

(E) A notarized affidavit from the new owner(s) stating that they are not connected with the previously disqualified owner(s) through blood or by marriage;

(F) A letter from the retailer's financial institution identifying the authorized signers for the business on any accounts relating to the business; and

(G) Store lease or property deed.

(2) Information, which may include, but is not limited to the following, to verify the ownership of the store and the value of the store:

(A) A bill of sale;

(B) Lease agreement;

(C) Escrow documents;

(D) An appraisal;

(E) Bank statements; and

(F) Other information verifying the change in ownership of the store.

(3) The vendor applicant shall not be required to provide information if the vendor can demonstrate to the Department that the release of that information is prohibited by federal or California state laws or regulations regarding confidentiality.

Feedback

Stakeholders may provide feedback regarding the impact of this Final Action and any policy adjustments to be considered by the Department after implementation. Comments may be sent electronically with the Bulletin number in the subject line to WICRegulations@cdph.ca.gov.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Attachment 1

Amendments to Section 70100 and 70500 Stakeholder Comments and Responses to Comments

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

July 11, 2016

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This final rule addresses public comments submitted in response to Regulatory Alert 2016-02 posted on April 15, 2016, regarding proposed amendments to article 4, sections 70100 and 70500 of the WIC Bulletin Regulations (W.B.R.).

A stakeholder webinar consultation was held on May 13, 2016, and the public comment period was held from April 18, 2016, through June 3, 2016.

A total of four comment letters were received with a majority of the comments being related to the proposed amendments to §70500(b)(3), which allow vendors serving a WIC sanction to authorize additional store locations as long as additional stores are not within the geographic range established by the Department. Other comments were related to the proposed amendments to business integrity standards, the use of the regulatory bulletin process in Health and Safety Code section 123322, certain information requested from vendor applicants to prevent the circumvention of WIC sanction, and the Department's information security protocols.

This Final Rule reflects the Department's desire to collaborate with stakeholders in developing and implementing criteria to select stores for authorization. The changes will be evaluated and amendments to these regulations will take place in the future as deemed appropriate and necessary.

Proposed Amendments to §70500(b)(3)

All commenters express support for the proposed amendments to §70500(b)(3) of the WIC Bulletin Regulations, which allow the vendors serving a WIC sanction to authorize additional store locations as long as those additional stores are not within a geographic range established by the Department. Commenters state that the proposed amendments will modify existing rules so that WIC participants can be guaranteed access to the healthy grocers under a vendor ownership that are not serving a WIC sanction.

Proposed Amendments to §70100

Three commenters express support of the proposed amendments to §70100 of the WIC Bulletin Regulations for their clarification and strengthening of the Department's business integrity standards.

Use of the Regulatory Bulletin Process in Health and Safety Code Section 123322

One commenter is concerned that Regulatory Alert 2016-02 does not meet the legislative standards necessary to justify the use of the regulatory bulletin process in Health and Safety Code section 123322. Commenter believes that the Department may only use Health and Safety Code section 123322 to justify adoption of regulations under the regulatory bulletin process when the regulations are needed to remain in

compliance with the conditions of federal funding. The Department agrees that it is appropriate to use Health and Safety Code section 123322 to justify adoption of regulations under the regulatory bulletin process when the regulations are needed to remain in compliance with the conditions of federal funding. The Department disagrees with Commenter's contention that Health and Safety Code section 123322 limits the use of this regulatory bulletin process to the adoption of mandatory federal regulations.

Health and Safety Code section 123322, subdivision (a) references compliance with the conditions of federal funding as a reason for requiring the Department to adopt criteria used for vendor authorization. Commenter's interpretation of Health and Safety Code section 123322 assumes the reference to federal funding is a restriction on the Department's use of the regulatory bulletin process. However, had the legislature intended to limit the Department's authority to adopt only mandatory federal regulations using this process, the legislature would have explicitly done so, as it did in Health and Safety Code section 123280, subdivision (c), which was also adopted as part of Assembly Bill No. 2322 (2011-2012 Reg. Sess).

The Department's proposed action meets the criteria for use of Health and Safety Code section 123322. As a condition of federal funding, the Department agrees to comply with all the provisions of federal statutes and regulations, and amendments thereto. Title 7 Code of Federal Regulations part 246.12(g)(3) requires state WIC agencies to develop and implement criteria to select stores for authorization. This regulatory bulletin has been proposed as part of the Department's ongoing efforts to develop and implement vendor authorization criteria, which ensures that the WIC program has authorized 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 management, oversight and review of its vendor population in compliance with 7 Code of Federal Regulations part 246.12(g)(1). Accordingly, the Department has the authority to amend WIC Bulletin Regulations §70100 and §70500 using this expedited process authorized by Health and Safety Code section 123322.

Requesting Information from a Vendor Applicant

One commenter raises concerns over the authority the Department has in §70500(c)(1) to request additional information. Commenter specifically refers to the provision in §70500(c)(1)(H) that the Department may request personal income tax returns from vendor applicants. Additionally, Commenter requests clarification on who among "all owners" of the vendor ownership will have to submit their personal federal tax returns.

In order to further examine stakeholder concerns, the Department will remove from the proposed amendments §70500(c)(1)(H) and §70500(c)(1)(I), the provisions which state

that the Department may request federal personal and business tax returns from vendor applicants.

Security Measures within the California WIC Program

One commenter has concerns about the Department's security measures to protect confidential vendor information, specifically referring to the regulation in §70500(c)(1)(H) that vendors provide personal tax returns at the Department's request. Commenter poses a series of questions that pertain to the nature of the security measures maintained by the Department to protect the sensitive information contained in personal tax returns.

The California WIC program abides by security protocols and guidelines established in the State Information Management Manual (SIMM), the State Administrative Manual (SAM), and the Public Health Administrative Manual (PHAM). The protocols are in compliance with the Information Practices Act, which requires protective measures for individuals whose information is maintained by a state agency.

Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address, telephone number, web site/e-mail address, store type, and authorization status. In compliance with federal regulations, California WIC restricts the use and disclosure of confidential vendor information in compliance with 7 Code of Federal Regulations part 246.26(e).

Paper documents containing confidential vendor information are secured in a locked file room within the California WIC Program headquarters. The California WIC program is headquartered in a secured building with facility entry controls and badging systems for personnel. Approved visitors receive authorization credentials to enter the building and are escorted by WIC staff at all times, and confidential vendor information must be kept out of sight from any visitors to the building.

Only authorized staff has access to the locked file room. Access to confidential vendor files is only granted through management approval to those staff members who need to know the information, and only if the documents are essential to the work of their staff. Checked out confidential information must be kept in locked cabinets when any staff member leaves their workstation. Workstations must be locked and secured during nonworking hours. The location of vendor files is tracked through routine audits and a logging system.

All electronic documents are stored on secured servers within California Department of Public Health (CDPH) firewalls. Confidential electronic documents are only accessible by authorized California WIC program staff.

The WIC program must report any actual or suspected security breach incident and all of its relevant information to management, the CDPH Privacy Office (PO), and the CDPH Information Security Office (ISO). CDPH workforce, which includes employees, retired annuitants, and student assistants, must complete information privacy and security training on an annual basis. This training instructs staff members on the necessary protocols and knowledge on how to protect confidential information within the program. All CDPH contractors needing access to CDPH confidential information are contractually bound to also train their staff (and ensure any subcontractors also train their staffs).

Pursuant to state law (Cal. Civ. Code, § 1798.29), any agency (including CDPH) that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. For purposes of Section 1798.29, “breach of the security of the system” means “unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency.” (State policy extends the coverage of this law to media other than “computerized data” (i.e., oral and paper).

Pursuant to SIMM 5340-C, barring extenuating circumstances, in the event of a security breach incident, the CDPH should notify affected individuals within ten (10) business days from the date the agency determines that the information was, or is reasonably believed to have been, acquired by unauthorized parties. Examples of extenuating circumstances include if notification might undermine a criminal investigation or if a premature announcement may pose other security concerns.

Beyond notification of a breach to affected individuals, the Department is under no obligation to provide assistance to individuals whose information is compromised. However, the Department has, on a case-by-case basis, offered credit monitoring services to individuals whose information was compromised in a breach.

Revisions to the Amendments to Article 4, Section 70500 of the WIC Bulletin Regulations (W.B.R.) Proposed in Regulatory Alert 2016-02¹

Revised sections of Article 4 listed below are incorporated into WIC Bulletin Regulation:

Article 4, §70500 is revised as follows:

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 that 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 within the same geographic area as the one for which the vendor has submitted an application, if the vendor applicant was the owner at the time the sanction was noticed or made effective by the Department.

(A) For the purposes of this subsection, “the same geographic area” is defined in California Code of Regulations, title 22, section 40740, subdivisions (h)(2)(A-B).

(4) The vendor applicant owns, previously owned, or has a legal interest in a store or business, including the applicant location that has an

¹ Amendments to Regulatory Bulletin 2013-01 are indicated through underline and strikethrough. Amendments to Regulatory Alert 2016-02 are indicated through double underline and double strikethrough.

outstanding vendor claim, and the vendor applicant was the owner at the time the vendor claim was noticed or made effective by the Department. 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 that 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 the following additional information from the vendor applicant: ~~which may include, but is not limited to, 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, and a bill of sale, lease agreement, bank statements or other information verifying the change in ownership of the store.~~

(1) Information, which may include, but is not limited to the following, to determine a vendor applicant's ability to meet authorization criteria:

(A) Tax identification number;

(B) Articles of incorporation for corporations or limited liability corporations (LLCs), including the list of designated officers and shareholders;

(C) For partnerships and sole proprietorships, copies of any available business documents previously filed with a municipality, city, county or state, such as a fictitious business name statement or partnership agreement;

(D) All available business licenses and/or permits (local health department, liquor, sales tax, etc.);

(E) A notarized affidavit from the new owner(s) stating that they are not connected with the previously disqualified owner(s) through blood or by marriage;

(F) A letter from the retailer's financial institution identifying the authorized signers for the business on any accounts relating to the business; and

(G) Store lease or property deed

~~(H) Personal federal tax returns for the most recent filing year for all owners; and~~

~~(I) Business federal tax returns (if available) for the most recent filing year for all owners.~~

(2) Information, which may include, but is not limited to the following, to verify the ownership of the store and the value of the store:

(A) A bill of sale;

(B) Lease agreement;

(C) Escrow documents;

(D) An appraisal;

(E) Bank statements; and

(F) Other information verifying the change in ownership of the store.

(3) The vendor applicant shall not be required to provide information if the vendor can demonstrate to the Department that the release of that information is prohibited by federal or California state laws or regulations regarding confidentiality.

Written Comment Letters Received

The California Department of Public Health/Women, Infants, and Children Program (Department) received comment letters in regard to amendments to article 4, sections 70100 and 70500 of the WIC Bulletin Regulations (W.B.R.), proposed in Regulatory Alert 2016-02 from the following five individuals/organizations:

1. Alicia Jimenez, Hearts and Hands Working Together, May 23, 2016
2. Ben Hueso, California State Senator, 40th District, and Janet Nguyen, California State Senator, 34th District, May 25, 2016 (Senators Hueso and Nguyen signed one letter)
3. Keri Askew Bailey, California Grocers Association, June 3, 2016
4. Pamela Boyd Williams, California Retailers Association, June 3, 2016

Letter 1 Hearts and Hands Working Together



HEARTS & HANDS
Working Together

May 23, 2016

Karen L. Smith, MD, MPH
Director and State Health Officer
California Department of Public Health
1615 Capitol Avenue
Sacramento, CA 95814

Dear Dr. Smith,

On behalf of Hearts and Hands Working Together, I write to express our support for the California Department of Public Health's plan to amend article 4, sections 70100 and 70500 of the WIC Bulletin Regulations (W.B.R.), pursuant to California Health and Safety Code section 123322 and in accordance with the federal and state requirements governing the WIC Program.

Hearts and Hands Working Together is a non-profit, 501 (c) (3) agency whose primary mission is to provide food, shoes and clothing to the underserved and at risk individuals/families in the San Ysidro community. The agency's mission is based on the principle of when people "work together" with their "hearts and hands" their mission and goals can be realized and a lot more will be accomplished.

Our organization is also a designated Emergency Food Assistance Program Distributor for the San Diego Food Bank, and distributes food to about 700+ families once a month while also responding to emergency needs. As a completely volunteer-run organization, we see the impact food and grocery outlet shortages have on families in our underserved community.

We appreciate the willingness of the CDPH to meet with stakeholders and listen to the public in order to include changes to the plan that would benefit program recipients. San Ysidro currently has just one grocery food chain store in our community of over 30,000 people. Every student in the school district serving our community is provided with free lunch, indicating that most of our families are at or below the poverty level. Should that one grocery store lose their ability to accept WIC vouchers, we fear our community would be impacted severely. Removing WIC access to another grocery outlet could leave disadvantaged families without the food they need to feed their young children or formula to feed their infants.

Thank you for the opportunity to provide comments on the California Department of Public Health's plan to amend WIC Bulletin Regulations. Please take into consideration the issues we have addressed so that we can ensure that our communities have access to healthy and nutritious food.

Sincerely,


Alicia Jimenez, President, Director and Founder
Hearts and Hands Working Together

Ccp. Raquel Moran Vice-President and Founder

Letter 2
California State Senators Ben Hueso
California State Senator Janet Nguyen

CAPITOL OFFICE
 STATE CAPITOL, ROOM 4035
 SACRAMENTO, CA 95814
 TEL (916) 651-4040
 FAX (916) 651-4940
 S040.SENATE.CA.GOV

California State Senate

SENATOR
BEN HUESO
 FORTIETH SENATE DISTRICT



STANDING COMMITTEES
 ENERGY, UTILITIES & COMMUNICATIONS
 CHAIR
 VETERANS AFFAIRS
 VICE-CHAIR
 NATURAL RESOURCES & WATER
 GOVERNMENTAL ORGANIZATION
 BANKING & FINANCIAL INSTITUTIONS
 AMERICAN PORTUGUESE VETERANS MEMORIAL
SELECT COMMITTEES
 CALIFORNIA-NEJICO COOPERATION
 CHAIR
 BILITERACY & DUAL IMMERSION PROGRAMS IN CALIFORNIA
 CHILDREN WITH SPECIAL NEEDS
 CLIMATE CHANGE AND AIRQI IMPLEMENTATION
 MENTAL HEALTH
SUBCOMMITTEE
 GAS, ELECTRIC & TRANSPORTATION SAFETY

May 26, 2016

Karen L. Smith, MD
 Director and State Health Office
 California Department of Public Health
 1615 Capitol Avenue
 Sacramento, CA 95814

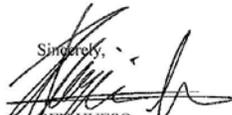
Dear Dr. Smith,

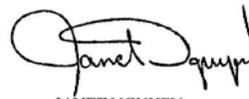
Thank you for the opportunity to provide comments on the California Department of Public Health's plan to amend Article 4, sections 70100 and 70500 of the WIC Bulletin Regulations (W.B.R.), pursuant to California Health and Safety Code section 123322 and in accordance with the federal and state requirements governing the WIC Program. We appreciate the healthy discussion between the CDPH and stakeholders from the Northgate Gonzalez Market in order to improve access to benefit program recipients.

Current WIC guidelines prevent any new stores within a chain of stores from offering WIC benefits while an existing store in the same chain of grocery stores is in a probationary period for a WIC regulation violation. This existing policy can leave many of our community members at a disadvantage, particularly low-income residents. Program participants often need to travel longer distances to find another grocery store that will accept WIC vouchers. Some of our communities do not have many grocery stores within their neighborhood and removing WIC access to another grocery store leaves disadvantaged families without healthy food alternatives or essential formula to feed their infants.

As representatives to diverse populations, we advocate for programs that provide disenfranchised communities with opportunities to live healthier lives. Programs such as WIC are important and valued by our residents because of the food resources and health education they provide. At this time, we would like to express our support for the WIC program changes described in amendments to W.B.R. sections 70100 and 70500. These changes will help ensure that grocers will readily be available for families who have limited means and access to fresh produce. It will guarantee access to healthier options within their neighborhoods.

Again, thank you for allowing us to express to you our support for these changes. Should you have any questions, please do not hesitate to call us at (619) 409-7690 or (916) 651-4034.

Sincerely,

 BEN HUESO
 California State Senator, 40th District


 JANET NGUYEN
 California State Senator, 34th District

CHULA VISTA DISTRICT OFFICE
 305 N. STREET, SUITE 2000
 CHULA VISTA, CA 91910
 TEL (619) 409-7690
 FAX (619) 409-7689

EL CENTRO DISTRICT OFFICE
 1224 STATE STREET, SUITE D
 EL CENTRO, CA 92243
 TEL (760) 335-3442
 FAX (760) 335-3444

Letter 3 California Grocers Association



June 3, 2016

Ms. Catherine Lopez, M. Ed.
Policy & Planning Branch Chief
WIC Division, CDPH
PO Box 997377, MS 0500
Sacramento, CA 95899-7377
Sent Via e-mail to: WICRegulations@cdph.ca.gov

Dear Ms. Lopez,

Thank you for the opportunity to submit comments regarding proposed changes to the California WIC Program incorporated in Regulatory Alert 2016-02. The California Grocers Association (CGA) is a non-profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail members operating over 6,000 food stores in California and Nevada, including traditional supermarkets, specialty food stores, club stores, and A-50 WIC stores. Our membership represents a significant percentage of authorized WIC vendors in California.

As you are aware, our association and many of our member companies have been working for several years with the Department to ensure objectives of cost containment and program integrity are met without undue burden on vendors participating in the program. As the "private" piece of this "public-private partnership" we always hope we are able to work in collaboration with the Department in identifying solutions and resolving legitimate challenges.

I would like to preface my comments on the specific proposal with a question as to the appropriateness of utilizing the process outlined in Health and Safety Code Section 123322 in this instance. While we understand the statute authorizes use of a regulatory bulletin process rather than the process outlined in California's Administrative Procedures Act (APA), that authority is not absolute and may only be applied in specific circumstances. While those do generally include, "criteria used for vendor authorization" we are not certain this particular regulatory bulletin meets the standard. As noted in the Statement of Reasons accompanying the proposed regulatory changes, Federal regulations only *require* states to include applicant convictions of crimes indicating a lack of business integrity as part of the vendor authorization process. All other factors appear to be optional or discretionary under Federal regulations. Health and Safety Code Section 123322 is clear in its intent that the bulletin process be used when needed to, "...remain in compliance with the conditions of federal funding..." It would appear in this case that the only way federal funding would be in jeopardy is if the state failed to include the mandated criminal convictions issue in its review of business integrity. All other changes are optional and therefore likely should be adopted through the normal APA process.

Ms. Catherine Lopez
June 3, 2016
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That being said, as to the specific changes proposed we have previously expressed concerns with provisions of the vendor business integrity regulations and appreciate the Department's efforts to address some of them. Specifically, the proposed amendments seem to strike a much more rational balance with regard to denial of additional location authorizations when one or more locations owned by a company are serving a sanction. As you are aware, many very technical violations can result in sanctions being imposed, and there is no requirement that sanctions be applied only in situations where there was intent to avoid specific compliance requirements or defraud the program. That being said, concerns and questions arise with provisions contained in some sections of the proposed regulatory updates.

Section 70500 Circumvention of WIC Sanction

In proposed (c)(1), the Department clarifies additional information that may be requested from a vendor applicant at the Department's sole discretion. We do have concerns with the sweeping authority provided in existing regulation to demand documents from vendors and potential vendors with no stated purpose or reason. With regard to the proposed regulatory changes, there are concerns with the list of additional documents articulated.

In proposed (c)(1)(H), the Department grants itself authorization to demand personal income tax returns for "all owners" of the applicant business. There are several concerns with this provision, one the Department grants itself at its sole discretion. First, while we understand that Federal regulations "require" the Department to maintain confidentiality of all vendor records, it is of great concern that PERSONAL rather than business records would be among those records. Especially since the Department has provided no information, even in response to an inquiry posed during public stakeholder meetings, regarding what protections they will provide such deeply confidential personal information.

Personal tax returns contain home address, social security number, charitable contributions, and other deeply confidential information not only for any business owner(s) but also for all spouses, children, and adult dependents that may be filing jointly with our claimed on those returns. The broad general rationale that those records "may help" determine circumvention of sanctions is little comfort when such private information is involved and applicants have no idea whether the Department's security measures are adequate to protect the privacy of that information. Compromise of such information could lead to significant negative consequences for any individual(s) whose information appears on a personal tax return, including identity theft and threats to personal safety.

While we understand there is a general requirement that vendor records be kept confidential, there is no indication what security measures are applied. Are paper documents kept in unlocked or locked file cabinets? Who has access to the keys? Similarly, if the documents kept electronically are they in encrypted or unencrypted form? Who has access to them and/or encryption keys? Does the Department have protocols in place to make it readily apparent if and when those confidential documents are accessed by unauthorized parties and if so what are they? Does the Department have an obligation to provide assistance to individuals whose information is compromised should that happen? If so what is the Department required to do? Is the Department even required to notify individuals if and when personal information is compromised?

Ms. Catherine Lopez
June 3, 2016
Page 3 of 3

In addition, there is no clarity in proposed (c)(1)(II) as to who will be considered among "all owners" of the vendor applicant. The issue seems fairly straightforward when the applicant is a sole proprietorship or a partnership. However, who would be considered among the owners of a private equity firm, a publicly traded (shareholder owned) company, or an ESOP (employee owned) vendor applicant?

Again, thank you for the opportunity to comment on the proposal contained in Regulatory Alert 2016-02 and we look forward to continuing to work with you on this and other important issues for the vendor community.

Thank you,



Keri Askew Bailey
Senior Vice President, Government Relations & Public Policy

Letter 4 California Retailers Association



June 3, 2016

Women, Infants and Children (WIC) Division
California Department of Public Health
3901 Lennane Dr. MS-8600
Sacramento, CA 95834

Via email: WICRegulations@cdph.ca.gov

RE: PROPOSED AMENDMENTS TO ARTICLE 4, SECTIONS 70100 AND 70500 OF THE WIC BULLETIN REGULATIONS, PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 123322

On behalf of our member retail companies, the California Retailers Association supports the California Department of Public Health's proposal to amend Article 4, Sections 70100 and 70500 of the WIC Bulletin Regulations, as outlined in regulatory alert 2016-2, dated April 15, 2016. The amendments will bring more clarity and certainty to the business integrity standards for the WIC program and vendors. Additionally the proposed amendments will strengthen the controls for WIC sanction circumvention and allow for protections of participants while also ensuring continued access throughout the State.

We respectfully urge the Department to approve the proposed amendments.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which currently operates over 418,840 retail establishments with a gross domestic product of \$330 billion annually and employs 3,211,805 people—one fourth of California's total employment.

Sincerely,

Pamela Boyd Williams
Executive Vice President