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September 23, 2013

WIC REGULATORY BULLETIN 2013-02

NOTICE OF FINAL ACTION

- Subject:** This is the Final Action on the Notice of Proposed Changes posted as Regulatory Alert 2013-02 on July 2, 2013 posted at:
<http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>
- Date of Adoption:** The Final Action will be effective October 26, 2013.
- Regulation:** California WIC Program Regulations by Bulletin
Article 5
Section 82000.
- (a) The California WIC Authorized Food List Shopping Guide dated July 5, 2011, is the list of authorized supplemental foods for the California Special Supplemental Nutrition Program for Women, Infants and Children.
- (b) As of October 26, 2013, “infant fruits and/or vegetables in pouches” is added to the Infant Fruits and Vegetables category “Cannot Buy” section on the list of authorized supplemental foods.
- Stakeholder Comments and Responses:** Please see Attachment 1 for a full list of stakeholder comments received and Departmental responses.
- Feedback:** The WIC Program welcomes your feedback regarding the impact of this Final Action and any policy adjustments you believe should be considered after implementation.
- You may provide your feedback by sending your comments, with the Bulletin number in the subject line, to: WICRegulations@cdph.ca.gov.



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Attachment 1

AMENDMENT TO THE WIC AUTHORIZED FOOD LIST DISALLOWING POUCHES

Stakeholder Comments and CDPH Responses

California Women, Infants and Children Supplemental Nutrition Program

September 23, 2013

Health & Safety Code §123322 authorizes the California Department of Public Health to establish regulations regarding the authorized foods of the California Women, Infants and Children Supplemental Nutrition Program using a regulatory bulletin process. The Department is utilizing this process to adopt the regulation in Regulatory Alert 2013-02. This document is intended to provide a list of the stakeholder comments received in response to Regulatory Alert 2013-02 and the Department's responses to those comments.

Written Comment Letters Received

Comment letters received by the Department in regard to Disallowance of Pouches regulations proposed in Regulatory Alert 2013-02 were received from the following 5 organizations:

1. Nicholas A. Pyle, President, Pyle & Associates, July 18, 2013
2. Sangita Forth, Plum Organics, July 18, 2013
3. Linda Sward, Breastfeeding/Nutrition Education Coordinator, Tulare County WIC Program, July 18, 2013
4. Carlos Carrasco, Grocery Buyer, Food 4 Less, July 18, 2013
5. Meredith Weinkauf, Segmentation Merchant, Target, July 24, 2013

**Comments
Received and
Responses**

In response to Regulatory Alert 2013-02, the California WIC Program received responses from five stakeholders. Their comments, with the California WIC Program's responses, are listed below in the order received.

1. **Comment:** This letter is in response to the California WIC Program's Proposed Regulation Article 5, Section 8200. The state notice proposes to remove infant fruits and vegetables in pouches from the list of WIC authorized foods on the California WIC Program.

While pouches are popular and convenient, there are many issues that preclude them from being beneficial on the California WIC Program. Due to the cost, the number of participants not being served on the California increases. Further, there are environmental issues like the inability to recycle empty infant food pouches.

POUCHES COST TWICE AS MUCH AS JARS

According to the California WIC Program, the average food cost for infant fruits and vegetables in 4 ounce glass/plastic containers is \$0.70, and the average food cost for infant fruits and vegetables in 4 ounce pouches is \$1.42. Pouches cost more than twice the price of a comparable amount of food in jars.

POUCHES PREVENT MAXIMUM PARTICIPANTS FROM BEING SERVED

Of the 1.46 million participants on the California WIC Program, approximately 320,000 infants (0-11 months) are served on the California WIC Program monthly. If approximately half of them, 160,000, fall into the 6-11 month age group that receives baby food, then the following can be determined.

If half (80,000 of the 160,000) of the 6-11 month old infants receive 64 jars or pouches of baby food monthly because they are fully breast fed, then the other 80,000 participants receive 32 jars or pouches of baby food month because they are partially breast fed or formula fed.

80,000 infants buy 64 pouches/month @ \$1.42 each = \$7,270,400

80,000 infants buy 64 jars/month @ \$0.70 each = \$3,584,000

(a difference of \$3,686,400)

80,000 infants buy 32 pouches/month @ \$1.42 each = \$3,635,200

80,000 infants buy 32 jars/month @ \$0.70 each = \$1,792,000
(a difference of \$1,843,200)

$\$3,686,400 + \$1,843,200 = \$5,529,600$

Per USDA, the average monthly benefit per person in California in FY 12 was \$49.35.

The maximum cost difference between all 160,000 infants using pouches versus jarred baby food equals \$5,529,600 monthly. This translates to up 112,048 additional people could be served WIC benefits in California with the removal of pouches. This is additional 7.6% more nutritionally at-risk Californians who might be served by eliminating pouches from the program.

POUCHES ARE NOT RECYCLABLE

From an environmental standpoint, jarred baby food is recyclable while pouches cannot be recycled. With California such a pro-recycle state, it behooves the California WIC Program to encourage participants to recycle the jarred baby food when they are done using the product.

OTHER ISSUES WITH POUCHES

Pouches limit the child/parent interaction during feeding time. Without assistance from the parent spoon-feeding the child the meal, the child is missing out on bonding time. Further, pouches encourage the child to suck (like a bottle) rather than learn how to properly chew.

The nutritional profile of pouches is mostly fruit. Even though the name says it is a vegetable (i.e. spinach, peas & pears), the actual product is mostly fruit. Infants will think that vegetable should be "sweet" and not be as receptive to straight vegetables when they are presented with them.

CONCLUSION

California WIC would see an almost immediate monthly multi-million dollar cost savings removing pouches from the state WIC program. The savings would allow up to 112,048 additional California residents to enroll in WIC. Eliminating pouches promotes environmental and waste education with the ability to recycle all baby food containers allowed on the California WIC Program. Finally, pouches reduce bonding with the parent during meal times and encourage infants to prefer sweetened vegetables versus regular vegetables due to the added fruits in vegetable pouches.

Thank you for considering removing pouches from the California WIC Program.

Response: Thank you for your comments. We appreciate your interest in the California WIC Program.

2.1 Comment: What is the acceptable threshold for pouch pricing?

Response: Thank you for your comment. We appreciate your interest in the California WIC Program.

The California WIC Program has not yet established a standardized price threshold for infant fruits and vegetables. In light of federal direction for state agencies to contain food costs while maintaining the nutritional integrity of the food package, the Department determined it is reasonable to exclude infant fruits and vegetable pouches because their average price per unit is 100% higher than the average price per unit for nutritionally similar products sold in glass and plastic containers. This decision is reasonable and necessary because it meets the federal cost containment directive and maintains the nutritional integrity of infant food packages.

2.2 Comment: What would it take for CA WIC to re-accept pouches (from a pricing standpoint)?

Response: Thank you for your comment. We appreciate your interest in the California WIC Program.

The Department is required to consider four criteria when authorizing specific foods, as specified in Cal. Code of Regs., tit. 22, 40715(c). When considering whether or not to re-authorize pouches, the Department would reevaluate the pouches using all of these criteria, one of which is cost. USDA has directed all states to review cost containment measures, including disallowance of more expensive package types. The market share data would need to demonstrate a significant decrease in the difference between the average cost of infant fruits and vegetables in pouches compared with infant fruits and vegetables in glass and plastic containers before the California WIC Program would consider authorizing these products.

2.3 Comment: What is the next time pouches could be reconsidered for CA WIC Program, if regulation is passed in December?

Response: Thank you for your comment. We appreciate your

interest in the California WIC Program.

We have reviewed your comment and want to let you know that changes to allowable container types are addressed through our food category change request process. This process is outlined in the "Questions and Additional Information" section (page 3) of the WIC Regulatory Alert 2012-02 announcement. We will announce on our website at www.wicworks.ca.gov when we will be accepting requests to make changes to brand specific foods and food category changes.

3. **Comment:** I was just alerted by our Agency Vendor Liaison the there is an open comment period for the pouch-style baby food. At this point they are a more expensive option in comparison to the jarred baby food items and are being discontinued.

Aside from the cost, I think that as an infant/child nutrition program we are sending mixed messages when we allow the pouch food. Granted, there are times they might be more convenient, but far too many parents allow their infant to self-feed directly from the pouch. Feeding skills are learned . . . and learning to use and eat from a spoon is a very important milestone. Product manufacturers will deny that this is the suggested method for feeding but it takes only a minute of looking online to see that many parents use them exactly that way. (A browsing of the items online showed several parents attaching photos of their adorable 9 month olds self-feeding directly from the squeeze pouch.)

I support the discontinuance of the pouch baby food both for economic and nutritional reasons. I encourage you to stay with your decision to do so.

Response: Thank you for your comments. We appreciate your interest in the California WIC Program.

4. **Comment:** 7/5/13 maximum allowable rates
Food item # 2102 24 3.5oz infant fruits and Vegetables Maximum Rate is 33.01 24 units / 33.01 = 1.37
Food item # 2109 14 3.5oz infant fruits and vegetables Maximum rate is 12.43 14 units / 12.43 = .88

When the customer has a voucher for 24 units we can charge 1.37 a unit. When the Customer has a voucher for 14 units we can only charge .88 cents a unit. Some of the 3.5oz WIC authorized items have a cost around 1.14 so we are forced to sell below cost at .88 cents. Please advise on why there is two different maximum rates for 3.5oz

infant fruits and vegetables and what I can set my retail at.

Response: Thank you for your comments. We appreciate your interest in the California WIC Program.

Federal regulations require the Department to establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group. The Maximum Allowable Department Reimbursement rate (MADR) represents the maximum price for which a WIC food instrument (FI) can be reimbursed. The MADR is not intended to be the amount reimbursed for each FI. Rather, the MADR is set for each peer group and accounts for varying prices, geographic disparities, and participant choice of food items selected. The actual amount reimbursed to a vendor should reflect competitively set prices and should not reach the maximum. The price at which you choose to set your retail is a business decision, and the California WIC Program cannot advise you as to what amounts to set your retail prices. Participants are allowed to purchase any eligible product allowed on an FI, and if you stock an eligible item, you may not restrict a participant from purchasing that eligible item.

5. **Comment:** We are glad that CA is reviewing these items. We have concerns with these items being WIC allowed (baby food pouches). State does not reimburse retailer for higher priced items which cause rework and potentially shortage.

We would like the state to either pass Regulatory Alert 2013-02 excluding these items or more adequately compensate the retailers for these higher priced items.

Response: Thank you for your comments. We appreciate your interest in the California WIC Program.