

July 2, 2013

REGULATORY ALERT 2013-02

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Supplemental Nutrition Program for Women, Infants and Children (WIC Program) to inform WIC stakeholders of the WIC Program's plan to amend the list of authorized supplemental foods for the WIC Program, adopted into regulations in Regulatory Bulletin 2012-02. This amendment revises the Infant Fruits and Vegetables category "Cannot Buy" section to no longer allow products sold in pouches. This amendment is proposed pursuant to Health and Safety (H&S) Code Section 123322 and in accordance with the federal and state requirements governing the WIC Program (included below in Authority).

- Attachment 1 of this notice provides reasons for the proposed action.
- Attachment 2 of this notice details how this proposed action will be implemented.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, the WIC Program will meet by webinar consultation with stakeholders on July 18, 2013 to receive input on the amendment to the list of authorized supplemental foods for the WIC Program, revising the Infant Fruits and Vegetables category "Cannot Buy" section to no longer allow products sold in pouches. If you are interested in participating in the stakeholder workgroup, please send an e-mail by close of business on July 9, 2013 with the subject line reading "Stakeholder RSVP for Regulatory Alert 2013-02" 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 WIC Program will contact you by July 12, 2013 with details on the time and how to attend the webinar workgroup meeting.

Comment Period

The WIC Program will accept written comments from affected stakeholders regarding the proposal to amend the list of authorized supplemental foods for the WIC Program, revising the Infant Fruits and Vegetables category “Cannot Buy” section to no longer allow products sold in pouches. The comment period will be open for 25 calendar days, from July 2–July 26, 2013. Send your comments electronically to the following e-mail address: WICRegulations@cdph.ca.gov.

If this proposed action is not withdrawn, the WIC Program 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 (Department), which administers the WIC Program, proposes to amend the following regulation via regulatory bulletin:

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 Supplemental Nutrition Program for Women, Infants and Children.
- (b) As of the effective date of this proposed regulation, “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.

Nature of the Regulation

The Department proposes adoption of the regulation removing infant fruits and vegetables in pouches from the list of WIC authorized foods. To become or continue as a WIC Program eligible infant fruit and/or vegetable, products must meet the requirements set forth in the California WIC Program Regulations by Bulletin Section 82000, as amended.

Reason for the Regulation

The reasons for this amendment are included in Attachment 1 of this notice.

Authority

Federal:

The Child Nutrition Act of 1966, title 42 of the United States Code (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 WIC Program 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)
<http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>

Questions and Additional Information:

If you have any questions, please contact the WIC Program at WICRegulations@cdph.ca.gov.



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Women, Infants and Children (WIC) Program Division



**Attachment 1
Statement of Reasons
July 2, 2013**

Section 82000 WIC Authorized Food List

PROPOSED 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 Supplemental Nutrition Program for Women, Infants and Children.
- (b) As of the effective date of this proposed regulation, “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.

Authority

Federal:

7 C.F.R. 246.10(b)(2)(i) State agency responsibilities. State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of 7 C.F.R. 246.10.

7 C.F.R. 246.10(e)(12) Minimum requirements and specifications for supplemental foods. The minimum requirements and specifications for infant fruits and vegetables in all food packages include: any variety of single ingredient commercial infant fruits and vegetables with no added sugars, starches, or salt, and in a range of textures from strained through diced.

State:

Health and Safety Code §123290: This section requires the Department to designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

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



Attachment 1 Statement of Reasons July 2, 2013

California Code of Regulations, Title 22, § 40715: This section requires the Department to authorize supplemental foods based upon the federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments. The following criteria shall be also used by the Department to designate the specific foods authorized: (1) Cost of the foods; (2) Appropriateness of foods to the participant's category; (3) Statewide availability of the foods for a period of at least one year; and (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

Statement of Reasons:

Code of Regulations, Title 22, § 40715 requires the Department to consider the following criteria in addition to the federal requirements when authorizing supplemental foods: (1) Cost of the foods; (2) Appropriateness of foods to the participant's category; (3) Statewide availability of the foods for a period of at least one year; and (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

(1) Cost

Infant fruits and vegetables were authorized as a WIC allowable food by USDA and added to California WIC's (CA WIC) food package in October 2009. At that time, infant fruits and vegetables were generally sold in two package types: glass and plastic containers. After the addition of infant fruits and vegetables to the California food package, a new package type, pouches, was introduced to the market, which generally cost significantly more than other package types.

The significant difference in price per unit between glass and plastic containers versus pouches is a cause for concern for USDA, CA WIC, and WIC authorized vendors. In a letter from USDA to CA WIC, dated April 16, 2013, USDA listed several acceptable cost containment measures for states to implement in order to receive WIC contingency funds; included on this list of acceptable cost containment measures to decrease costs while maintaining nutritional integrity is the authorization of less expensive packaging.

A CA WIC analysis of the most recently available infant fruits and vegetables market share data (sourced from IRI) is summarized below. The results show the average cost of infant fruits and vegetables is dependent on the type of packaging or container in which it is sold. The costs for this analysis of package type container costs were calculated by:



Attachment 1 Statement of Reasons July 2, 2013

- sorting 4 ounce products to their appropriate package type categories (glass/plastic containers versus pouches),
- removing outlier products in the upper and lower 10% of product cost for each package type category, and
- calculating the average price for each package type category

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. The analysis shows pouches are significantly higher in price than their glass or plastic container counterparts, with the average cost of infant fruits and vegetables packaged in pouches more than double the average cost of infant fruits and vegetables packaged in glass or plastic containers.

CA WIC reasonably determines that this cost differential data supports prohibiting the purchase of infant fruits and vegetables in pouches to reduce program food costs, in accordance with USDA's April 16, 2013 cost containment directives. Since infant fruits and vegetables in both of the package types are nutritionally identical and are widely available for participants to purchase, it is reasonable to prohibit the purchase of infant fruits and vegetables in pouches due to their high cost.

(2) Appropriateness of Foods to the Participant's Category

USDA, in accordance with the Institute of Medicine, has determined infant fruits and vegetables to be appropriate for infants 6 to 12 months of age; Infant Fruits and Vegetables is a mandatory food package category.

(3) Statewide Availability

Infant Fruits and Vegetables in glass or plastic containers are eligible products which are available statewide.

(4) Nutrient Content of the Food

USDA, in accordance with the Institute of Medicine, has determined that commercial infant fruits and vegetables contain appropriate nutrients for infants 6 to 12 months of age. Infant fruits and vegetables packaged in pouches are nutritionally identical to infant fruits and vegetables sold in glass or plastic containers.



Attachment 1 Statement of Reasons July 2, 2013

Federal Regulations for Infant Fruits and Vegetables:


To be eligible for purchase with WIC Food Instruments, federal regulations require state WIC Programs to authorize infant fruits and vegetables that meet several requirements. Federal regulations allow any variety of single ingredient commercial infant fruits and vegetables with no added sugars, starches, or salt, and in a range of textures from strained through diced.

The Department has determined that because participants will be able to receive their full nutritional benefit through the purchase of infant fruits and vegetables in glass or plastic containers, applying the criteria above, when nutritionally identical and lower-priced products are widely available for purchase, infant fruits and vegetables in pouches are not authorized.

Attachment 2 Implementation of the Prohibition on Pouches July 2, 2013

Sample Food Instrument for Pouches Prohibition Language:

INDIVIDUAL NO.	PARTICIPANT / PARENT / GUARDIAN	FIRST DAY TO USE	LAST DAY TO USE	SERIAL NO.
231900713IG	ISABELLE GALVAN	OCT 28 13	NOV 27 13	269534015



**CALIFORNIA
wic**
WOMEN, INFANTS & CHILDREN

700-269534015

Pay to the order of: WIC Authorized Vendor

What to buy:

14 (4 OZ) INFANT FRUITS AND VEGETABLES
 OR 18 (3.5 OZ) INFANT FRUITS AND VEGETABLES
*****POUCHES NOT ALLOWED*****

1 (8 OZ) INFANT CEREAL

90-1342
1211

EXACT PURCHASE PRICE:

*MUST NOT EXCEED MAXIMUM ALLOWABLE DEPARTMENT REIMBURSEMENT RATE

FOOD ITEM NUMBER

State of California WIC Program
VOID IF NOT DEPOSITED WITHIN 45 DAYS OF "FIRST DAY TO USE." NOT VALID IF ALTERED.

VALID ONLY FOR FOOD ITEMS SPECIFIED IN THE CALIFORNIA WIC AUTHORIZED FOOD LIST.

NON-NEGOTIABLE

AUTHORIZED SIGNATURE (SIGN AT PURCHASE)

⑈0700⑈ ⑆121113423⑆ 269534015⑈

The language in the WIC Authorized Food List Shopping Guide (WAFL SG) Infant Fruits and Vegetables category "Cannot Buy" section will be updated at the next WAFL SG revision to no longer allow products sold in pouches.