



December 13, 2013

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REGULATORY ALERT 2013-03

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to inform WIC stakeholders of the Program’s plan to adopt the California WIC vendor peer group criteria and a corresponding reimbursement system into California regulation, pursuant to Health and Safety Code section 123322, in accordance with the federal requirements governing the WIC Program (included below in Authority).

Attachments 1 and 2 of this notice provide reasons for the proposed actions.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, CDPH will meet by webinar consultation with stakeholders between January 15, 2014, and January 22, 2014, to receive input on the adoption of the vendor peer group criteria and corresponding reimbursement system. If you are interested in participating in the stakeholder workgroup, please send an e-mail by close of business on January 2, 2014, 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 January 7, 2014, 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 peer group criteria and



corresponding reimbursement system. The comment period will be open for 40 calendar days, from December 16, 2013, through January 24, 2014. 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If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.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 rules into California regulation via regulatory bulletin.

Article 2. Peer Group Criteria

50000 Peer Group Criteria. (a) For the purposes of this article “Department” is defined as the Department of Public Health, and the “Program” and “WIC” are defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.

(b) The Department shall place vendors in an appropriate peer group category and subgroup, if applicable, when authorizing a vendor by applying the requirements set forth in this section and in sections 50100, 50200 and 50300. The Department may reassign a vendor to a different peer group category or subgroup at any time during the term of the vendor agreement. The Department shall notify the vendor of its peer group category and subgroup assignment at authorization or at the time of any subsequent changes in assignment.

(c) The Department shall make peer group category and subgroup assignments based on its review and assessments of the vendor at the time of the vendor’s initial authorization and as part of vendor monitoring at any time during the term of the vendor agreement, according to the requirements in this section.

(d) Vendors shall be reassessed based on their records using criteria in Section 50100 within six (6) months of authorization, annually, at reauthorization, and at any time during the term of the vendor agreement. In order to reassess a vendor, the Department shall request that the vendor provide a copy of its California Board of Equalization (BOE) State, Local and District Sales and Use Tax Return statement for the period of time specified by the Department. A vendor must provide the BOE State, Local and District Sales and Use Tax Return statement to the Department within thirty (30) days of the date on which the vendor received the Department’s request for the statement. If a vendor does not file a BOE State, Local and District Sales and Use Tax Return statement because that vendor does not sell any taxable goods or if a

vendor applicant has not filed a State, Local and District Sales and Use Tax Return statement with the BOE within 6 months of authorization because the vendor files these statements annually, the vendor must submit the materials specified in Section 50100(a)(2)(B)(1). If the vendor fails to submit the BOE State, Local and District Sales and Use Tax Return statement or the alternate materials in Section 50100(a)(2)(B)(1) within thirty (30) days from receipt of the request, the Department shall deny reauthorization of the vendor, or, if the vendor is not in the reauthorization process, place a vendor in Peer Group Category C.

(1) For the purposes of this section, "date of receipt" shall mean the date indicated on the United States Postal Service delivery confirmation when delivered to the vendor's most recent business ownership address on file with the Department.

(e) The Department shall conduct an on-site visit upon initial authorization of a vendor and may conduct on-site visits at other times during the term of the vendor agreement, as part of vendor monitoring, for the purposes of reviewing inventory to assign or verify a vendor's peer group category and subgroup assignment.

(1) On-site visits shall be conducted during the vendor's regular business hours, and Department staff conducting the visit shall identify themselves upon arrival. The Department is not required to notify the vendor of the onsite visit in advance of arrival.

(2) During the on-site visit, the vendor shall provide the Department staff with access to its food stock and inventory records. All food items must be documented by invoices or transfer documents specific to that store location.

(3) The Department's on-site review of inventory for peer group assignment shall include only food items in the public area of a vendor's store where merchandise is available for purchase, and infant formula, infant meats, and milk in storage on the premises of the vendor location, at the time Department staff arrives on the premises for the assessment.

50100 A-50 Peer Group/Category A. (a) Vendors receiving more than fifty (50) percent of their annual food sales revenue from WIC redemptions and those vendor applicants expected to meet this criterion shall be classified as above-50-percent (A-50) vendors and placed in Peer Group Category A. The Department shall take the following steps to assess whether a vendor shall be placed in Peer Group Category A:

(1) Upon initial application, the Department shall ask vendor applicants if they believe they will meet the criteria for Peer Group Category A.

(A) If an applicant answers in the affirmative, the

Department shall place the vendor in Peer Group Category A.

(B) If an applicant answers in the negative, the Department will make the assessment according to the following criteria and shall place a vendor in Peer Group Category A based on any one of these criteria.

1. If a vendor applicant is requesting authorization of a new store location and owns other WIC authorized stores, the Department shall first determine if the vendor applicant owns an existing authorized A-50 store. If the vendor applicant ownership owns at least one (1) existing authorized A-50 store, the Department shall then calculate WIC redemptions as a percent of total food sales of all the existing WIC authorized stores owned by the vendor applicant. If the combined total WIC redemptions of the vendor's stores exceed 50 percent of the combined total food sales the applicant store will be placed in Peer Group Category A.
 2. The Department shall request from the vendor applicant the percentage of anticipated food sales by type of payment, including cash, Supplemental Nutrition Assistance Program (SNAP), WIC, and credit/debit card. If the vendor's anticipated WIC sales are more than 50 percent of the anticipated food sales, the vendor applicant will be placed in Peer Group Category A.
 3. The Department shall review the actual food items present at the preauthorization on-site visit described in Section 50000. If the food items indicate that the vendor's inventory is more than 50 percent WIC authorized supplemental food items, the vendor applicant shall be placed in Peer Group Category A.
 4. If the Department receives notification from a new vendor applicant otherwise qualified for authorization that WIC authorization is required in order for the store to open for business, the vendor applicant will be placed in Peer Group Category A.
- (2) Within six (6) months of authorization, the Department shall re-assess whether a new vendor should be placed in Peer Group Category A using the following criteria:
- (A) The Department shall compare the total dollar amount of a vendor store's WIC redemptions to the total dollar amount of a vendor store's SNAP redemptions for the period which the vendor has been authorized. When comparing a

vendor's WIC redemptions to SNAP redemptions the Department shall consider only WIC redemption information from the Department and SNAP redemption information provided by the California Department of Social Services and the United States Department of Agriculture (USDA). If the vendor store's SNAP redemptions exceed WIC redemptions for the period during which the vendor has been authorized the vendor shall not be considered an A-50 vendor.

(B) If the total dollar amount of the vendor store's WIC redemptions exceed the total dollar amount of its SNAP redemptions, the Department shall compare total dollar amount of the vendor's non-taxable food sales from the vendor's most recent BOE State, Local and District Sales and Use Tax Return statement to the total dollar amount of the vendor's WIC redemptions for the same time period. If the vendor store's WIC redemptions exceed 50 percent of the non-taxable food sales for the time period covered by the tax return statement, the Department shall place the vendor in Peer Group Category A.

1. If a vendor does not file a BOE State, Local and District Sales and Use Tax Return statement because that vendor does not sell any taxable goods or if a vendor has not filed a State, Local and District Sales and Use Tax Return statement with the BOE within 6 months of authorization because the vendor files these statements annually, the Department may require the vendor to submit monthly sales statements with inventory records detailing the vendor's sales for SNAP eligible foods and total sales for the period of time specified by the Department. This vendor must certify that the information included in this statement is true and correct. If the vendor store's WIC redemptions exceed 50 percent of the non-taxable food sales for the time period covered by the sales and inventory records, the Department shall place the vendor in Peer Group Category A.

(3) In addition to the assessments set forth in Section 50100(a)(1 – 2), the Department shall assess all authorized vendors annually, or, as part of vendor monitoring at any time during the term of the vendor agreement, to determine if a vendor's WIC redemptions are more than 50 percent of its total food sales. The Department shall use the following criteria to determine if an authorized vendor shall be placed in Peer Group Category A:

- (A) The Department shall compare the total dollar amount of the vendor store's WIC redemptions for the most recent twelve (12)-month period to the total dollar amount of the vendor store's SNAP redemptions for the same period. If SNAP redemptions exceed WIC redemptions, the Department shall not consider the vendor an A-50 vendor. When comparing a vendor's WIC redemptions to SNAP redemptions the Department shall consider only WIC redemption information from the Department and SNAP redemption information provided by the California Department of Social Services and the USDA.
- (B) If the total dollar amount of the vendor store's WIC redemptions exceed the total dollar amount of its SNAP redemptions for the most recent twelve (12)-month period, the Department shall compare the total dollar amount of the vendor's non-taxable food sales from the vendor's most recent BOE State, Local and District Sales and Use Tax Return statement(s) for the same twelve month period to the total dollar amount of the vendor's WIC redemptions covering the same time period. If WIC redemptions exceed fifty (50) percent of food sales for the time period covered by the tax return statement, the Department shall place the vendor in Peer Group Category A.
1. If a vendor does not file a BOE State, Local and District Sales and Use Tax Return statement because that vendor does not sell any taxable goods, the Department may require the vendor to submit monthly sales statements with inventory records detailing the vendor's sales for SNAP eligible foods and total sales for the period of time specified by the Department. This vendor must certify that the information included in this statement is true and correct. If the vendor store's WIC redemptions exceed 50 percent of the non-taxable food sales for the time period covered by the sales and inventory records, the Department shall place the vendor in Peer Group Category A.
- (4) When comparing a vendor's total dollar amount of non-taxable food sales as reported on the vendor's BOE State, Local and District Sales and Use Tax Return statement, the Department will not include the dollar amount of sales to other retailers for the purposes of resale.
- (5) The Department may require a vendor to provide copies of

inventory, sales, and other records for inspection in order to verify the accuracy of information used in the assessment process.

50200 Full-Line Grocery Peer Group/Category B. (a) Vendors receiving less than or equal to fifty (50) percent of their annual food sales revenue from WIC redemptions who meet the definition of a full-line grocery store shall be classified as full-line grocers and placed in Peer Group Category B.

- (1) For the Purposes of this section, the Department shall use the following definitions to determine variety and quantity of food items stocked:
 - (A) A variety includes different types of food items in the food group. For purposes of this section, food groups include cereals, breads/tortillas, fresh dairy products, fresh fruits and vegetables, and fresh meats/poultry/seafood. For example, a variety of dairy products includes eggs, cheese, milk, yogurt, and butter. A variety of cereal includes but is not limited to shredded wheat, toasted o's, corn flakes, rice flakes, puffed rice, oatmeal, and cream of wheat. A variety of breads includes but is not limited to rye, whole wheat, white, and multi-grain. A variety of breads also includes different forms of bread, regardless of the grain; for example, a variety of bread includes rolls, a whole loaf, a pre-sliced loaf, and buns. A variety of fresh meats includes but is not limited to different cuts of the same type of fresh meat. For example, a variety of fresh meats includes boneless chicken breasts, chicken legs, whole chicken and ground chicken.
 - (B) A variety does not include different brands or flavors of the same food item. For example, a variety of fresh dairy products does not include five (5) different brands of yogurt. A variety of fresh dairy products also does not include five (5) different flavors of yogurt. A variety of cereal does not include different brands of the same type of cereal or different flavors of the same brand. For example, a variety of cereal does not include different brands of puffed rice or different flavors of toasted o's. Rolled oats, steel cut oats and instant oatmeal shall not count as more than one (1) variety. Different flavors of oatmeal shall not count as more than one (1) variety.
 - (C) For food items packaged for sale as one item, a unit shall mean one package.
 - (D) For food items sold in bulk quantities, a unit shall be determined by the method in which the food item is sold. For example if produce or meat is sold by weight, a unit shall be

one pound. For example for bananas, apples, oranges and other fruits sold by the pound, one pound shall be one unit.

(E) For products sold in set quantities, a unit shall be one (1) set quantity. For example, a head of lettuce sold by the head shall be one (1) unit. An avocado or banana sold individually shall be one (1) unit.

(F) For the purposes of this section, "fresh" food items shall not include cooked, frozen, canned, dried, or other shelf stable food items.

(2) A full-line grocer shall be defined as a vendor stocking the following:

(A) Cereal: five (5) or more varieties with five (5) units of each variety. Single serving units of cereal packaged for sale will not be counted toward the variety or quantity required to meet the full-line grocery definition described in this subsection.

(B) Breads/Tortillas: four (4) or more varieties with five (5) units of each variety. Frozen breads will not be counted toward the variety or quantity required to meet the full-line grocery definition described in this subsection.

(C) Fresh Dairy Products: five (5) or more varieties with five (5) units of each variety.

(D) Fresh fruits and Vegetables: seven (7) or more fresh fruits and seven (7) or more fresh vegetable varieties with five (5) units of each variety.

(E) Fresh Meats/Poultry/Seafood: four (4) or more varieties with five (5) units of each variety.

(3) Vendors assigned to Category B shall be assigned to subgroups based on the number of cash registers in the vendor store:

(A) 1-2 registers

(B) 3-5 registers

(C) 6-9 registers

(D) 10+ registers

(E) Only registers that comply with W.B.R. §70300 shall be counted in accordance with the following subsections:

1. All registers must be counted whether they are used full

time or occasionally.

2. All registers in specialty locations or sections shall be counted if those registers transact any foods sales as defined in 7 C.F.R. §246.2. Examples of specialty locations or sections include but are not limited to jewelry, clothing, and electronics.
3. Specialty locations shall not be included in the register count if the location does not have a register.
4. ATMs or in-store banks with registers shall not be included in the register count.

Article 3. Reimbursement System for Vendors

60000 Definitions. (a) For purposes of this article, the following definitions apply:

- (1) *Actual Selling Price.* The Actual Selling Price is the amount entered on the food instrument (FI) by a vendor at the time of sale, including all store, coupon, advertisement, or other discounts applied to the sale.
- (2) *Competitive Average Redemption Value.* The Competitive Average Redemption Value (CARV) is a 12-week average, using food instrument redemption data from vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+ as defined in WIC Regulations by Bulletin §50200.
 - (A) For Unit-Priced Food Instruments: The CARV shall be calculated as a dollar sum of all redemptions for Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ vendors across all food instruments for the same supplemental food divided by the quantity of units redeemed by Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors, rounded up to the nearest one cent.
 - (B) For Non-Unit Priced Food Instruments: The CARV shall be calculated for each food item number as the dollar sum of all redemptions for Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors divided by the number of food instruments redeemed by Peer Group Category B Register Count Subgroups' 6-9+ register and 10+ register vendors, rounded up to the nearest one cent.

- (3) *Department.* The Department is defined as the California Department of Public Health and the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).
- (4) *Food Instruments, Non-Unit Priced.* Non-Unit Priced Food Instruments contain either a single supplemental food or a combination of various supplemental foods as defined in the “What to buy” section and identified by the food item number found on the face of the food instrument. A food instrument containing a single supplemental food which does not specify both a specific quantity and package size prescribed in the “What to buy” section on the face of the food instrument such as 16-18 oz. of peanut butter is a non-unit priced food instrument.
- (5) *Food Instruments, Unit Priced.* Unit-Priced Food Instruments contain either one or multiple quantities of a single supplemental food with a specific package size such as a 12.5 oz. can of infant formula and are differentiated for quantity in both the “What to buy” section and the food item number found on the face of the food instrument.
- (6) *Food Item Number.* A four-digit number found on the face of a food instrument or cash-value voucher (CVV) that corresponds to an individual supplemental food or group of supplemental foods by quantity or dollar amount.
- (7) *Maximum Allowable Department Reimbursement.* The Maximum Allowable Department Reimbursement (MADR) rate for food instruments and CVVs is defined as the maximum reimbursement paid to WIC authorized vendors in exchange for providing WIC supplemental foods to program participants according to the food item number.
- (8) *Peer Groups.* A classification of authorized vendors into groups based on common characteristics or criteria that affect food prices, for the purpose of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels. Regulations defining California WIC vendor peer groups, categories and register count subgroups are located in WIC Regulations by Bulletin Article 2 Section 50000 et seq.
- (9) *Statewide Average.* The Statewide Average is a 12-week average of food instrument redemption data from Peer Group Category B and C vendors.
 - (A) For Unit-Priced Food Instruments: The Statewide Average shall be calculated as a dollar sum of all redemptions across all food instruments for the same supplemental food divided by the quantity of units

redeemed by Peer Group Category B and C vendors, rounded up to the nearest one cent.

(B) Non-Unit Priced Food Instruments: The Statewide Average shall be calculated for each food item number as the sum of all redemptions of Peer Group Categories B and C divided by the number of food instruments redeemed by Peer Group Category B and C vendors, rounded up to the nearest one cent.

(10) *Tolerance Factor*. A percentage adjustment applied to the CARV to account for differences in vendor prices due to store size and the variety of brands and package sizes stocked by the store as part of the MADR calculation.

60100 Maximum Allowable Department Reimbursement Rates for Cash-Value Vouchers. (a) The MADR rate for CVVs shall be the amount printed on each CVV. Vendors shall be reimbursed for CVVs as follows:

- (1) The Department shall reimburse vendors for the actual selling price of the fruits and vegetables when the cost of the quantity purchased by the participant is less than the MADR rate for the CVV.
- (2) The Department shall reimburse vendors the MADR rate for the fruit and vegetable CVV when the actual selling price of the quantity of fruits and vegetables purchased by the participant equals or exceeds the MADR rate.

(A) If the actual selling price of fruits and vegetables chosen by a participant exceeds the MADR rate for the fruit and vegetable CVVs and the participant wishes to purchase the full quantity selected, the vendor shall accept and collect payment from the participant for the amount by which the actual selling price exceeds the MADR rate of the CVV.

60200 Maximum Allowable Department Reimbursement Rates for Food Instruments (a) The Department shall reimburse vendors the lesser of the vendor's posted price, the actual selling price, or the MADR of all of the supplemental foods purchased by the participant and included on the food instrument.

(b) If the vendor submits a food instrument for payment in an amount that exceeds the MADR, that food instrument will be rejected and returned to the vendor by the Department or its agent. When a food instrument is rejected, a vendor must reduce the amount requested for reimbursement on the food instrument so that it does not exceed the MADR and resubmit the food instrument.

- (1) Vendors may not seek or accept payment for any difference between the vendor's posted price or the actual selling price of the supplemental foods purchased and the MADR rate for a food instrument when the vendor's posted price or actual selling price of the supplemental foods exceeds the MADR rate.
- (c) The MADR rate for a food instrument shall be assigned based on the MADR rate in effect at the time the food instrument is initially submitted by the vendor to the Department through the Vendor WIC Information eXchange (VWIX) and shall be calculated according to the vendor's assigned Peer Group Category and Subgroup as follows:
 - (1) The MADR rate for Peer Group Category A vendors shall be the Statewide Average.
 - (2) The MADR (MADR) rate for vendors assigned to Peer Group Category B Register Count Subgroups shall be calculated by adding the applicable tolerance factor to the CARV:

$$\text{MADR} = \text{CARV} + \text{Tolerance Factor}$$

- (A) Tolerance factors for Peer Group Category B vendors shall be determined based on whether a food item number is a Single Item Food Instrument or a Combination Item Food Instrument.
 1. Single Item Food Instruments contain a single supplemental food in the "What to buy" section on the face of the food instrument.
 2. Combination Food Instruments contain two or more different supplemental foods as found in the "What to buy" section of the food instrument.
- (B) Each Peer Group Category B Register Count Subgroup's MADR rate for single item food instruments shall be calculated using the Register Count Subgroup's Tolerance Factor for Single Item Food Instruments as follows:
 1. 1-2 Register Count Subgroup: 28% of CARV
 2. 3-5 Register Count Subgroup: 22% of CARV
 3. 6-9 Register Count Subgroup: 16% of CARV
 4. 10+ Register Count Subgroup: 10% of CARV
- (C) Each Peer Group Category B Register Count Subgroup's MADR rate for combination food instruments shall be calculated using the Register Count Subgroup's Tolerance Factor for Combination Food Instruments as

follows:

1. 1-2 Register Count Subgroup: 49% of CARV
2. 3-5 Register Count Subgroup: 43% of CARV
3. 6-9 Register Count Subgroup: 37% of CARV
4. 10+ Register Count Subgroup: 31% of CARV

- (3) The MADR rates for Peer Group Category C vendors shall be the CARV.

60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate (a) The MADR rates shall be calculated every 4 weeks on Thursday using the prior 12 weeks of data, beginning on a Tuesday and ending on the Tuesday prior to the calculation date. The Department will have 10 days to review the calculated rates and make manual adjustments as specified in subsection (b) below. The rates shall go into effect at 12:01am on the Friday following the end of the Department's 10 day review period.

- (1) The MADR rate shall be calculated for all food item numbers for Peer Group Category A if there are at least 30 unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period.
 - (2) The MADR rate shall be calculated for all food item numbers for Peer Group Category B if there are at least 30 unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.
 - (3) The MADR rate shall be calculated for all food item numbers for Peer Group Category C if there are at least 30 unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.
- (b) The Department may manually adjust the MADR rates or the calculation methods, as specified below.
- (1) Upon implementation of this section, if a food item number does not have at least thirty (30) unique vendors in the 6-9 and 10+ Register Count Subgroups with redemptions during the immediately preceding 12-week period used for calculations the Department will make a one-time calculation to determine the MADR for food item numbers calculated as follows:
 - (A) The average of the MADRs for each food item number for the three 10+ register store peer groups under the peer group and MADR systems in effect prior to the implementation of this regulation shall be set as the new MADR for the 10+ register Count Subgroup for that food

item number.

- (B) A substitute CARV shall be derived from the new MADR calculated in (b)(1)(A) above using the calculation rules in Section 60200(c). The substitute CARV shall be used as the basis for calculating all other peer group substitute MADRs.
- (2) When a food item number does not have at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period, the Department may manually adjust the MADR for Peer Group Category A to comply with federal requirements of cost neutrality by comparing the simple averages of the prices at which the food item number was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A.
- (3) When a food item number does not have at least thirty (30) unique vendors in the 6-9 and 10+ Register Count Subgroups with redemptions during the immediately preceding 12-week period used for calculations, the previous period's MADR rate for Peer Group Category B and C vendors will remain in effect. The Department may calculate a substitute CARV for food item numbers that do not have thirty (30) unique vendor redemptions of that food item number in any of the preceding six (6) four (4) week MADR periods.
- (A) When the Department calculates a substitute CARV for food item numbers pursuant to subsection (b)(2) above, the Department shall use data from the Peer Group Category B 6-9 and 10+ Register Count Subgroups collected during the most recent semiannual collection of shelf prices for determination of cost competitiveness to calculate the substitute CARV for food item numbers. The substitute CARV will be determined by averaging the sum of the average prices of the foods included on the food instrument for all vendors in a peer group based on the most recent semi-annual collection of shelf prices.
- (B) Where no submitted shelf price data is available from the semiannual collection of shelf prices, the Department shall collect shelf price data from Peer Group Category B 6-9 and 10+ Register Count Subgroups for calculation of a substitute CARV. When the Department collects data for this purpose, it will be from a minimum of eight (8) rural and eight (8) urban vendors as those terms are as defined in Cal. Code Regs., tit. 22, § 40740(h)(2) in the Peer Group Category B 6-9 Register Count Subgroup and from a minimum of eight (8) rural and (8)

urban vendors in the Peer Group Category B 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. Using this data, the substitute CARV will be calculated as a dollar sum of all of the collected shelf prices for a food item divided by the total number of shelf prices collected.

- (C) The Department may manually adjust the MADR rate to temporarily accommodate extreme fluctuations in wholesale food prices as reported by price and inflation information from other California State agencies and departments or nationally recognized sources of commodity food pricing information.
- (c) The Department will remove partially-redeemed food instruments (FIs) when calculating the Statewide Average for food item numbers 6000, 6003, and 6107.
 - (1) In order to identify a partially-redeemed FI, upon completion and Department verification of the prices submitted as part of the semi-annual shelf price collection, the Department will calculate a minimum full redemption value for each food item number in (c) by determining the lowest shelf price for each market basket item reported by Peer Group B and C vendors in the most recent complete shelf price submission required by W.B.R. §70600. The minimum full redemption value is a threshold dollar amount below which the Department will consider a food instrument to be partially-redeemed. The Department shall identify the minimum full redemption value for each food item number in one of three ways, dependent on the availability of reported shelf prices as follows:
 - (A) The minimum full redemption value for each food instrument identified in (1) will be determined by adding the lowest reported shelf price of each individual market basket food item included in the food item number. Any redemption amount below the minimum full redemption value shall be deemed a partially-redeemed FI for purposes of calculating the statewide average.

For example, food item number 6003 includes three food items (one gallon milk, lower fat, sixteen ounces of whole grains, and thirty six ounces of breakfast cereal), all of which are included in the Market Basket. If the lowest reported shelf prices for each item are as follows, the minimum full redemption value possible for this food item would be:

1 gallon milk, lower fat	\$2.50
1 (16 oz.) whole grains	\$2.00

<u>36 oz. breakfast cereal</u>	<u>\$4.00</u>
Total Minimum Full Redemption Value	\$8.50

Any redemption below \$8.50 would be considered a partially-redeemed FI.

- (B) If a food item number does not have reported shelf prices for all of the supplemental food types included in the market basket, the Department will not calculate a minimum full redemption value for that food item number.

Nature of the Regulation

The Department proposes adoption of the regulations set forth in Attachments 1 and 2 of this notice. In compliance with federal regulations (7 C.F.R. §246.12) and state law (Health and Safety Code §§123310, 123315) the Department proposes the establishment of vendor peer group criteria and corresponding reimbursement system.

The peer group criteria and reimbursement system for WIC vendors are based on the objectives of cost containment and program integrity. When determining a vendor's appropriate peer group assignment, the Department shall apply the criteria described in Article 2.

The Department is required by 7 C.F.R. §246.12(g)(4) and California Health and Safety Code §123315 to adopt rules for vendor reimbursement, including the maximum allowable department reimbursement (MADR) rates for each peer group. The reimbursement system is described in Article 3.

Reason for the Regulation

The reasons for the peer group criteria are included in Attachment 1 of this notice. The reasons for the reimbursement system are included in Attachment 2 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, Part 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 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, 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.



Lisa Kawano
Acting Division Chief
Women, Infants, and Children (WIC) Program

Attachment 1

Vendor Peer Group Criteria and Statement of Reasons

**California Special Supplemental Nutrition Program for Women, Infants, and Children
December 13, 2013**

Health & Safety Code § 123322 authorizes the California Department of Public Health to establish regulations regarding the vendor peer group criteria and corresponding reimbursement system for the California Special Supplemental Nutrition Program for Women, Infants, and Children using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations. This document is intended to provide reasons why the Department is adopting the peer group criteria, specified in Regulatory Alert 2013-03, into California regulation.

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50000 Peer Group Criteria

PROPOSED REGULATION

50000 Peer Group Criteria. (a) For the purposes of this article “Department” is defined as the Department of Public Health, and the “Program” and “WIC” are defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.

(b) The Department shall place vendors in an appropriate peer group category and subgroup, if applicable, when authorizing a vendor by applying the requirements set forth in this section and in sections 50100, 50200 and 50300. The Department may reassign a vendor to a different peer group category or subgroup at any time during the term of the vendor agreement. The Department shall notify the vendor of its peer group category and subgroup assignment at authorization or at the time of any subsequent changes in assignment.

(c) The Department shall make peer group category and subgroup assignments based on its review and assessments of the vendor at the time of the vendor’s initial authorization and as part of vendor monitoring at any time during the term of the vendor agreement, according to the requirements in this section.

(d) Vendors shall be reassessed based on their records using criteria in Section 50100 within six (6) months of authorization, annually, at reauthorization, and at any time during the term of the vendor agreement. In order to reassess a vendor, the Department shall request that the vendor provide a copy of its California Board of Equalization (BOE) State, Local and District Sales and Use Tax Return statement for the period of time specified by the Department. A vendor must provide the BOE State, Local and District Sales and Use Tax Return statement to the Department within thirty (30) days of the date on which the vendor received the Department’s request for the statement. If a vendor does not file a BOE State, Local and District Sales and Use Tax Return statement because that vendor does not sell any taxable goods or if a vendor applicant has not filed a State, Local and District Sales and Use Tax Return statement with the BOE within 6 months of authorization because the vendor files these statements annually, the vendor must submit the materials specified in Section 50100(a)(2)(B)(1). If the vendor fails to submit the BOE State, Local and District Sales and Use Tax Return statement or the alternate materials in Section 50100(a)(2)(B)(1) within thirty (30) days from receipt of the request, the Department shall deny reauthorization of the vendor, or, if the vendor is not in the reauthorization process, place a vendor in Peer Group Category C.

- (1) For the purposes of this section, "date of receipt" shall mean the date indicated on the United States Postal Service delivery confirmation when delivered to the vendor's most recent business ownership address on file with the Department.
- (e) The Department shall conduct an on-site visit upon initial authorization of a vendor and may conduct on-site visits at other times during the term of the vendor agreement, as part of vendor monitoring, for the purposes of reviewing inventory to assign or verify a vendor's peer group category and subgroup assignment.
- (1) On-site visits shall be conducted during the vendor's regular business hours, and Department staff conducting the visit shall identify themselves upon arrival. The Department is not required to notify the vendor of the onsite visit in advance of arrival.
- (2) During the on-site visit, the vendor shall provide the Department staff with access to its food stock and inventory records. All food items must be documented by invoices or transfer documents specific to that store location.
- (3) The Department's on-site review of inventory for peer group assignment shall include only food items in the public area of a vendor's store where merchandise is available for purchase, and infant formula, infant meats, and milk in storage on the premises of the vendor location, at the time Department staff arrives on the premises for the assessment.

AUTHORITY

Federal

7 C.F.R. §246.12(g)(4): 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 inform all vendors of the criteria for peer groups, and must inform each individual vendor of its peer group assignment.

7 C.F.R. §246.12(g)(4)(ii)(C): The State agency may change a vendor's peer group whenever the State agency determines that placement in an alternate peer group is warranted.

State

Health & Saf. Code §123310: "Peer group" means a group of vendors with similar characteristics that may include, but shall not be limited to, any or all of the following: (1) geographic location of the store, (2) store size, (3) type of store, (4) number of cash

registers, (5) sales volume relating to WIC, (6) gross sales volume, (7) inventory, (8) other vendor characteristics established by the department.

STATEMENT OF REASONS

50000 (a) This section is being adopted to define terms not found in existing federal or state regulations. In the adoption of Health & Safety Code §123280, the California Legislature authorized the Department of Public Health to administer the California Special Supplemental Food Program for Women, Infants, and Children (WIC) to serve nutritionally at-risk low-income pregnant, postpartum and lactating women, as well as children under five years of age.

(b) Federal regulation (7 C.F.R. §246.12(g)(4)) and state law (Health and Saf. Code §123310) require the Department to establish a peer group system. Under federal regulations, the Department must periodically evaluate its peer group system, and it may assign and re-assign vendors to the appropriate peer group as needed.

(c) The Department is reserving the right to assess vendors at any time during the term of a vendor's agreement as part of vendor monitoring pursuant to 7 C.F.R. §246.12(g)(3) to prevent fraud, waste, and program noncompliance.

(d) This section establishes requirements for submitting documentation that enables the Department to conduct peer group assessments. Federal regulations (7 C.F.R. §246.12(g)(4)(i) and 7 C.F.R. §246.12(g)(4)(i)(B)) require the Department to assess all vendors annually and within six (6) months of authorization to determine if a vendor meets the criteria described in Section 50100. In order to perform these assessments, the Department must use verifiable documentation to establish whether a vendor's WIC redemption revenue exceeds fifty (50) percent of its food sales revenue. The BOE State, Local and District Sales and Use Tax Return and the alternate sales verification materials in WIC Regulations by Bulletin §50100(a)(2)(B)(1) are the only forms of food sales documentation that vendors may submit to the Department. The Department has determined that a vendor's BOE State, Local and District Sales and Use Tax Return statement is the best available form of verifiable documentation that will enable the Department to comply with federal requirements as it is documentation of food sales provided by the vendor which is both certified as true, correct, and complete, and reviewed by another state agency. The materials required in Section 50100(a)(2)(B)(1) are needed in the event that vendor has not filed the BOE State, Local and District Sales and Use Tax Return. Some WIC authorized A-50 vendors do not sell any taxable goods and are not required to file State, Local and District Sales and Use Tax Returns with the BOE. Other vendors choose to file their State Local and District Sales and Use Tax Returns on an annual basis. For these vendors inventory records and sales statements are reasonable forms of documentation the Department may use to compare food sales against WIC redemptions. The Department shall require these vendors to submit these materials to the Department as described in this section, facilitating these federally-required assessments. This section is needed to ensure that documents required to perform these assessments are submitted by the vendor to the

Department in a timely manner. Vendors who do not submit the required materials within 30 days of the Department's request will be denied reauthorization or, if not in the reauthorization process, assigned to Category C. This provision ensures that if the Department does not have the necessary sales information to distinguish between those vendors who should be placed in Category A and those who should be placed in a different peer group category, the Department may place the vendor in Peer Group Category C. When a vendor does not submit the required materials documenting their food sales information the Department will assign vendors to Category C because the Department does not have the documentation necessary for assessment of a vendor as Category A or B.

- (2) This section defines "date of receipt" for the purposes of requesting records from vendors, which are necessary to determine a vendor's appropriate peer group. This definition is needed to clarify the date from which vendors have 30 days to respond to the Department to ensure that the Department and vendors can effectively comply with requirements in a timely fashion.

(e) This section establishes the criteria the Department shall use for conducting the on-site pre-authorization visit. On-site pre-authorization visits are required by 7 C.F.R. §246.12(g)(6), The Department is reserving the right to conduct on-site visits as part of vendor monitoring to prevent fraud, waste, and program noncompliance.

- (1) The Department shall conduct on-site visits performed pursuant to this section during regular business hours as a convenience to the vendor. The Department staff shall identify themselves because doing so is consistent with the definition of a routine monitoring visit included in 7 C.F.R. §246.2. The Department is not required to notify the vendor of the on-site visit in advance because doing so may limit the Department's ability to review food that is consistently stocked by a vendor or make it possible for vendors to stock only for assessment purposes.
- (2) The Department is requiring that vendors provide access to food stock and inventory records in order to ensure that it has access to the resources it needs to conduct peer group assessments, including those assessments required by 7 C.F.R. §246.12(g)(4)(i)(E) which require access to inventory records.
- (3) When counting inventory for peer group assessment the Department shall only count stock located in the public area of a vendor's store where merchandise is available for purchase. This requirement is consistent with SNAP authorization requirements included in 7 C.F.R. §278.1(b)(1)(ii)(A) and is needed to ensure that the Department has a verifiable methodology for evaluating inventory for peer group assignment that ensures compliance with federal funding requirements. Three (3) exceptions to this

requirement exist; the Department shall count infant formula, infant meats and milk towards the minimum stocking requirements when those items are in storage on the store's premises. This exception is consistent with the minimum stocking requirements adopted in §71100 of California WIC Program Regulations by Bulletin (W.B.R.) 2013-01.

50100: A-50 Peer Group/Category A

PROPOSED REGULATION

50100 A-50 Peer Group/Category A. (a) Vendors receiving more than fifty (50) percent of their annual food sales revenue from WIC redemptions and those vendor applicants expected to meet this criterion shall be classified as above-50-percent (A-50) vendors and placed in Peer Group Category A. The Department shall take the following steps to assess whether a vendor shall be placed in Peer Group Category A:

- (1) Upon initial application, the Department shall ask vendor applicants if they believe they will meet the criteria for Peer Group Category A.
 - (A) If an applicant answers in the affirmative, the Department shall place the vendor in Peer Group Category A.
 - (B) If an applicant answers in the negative, the Department will make the assessment according to the following criteria and shall place a vendor in Peer Group Category A based on any one of these criteria.
 1. If a vendor applicant is requesting authorization of a new store location and owns other WIC authorized stores, the Department shall first determine if the vendor applicant owns an existing authorized A-50 store. If the vendor applicant ownership owns at least one (1) existing authorized A-50 store, the Department shall then calculate WIC redemptions as a percent of total food sales of all the existing WIC authorized stores owned by the vendor applicant. If the combined total WIC redemptions of the vendor's stores exceed 50 percent of the combined total food sales the applicant store will be placed in Peer Group Category A.
 2. The Department shall request from the vendor applicant the percentage of anticipated food sales by type of payment, including cash, Supplemental Nutrition Assistance Program (SNAP), WIC, and credit/debit card. If the vendor's anticipated WIC sales are more than 50 percent of the anticipated food sales, the vendor applicant will be placed in Peer Group Category A.
 3. The Department shall review the actual food items present at the preauthorization on-site visit described in Section 50000. If the food items indicate that the vendor's inventory is more than 50 percent WIC authorized supplemental food items, the vendor applicant shall be placed in Peer Group Category A.

4. If the Department receives notification from a new vendor applicant otherwise qualified for authorization that WIC authorization is required in order for the store to open for business, the vendor applicant will be placed in Peer Group Category A.

(2) Within six (6) months of authorization, the Department shall re-assess whether a new vendor should be placed in Peer Group Category A using the following criteria:

(A) The Department shall compare the total dollar amount of a vendor store's WIC redemptions to the total dollar amount of a vendor store's SNAP redemptions for the period which the vendor has been authorized. When comparing a vendor's WIC redemptions to SNAP redemptions the Department shall consider only WIC redemption information from the Department and SNAP redemption information provided by the California Department of Social Services and the United States Department of Agriculture (USDA). If the vendor store's SNAP redemptions exceed WIC redemptions for the period during which the vendor has been authorized the vendor shall not be considered an A-50 vendor.

(B) If the total dollar amount of the vendor store's WIC redemptions exceed the total dollar amount of its SNAP redemptions, the Department shall compare total dollar amount of the vendor's non-taxable food sales from the vendor's most recent BOE State, Local and District Sales and Use Tax Return statement to the total dollar amount of the vendor's WIC redemptions for the same time period. If the vendor store's WIC redemptions exceed 50 percent of the non-taxable food sales for the time period covered by the tax return statement, the Department shall place the vendor in Peer Group Category A.

1. If a vendor does not file a BOE State, Local and District Sales and Use Tax Return statement because that vendor does not sell any taxable goods or if a vendor has not filed a State, Local and District Sales and Use Tax Return statement with the BOE within 6 months of authorization because the vendor files these statements annually, the Department may require the vendor to submit monthly sales statements with inventory records detailing the vendor's sales for SNAP eligible foods and total sales for the period of time specified by the Department. This vendor must certify that the information included in this statement is true and correct. If the vendor store's WIC redemptions exceed 50 percent of the non-taxable food sales for the time period covered by the sales and inventory records, the Department shall place the

vendor in Peer Group Category A.

(3) In addition to the assessments set forth in Section 50100(a)(1 – 2), the Department shall assess all authorized vendors annually, or, as part of vendor monitoring at any time during the term of the vendor agreement, to determine if a vendor's WIC redemptions are more than 50 percent of its total food sales. The Department shall use the following criteria to determine if an authorized vendor shall be placed in Peer Group Category A:

(A) The Department shall compare the total dollar amount of the vendor store's WIC redemptions for the most recent twelve (12)-month period to the total dollar amount of the vendor store's SNAP redemptions for the same period. If SNAP redemptions exceed WIC redemptions, the Department shall not consider the vendor an A-50 vendor. When comparing a vendor's WIC redemptions to SNAP redemptions the Department shall consider only WIC redemption information from the Department and SNAP redemption information provided by the California Department of Social Services and the USDA.

(B) If the total dollar amount of the vendor store's WIC redemptions exceed the total dollar amount of its SNAP redemptions for the most recent twelve (12)-month period, the Department shall compare the total dollar amount of the vendor's non-taxable food sales from the vendor's most recent BOE State, Local and District Sales and Use Tax Return statement(s) for the same twelve month period to the total dollar amount of the vendor's WIC redemptions covering the same time period. If WIC redemptions exceed fifty (50) percent of food sales for the time period covered by the tax return statement, the Department shall place the vendor in Peer Group Category A.

1. If a vendor does not file a BOE State, Local and District Sales and Use Tax Return statement because that vendor does not sell any taxable goods, the Department may require the vendor to submit monthly sales statements with inventory records detailing the vendor's sales for SNAP eligible foods and total sales for the period of time specified by the Department. This vendor must certify that the information included in this statement is true and correct. If the vendor store's WIC redemptions exceed 50 percent of the non-taxable food sales for the time period covered by the sales and inventory records, the Department shall place the vendor in Peer Group Category A.

(4) When comparing a vendor's total dollar amount of non-taxable food sales

as reported on the vendor's BOE State, Local and District Sales and Use Tax Return statement, the Department will not include the dollar amount of sales to other retailers for the purposes of resale.

- (5) The Department may require a vendor to provide copies of inventory, sales, and other records for inspection in order to verify the accuracy of information used in the assessment process.

AUTHORITY

Federal

7 C.F.R. §246.2: Above-50-percent vendors means vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by the Food and Nutrition Service (FNS).

7 C.F.R. §246.12(g)(4)(i): Each State agency annually must implement procedures approved by FNS to identify authorized vendors and vendor applicants as either A-50 vendors or regular vendors.

7 C.F.R. §246.12 (g)(4)(i)(B): Each State agency authorizing A-50 vendors must reassess the status of new vendors within six months after authorization to determine whether or not the vendors are A-50 vendors, and must take necessary follow-up action, such as terminating vendor agreements or reassigning vendors to the appropriate peer group.

7 C.F.R. §246.12 (g)(4)(i)(F): Each State agency authorizing A-50 vendors must determine whether a currently authorized vendor meets the A-50 criterion, based on the State agency's calculation of WIC redemptions as a percent of the vendor's total foods sales for the same period.

State

Health and Saf. Code §123310: "Peer group" means a group of vendors with similar characteristics that may include, but shall not be limited to, any or all of the following: (1) geographic location of the store, (2) store size, (3) type of store, (4) number of cash registers, (5) sales volume relating to WIC, (6) gross sales volume, (7) inventory, (8) other vendor characteristics established by the department.

STATEMENT OF REASONS

50100 (a) This section codifies in state regulation federal requirements regarding the A-50 peer group. 7 C.F.R. §246.12(g)(4)(i)(A) requires the Department to place vendors obtaining more than 50 percent of their annual food sales revenue from WIC redemptions in a separate peer group for A-50 vendors or to place A-50 vendors in a peer group with other vendors and establish distinct cost competitive criteria and reimbursement levels for the A-50 vendors. The Department has chosen to place A-50 vendors in a separate peer group because the Department is implementing cost competitive criteria based on peer group. Grouping A-50 vendors with other vendors would inhibit the Department's ability to monitor the cost-competitiveness of vendors.

(1) This section is necessary to establish how the Department shall assess whether vendors meet the criteria described in Section 50100 and is required by 7 C.F.R. §246.12 (g)(4)(i)(E).

(A) In compliance with federal regulation (7 C.F.R. §246.12 (g)(4)(i)(E)) the Department shall assess whether vendor applicants will meet the A-50 criteria by asking vendor applicants if they believe they will meet the A-50 criteria and assigning those answering in the affirmative to the A-50 peer group.

(B) This section is necessary to establish how the Department will assess vendors who do not anticipate that the store for which they are seeking authorization will be an A-50.

1. When a vendor applicant answers in the negative, federal regulation (7 C.F.R. §246.12(g)(4)(i)(E)) requires the Department to assign the vendor applicant's new store location to the A-50 peer group if WIC redemptions from the applicant's existing stores exceed 50 percent of food sales revenue from the existing stores. The Department is first determining if a vendor applicant owns any existing A-50 stores. If the vendor applicant does not own any A-50 stores, the Department shall not assign the new location for which the vendor is seeking authorization to Peer Group Category A based on this criterion because it is mathematically impossible for WIC

redemptions to exceed 50 percent of food sales revenue in existing stores if the vendor does not own any A-50 stores. If a vendor owns at least one A-50 store, the Department shall calculate the total food sales from the existing stores and the total WIC redemptions redeemed by the existing stores for the same period as the food sales. If the dollar value of the total WIC redemptions exceeds 50 percent of the total dollar value of the existing stores' food sales revenue, the Department shall assign the new store for which the vendor applicant is seeking authorization to Category A as required by 7 C.F.R. §246.12(g)(4)(i)(E).

2. When a vendor applicant answers in the negative, federal regulation (7 C.F.R. §246.12(g)(4)(i)(E)) requires the Department to determine whether a vendor applicant will be an A-50 vendor based on the percentage of anticipated food sales by type of payment.
3. When a vendor applicant who answers in the negative and does not anticipate its total WIC sales will be more than 50% of its total food sales, federal regulation (7 C.F.R. §246.12(g)(4)(i)(E)) requires the Department to assess a vendor applicant's A-50 status by reviewing either the inventory invoices for food items or the actual food present at the preauthorization visit or both to determine if WIC redemptions will comprise more than 50 percent of the vendor's food sales revenue. The Department has chosen to review the actual food items present on a vendor applicant's shelves at the preauthorization visit because this evaluation method directly verifies vendor stock, will avoid the need for auditing vendor inventory records, and is consistent with the SNAP stocking requirements included in 7 C.F.R. §278.1(b)(1).

When a vendor applicant who answers in the negative and does not meet the criteria in (1)(B)(3) or (4), federal regulation (7 C.F.R. §246.12(g)(4)(i)(E)) requires the Department to assign a vendor applicant to the A-50 peer group when the Department determines that authorization is required for the store to open for business. The Department has concluded that notification from the vendor applicant that WIC authorization is necessary for a store to open is the most reasonable form of information with which the Department can make its determination because other information sources not provided by the vendor would increase administrative costs associated with information gathering and verification.

- (2) Under federal regulation (7 C.F.R. §246.12(g)(4)(i)(B),(F)), the Department must also reassess all vendors within six months of authorization to determine if the vendor meets the A-50 criteria.

(A) 7 C.F.R. §246.12(g)(4)(i)(F) allows the Department to compare each vendor's WIC redemptions to SNAP redemptions as an initial step to comparing WIC redemptions against food sales. If SNAP redemptions exceed WIC

redemptions, no further assessment is required under federal regulation since the vendor would not be an above-50-percent vendor.

(B) If a vendor's WIC redemptions exceeds the vendor's SNAP redemptions, 7 C.F.R. §246.12(g)(4)(i)(F) further requires the Department to determine if WIC redemptions exceed 50 percent of food sales. Under federal regulation, the Department must obtain from the vendor a statement of the vendor's food sales. All food sales must be supported by verifiable documentation. The Department has determined that a vendor's BOE State, Local and District Sales and Use Tax Return statement is the best available form of verifiable documentation that will enable the Department to comply with federal requirements as it is documentation of food sales provided by the vendor which is both certified as true, correct, and complete, and reviewed by another state agency.

1. If a vendor is not required to file a State, Local and District Sales and Use Tax Return with the BOE because the vendor does not sell any taxable goods or if a vendor has not filed a State, Local and District Sales and Use Tax Return statement during the vendor's authorization period, the Department will require inventory records and monthly sales statements detailing the vendor's sales and certified by the vendor. These documents are required because the inventory records and sales statements are reasonable forms of documentation the Department may use to compare food sales against WIC redemptions in the event that a vendor has not filed a BOE State, Local and District Sales and Use Tax Return.

(3) Federal regulation (7 C.F.R. §246.12(g)(4)(i)) requires the Department to identify authorized vendors and vendor applicants as either above-50-percent vendors or regular vendors annually, in accordance with 7 C.F.R. §246.12(g)(4)(i)(F).

(A) The Department must review a vendor's percentage total food sales by comparing a vendor's SNAP redemptions against the vendor's WIC redemptions. If SNAP redemptions exceed WIC redemptions, under federal regulation, no further assessment is needed as the vendor cannot be an A-50 vendor.

(B) If a vendor's WIC redemptions exceed the vendor's SNAP redemptions, the Department must determine if the vendor's WIC redemptions exceed 50 percent of its food sales. All food sales must be supported by verifiable documentation. The Department has determined that a vendor's BOE State, Local and District Sales and Use Tax Return statement provides the best available form of verifiable documentation that will enable the Department to comply with federal requirements as it is the only documentation of food sales provided by the vendor to another state agency for review. Because vendors must file a BOE Tax Return at least annually, the Department will

not accept alternate documentation of food sales for annual assessment of vendors unless the vendor does not sell any taxable goods.

1. If a vendor is not required to file a State, Local and District Sales and Use Tax Return with the BOE because the vendor does not sell any taxable goods, the Department will require inventory records and monthly sales statements detailing the vendor's sales and certified by the vendor. These documents are required because the inventory records and sales statements are reasonable forms of documentation the Department may use to compare food sales against WIC redemptions in the event that a vendor has not filed a BOE State, Local and District Sales and Use Tax Return.

(4) 7 C.F.R. §246.12(g)(4)(i)(F) requires the Department to determine if WIC redemptions exceed 50 percent of food sales for authorized vendors and vendor applicants. The Department has determined that the BOE State, Local and District Sales and Use Tax Return statement is the best available form of verifiable documentation that will enable the Department to comply with federal requirements as it is documentation of food sales provided by the vendor which is both certified as true, correct, and complete, and reviewed by another state agency. This section is needed to clarify that the Department will only count items listed as nontaxable sales of food products on the tax return statement, and the Department will not consider wholesale sales as nontaxable sales of food products. This clarification is needed to prevent fraud, waste and program noncompliance.

(5) Federal regulation (7 C.F.R. §246.12(j)) requires the Department to design and implement a system for monitoring its vendors for compliance with program requirements. Federal regulation (7 C.F.R. §246.4(a)(14)(iv)) also defines vendor monitoring as the system for monitoring vendors to ensure compliance and prevent fraud, waste and program noncompliance. This section supports the integrity of vendor peer groups, and it is needed to ensure that the Department can conduct federally-required vendor monitoring.

50200: Full-Line Grocery Peer Group/Category B

PROPOSED REGULATION

50200 Full-Line Grocery Peer Group/Category B. (a) Vendors receiving less than or equal to fifty (50) percent of their annual food sales revenue from WIC redemptions who meet the definition of a full-line grocery store shall be classified as full-line grocers and placed in Peer Group Category B.

- (1) For the Purposes of this section, the Department shall use the following definitions to determine variety and quantity of food items stocked:
 - (A) A variety includes different types of food items in the food group. For purposes of this section, food groups include cereals, breads/tortillas, fresh dairy products, fresh fruits and vegetables, and fresh meats/poultry/seafood. For example, a variety of dairy products includes eggs, cheese, milk, yogurt, and butter. A variety of cereal includes but is not limited to shredded wheat, toasted o's, corn flakes, rice flakes, puffed rice, oatmeal, and cream of wheat. A variety of breads includes but is not limited to rye, whole wheat, white, and multi-grain. A variety of breads also includes different forms of bread, regardless of the grain; for example, a variety of bread includes rolls, a whole loaf, a pre-sliced loaf, and buns. A variety of fresh meats includes but is not limited to different cuts of the same type of fresh meat. For example, a variety of fresh meats includes boneless chicken breasts, chicken legs, whole chicken and ground chicken.
 - (B) A variety does not include different brands or flavors of the same food item. For example, a variety of fresh dairy products does not include five (5) different brands of yogurt. A variety of fresh dairy products also does not include five (5) different flavors of yogurt. A variety of cereal does not include different brands of the same type of cereal or different flavors of the same brand. For example, a variety of cereal does not include different brands of puffed rice or different flavors of toasted o's. Rolled oats, steel cut oats and instant oatmeal shall not count as more than one (1) variety. Different flavors of oatmeal shall not count as more than one (1) variety.
 - (C) For food items packaged for sale as one item, a unit shall mean one package.
 - (D) For food items sold in bulk quantities, a unit shall be determined by the method in which the food item is sold. For example if produce or meat is sold by weight, a unit shall be one pound. For example for

bananas, apples, oranges and other fruits sold by the pound, one pound shall be one unit.

(E) For products sold in set quantities, a unit shall be one (1) set quantity. For example, a head of lettuce sold by the head shall be one (1) unit. An avocado or banana sold individually shall be one (1) unit.

(F) For the purposes of this section, "fresh" food items shall not include cooked, frozen, canned, dried, or other shelf stable food items.

(2) A full-line grocer shall be defined as a vendor stocking the following:

(A) Cereal: five (5) or more varieties with five (5) units of each variety. Single serving units of cereal packaged for sale will not be counted toward the variety or quantity required to meet the full-line grocery definition described in this subsection.

(B) Breads/Tortillas: four (4) or more varieties with five (5) units of each variety. Frozen breads will not be counted toward the variety or quantity required to meet the full-line grocery definition described in this subsection.

(C) Fresh Dairy Products: five (5) or more varieties with five (5) units of each variety.

(D) Fresh fruits and Vegetables: seven (7) or more fresh fruits and seven (7) or more fresh vegetable varieties with five (5) units of each variety.

(E) Fresh Meats/Poultry/Seafood: four (4) or more varieties with five (5) units of each variety.

(3) Vendors assigned to Category B shall be assigned to subgroups based on the number of cash registers in the vendor store:

(A) 1-2 registers

(B) 3-5 registers

(C) 6-9 registers

(D) 10+ registers

(E) Only registers that comply with W.B.R. §70300 shall be counted in accordance with the following subsections:

1. All registers must be counted whether they are used full time or occasionally.

2. All registers in specialty locations or sections shall be counted if those registers transact any foods sales as defined in 7 C.F.R. §246.2. Examples of specialty locations or sections include but are not limited to jewelry, clothing, and electronics.
3. Specialty locations shall not be included in the register count if the location does not have a register.
4. ATMs or in-store banks with registers shall not be included in the register count.

AUTHORITY

Federal

7 C.F.R. §246.2: "Vendor peer group system" means a classification of authorized vendors into groups based on common characteristics or criteria that affect food prices, for the purpose of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels.

7 C.F.R. §246.12(g)(4): 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 inform all vendors of the criteria for peer groups, and must inform each individual vendor of its peer group assignment.

7 C.F.R. §246.12(g)(4)(ii)(A): The State agency's methodology for establishing a vendor peer group system must include at least two criteria for establishing peer groups, one of which must be a measure of geography, such as metropolitan or other statistical areas that form distinct labor and products markets, unless the State agency receives FNS approval to use a single criterion.

State

Health and Saf. Code §123310: "Peer group" means a group of vendors with similar characteristics that may include, but shall not be limited to, any or all of the following: (1) geographic location of the store, (2) store size, (3) type of store, (4) number of cash registers, (5) sales volume relating to WIC, (6) gross sales volume, (7) inventory, (8) other vendor characteristics established by the department.

STATEMENT OF REASONS

50200(a) Federal regulations and state law require the Department to establish a vendor peer group system to achieve cost containment. Federal regulations define this system as one grouping vendors by shared characteristics that impact food pricing (7 C.F.R. 246.2). Research findings from the University of California, Davis (UCD) demonstrate that register count and variety of stocked foods are characteristics

impacting redemption pricing. These findings also show that establishing a separate peer group for full-line grocery stores will support federal funding requirements of cost containment.

Under federal regulations, the Department must use at least two criteria to create peer groups (7 C.F.R. §246.12(g)(4)(ii)(A)). Unless the Department has received federal approval to implement a peer grouping methodology that does not account for geographic location, vendors' geographic location must be incorporated into the peer group system. (Id.) In collaboration with agricultural research scientists from UCD, the Department researched the extent to which geographic location impacts food pricing. This research concluded that store register count and variety of foods stocked in a store have a much greater impact on vendor pricing behaviors than geographic location. As a result, the Department has received a two-year waiver for the federal geographic requirement.

- (1) This section establishes definitions needed to ensure that the Department can effectively evaluate vendors' inventory for peer group assignment.
 - (A) A variety is defined as different types of food items in a food group because this definition is consistent with the description of variety for SNAP staple foods included in 7 C.F.R. §278.1(b)(1)(ii)(C).
 - (B) A variety does not include different brands or flavors because their inclusion would not be consistent with the descriptions of a SNAP staple food variety included in 7 C.F.R. §278.1(b)(1)(ii)(C).
 - (C) A unit is defined as one package for food packaged for sale to ensure that the Department can quantify the units sold by vendors for the purposes of peer group classification.
 - (D) A unit of an item sold in bulk shall be defined as method in which the food item is sold. This definition is necessary to ensure that the Department can quantify the units sold by vendors for the purposes of peer group classification.
 - (E) A unit of an item sold in set quantities shall be one (1) set quantity because this represents the method in which the food item is sold. This definition is necessary to ensure that the Department can quantify the units sold by vendors for the purposes of peer group classification.
 - (F) Fresh is defined to exclude cooked, canned, dried, frozen, or other shelf stable food items because this definition is consistent with the

description of fresh staple foods included in 7 C.F.R.
§278.1(b)(1)(ii)(B).

- (2) (A-E) In addition to complying with the requirements for peer groups set forth in 7 C.F.R. §246.2 and 7 C.F.R. §246.12(g)(4)(ii)(A), federal regulation also require the Department to comply with federal funding requirements of cost containment.

Research conducted by the Department and UCD demonstrates that the creation of a peer group for full-line grocery stores will reduce program costs while establishing peer groups that effectively classify vendors by characteristics impacting food costs.

The varieties required to meet the definition in this section reflect the varieties included in the definition of “staple food” for Supplemental Nutrition Assistance Program (SNAP) vendor authorization under federal regulations (7 C.F.R. §271.2). The varieties included in this section support WIC’s efforts to provide participants with access to a wide selection of nutritious foods which complement the WIC authorized foods.

Vendors who stocked the varieties and quantities included in the definition described by this section displayed different redemption behavior from those who did not meet the definition. This divergent redemption behavior demonstrates that vendors who meet the full-line grocery definition share characteristics that impact food pricing. Cost analyses showed that the group of vendors who did not stock the varieties and quantities included in this definition also did not charge redemption prices consistent with the group of vendors meeting the full-line grocery definition.

The Department considered alternative full-line grocery definitions requiring more or less food item quantities in its analysis. This analysis showed that these alternative definitions failed to produce cost savings, excluded too many vendors to create viable peer groups or could not effectively distinguish between vendors with different redemption prices.

Additional research showed that when a vendor stocked a food item included in the full-line grocery criteria, the vendor generally stocked at least five (5) units of that food item. Vendors who do not consistently stock the required varieties and quantities described by the definition in this section do not practice stocking behaviors that are consistent with vendors meeting the full-line grocery criteria.

- (3)(A-D) Research findings from UCD demonstrate that register count is a reasonable and verifiable means of determining vendors’ store size. These findings also show that store size impacts food pricing. The register counts for Peer Group Category B Subgroups enable the Department to classify vendors by store size in addition to variety of foods stocked. UCD’s research demonstrates that

vendors with 1 register generally redeem WIC food instruments for prices that are consistent with those charged by 2 register vendors. However, vendors with 3 registers generally submit redemptions more closely related to those charged by 4 register vendors. Five register vendors' redemption behavior is more similar to that of 3 and 4 register vendors than 6 register stores. Stores with 6-9 registers submit redemptions at prices that are very similar to each other; however, these redemption prices are different from stores with more than 10 registers. The different pricing behavior observed in UCD's research supports the creation of the register subgroups within Peer Group Category B.

(E) This section clarifies that any cash register counted by the Department for the purposes of peer grouping must comply with the definition of a "cash register system" included in W.B.R. §70300. This requirement is consistent with the Vendor Authorization Criteria and is needed to ensure that the Department has clear criteria for counting the number of registers in a store for the purposes of peer group assessment.

1. This subsection is needed to ensure that the Department can obtain an accurate count of the registers that can be used to transact a WIC purchase. Any register that can be used to transact a WIC purchase will be counted for the purposes of peer group assignment. The Department is accommodating store staffing practices by counting registers that are not used at all times during store hours, but are functional, located within the store and able to transact the a WIC purchase.
2. This subsection is needed to clarify that all registers capable of transacting a WIC purchase shall be counted – even when those registers are located in a specialty area.
3. This subsection is needed to clarify that specialty areas of stores that do not include a register shall not be evaluated for a register count.
4. This subsection is needed to clarify that ATMs and banks shall not be counted towards the register count even if they contain registers because these registers cannot be used to transact a WIC purchase.

50300: Other Peer Group/Category C

PROPOSED REGULATION

50300 Other Peer Group/Category C. Vendors meeting the authorization criteria described in WIC Regulations by Bulletin Article 4 that do not meet the criteria for placement in Peer Group Categories A or B shall be placed in Peer Group Category C.

AUTHORITY

Federal

7 C.F.R. §246.12(g)(4): 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 inform all vendors of the criteria for peer groups, and must inform each individual vendor of its peer group assignment.

7 C.F.R. §246.12(g)(4)(ii)(A): The State agency's methodology for establishing a vendor peer group system must include at least two criteria for establishing peer groups, one of which must be a measure of geography, such as metropolitan or other statistical areas that form distinct labor and products markets, unless the State agency receives FNS approval to use a single criterion.

State

Health and Saf. Code §123310: "Peer group" means a group of vendors with similar characteristics that may include, but shall not be limited to, any or all of the following: (1) geographic location of the store, (2) store size, (3) type of store, (4) number of cash registers, (5) sales volume relating to WIC, (6) gross sales volume, (7) inventory, (8) other vendor characteristics established by the department.

STATEMENT OF REASONS

50300(a) The Department will authorize and administer vendors who do not meet the criteria for Peer Groups A and B as specified in Sections 50100 and 50200 in order to maximize the selection of vendors participating in the Program and provide greater participant choice. The Department shall assign authorized vendors who do not meet the criteria for A-50 or full-line grocery store status to Peer Group C.

Unlike vendors meeting the full-line grocery store criteria described in Section 50200, vendors in Category C do not consistently stock the variety or quantity of staple foods that would indicate a business model aimed at providing participants with a range of nutritious food choices. They also share redemption characteristics that demonstrate that they are not A-50 vendors.

Research findings from UCD and the Department show that vendors who do not meet the criteria for Peer Group Categories A or B have higher median redemption prices for frequently redeemed food instruments than vendors who meet the criteria described in Sections 50100 and 50200.

Because these vendors exhibit similar redemption behaviors which affect food prices, the Department has chosen to create a separate peer group for these vendors in order to limit payments for food to competitive levels in compliance with federal funding requirements of cost containment.

Attachment 2

Vendor Reimbursement System
and
Statement of Reasons

**California Special Supplemental Nutrition Program for Women, Infants, and Children
December 13, 2013**

Health & Safety Code § 123322 authorizes the California Department of Public Health to establish regulations regarding the vendor peer group criteria and corresponding reimbursement system for the California Special Supplemental Nutrition Program for Women, Infants, and Children using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations. This document is intended to provide reasons why the Department is adopting the reimbursement system, specified in Regulatory Alert 2013-03, into California regulation.

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60000 Reimbursement of Vendors

PROPOSED REGULATION

60000 Definitions. (a) For purposes of this article, the following definitions apply:

- (1) *Actual Selling Price.* The Actual Selling Price is the amount entered on the food instrument (FI) by a vendor at the time of sale, including all store, coupon, advertisement, or other discounts applied to the sale.
- (2) *Competitive Average Redemption Value.* The Competitive Average Redemption Value (CARV) is a 12-week average, using food instrument redemption data from vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+ as defined in WIC Regulations by Bulletin §50200.
 - (A) For Unit-Priced Food Instruments: The CARV shall be calculated as a dollar sum of all redemptions for Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ vendors across all food instruments for the same supplemental food divided by the quantity of units redeemed by Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors, rounded up to the nearest one cent.
 - (B) For Non-Unit Priced Food Instruments: The CARV shall be calculated for each food item number as the dollar sum of all redemptions for Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors divided by the number of food instruments redeemed by Peer Group Category B Register Count Subgroups' 6-9+ register and 10+ register vendors, rounded up to the nearest one cent.
- (3) *Department.* The Department is defined as the California Department of Public Health and the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).
- (4) *Food Instruments, Non-Unit Priced.* Non-Unit Priced Food Instruments contain either a single supplemental food or a combination of various supplemental foods as defined in the "What to buy" section and identified by the food item number found on the face of the food instrument. A food instrument containing a single supplemental food which does not specify both a specific quantity and package size prescribed in the "What to buy" section on the face of the food instrument such as 16-18 oz. of peanut butter is a non-unit priced food instrument.
- (5) *Food Instruments, Unit Priced.* Unit-Priced Food Instruments contain either one or multiple quantities of a single supplemental food with a specific package size such as a 12.5 oz. can of infant formula and are differentiated for quantity in both the "What to buy" section and the food item number found on the face of the food instrument.

- (6) *Food Item Number.* A four-digit number found on the face of a food instrument or cash-value voucher (CVV) that corresponds to an individual supplemental food or group of supplemental foods by quantity or dollar amount.
- (7) *Maximum Allowable Department Reimbursement.* The Maximum Allowable Department Reimbursement (MADR) rate for food instruments and CVVs is defined as the maximum reimbursement paid to WIC authorized vendors in exchange for providing WIC supplemental foods to program participants according to the food item number.
- (8) *Peer Groups.* A classification of authorized vendors into groups based on common characteristics or criteria that affect food prices, for the purpose of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels. Regulations defining California WIC vendor peer groups, categories and register count subgroups are located in WIC Regulations by Bulletin Article 2 Section 50000 et seq.
- (9) *Statewide Average.* The Statewide Average is a 12-week average of food instrument redemption data from Peer Group Category B and C vendors.
 - (A) For Unit-Priced Food Instruments: The Statewide Average shall be calculated as a dollar sum of all redemptions across all food instruments for the same supplemental food divided by the quantity of units redeemed by Peer Group Category B and C vendors, rounded up to the nearest one cent.
 - (B) Non-Unit Priced Food Instruments: The Statewide Average shall be calculated for each food item number as the sum of all redemptions of Peer Group Categories B and C divided by the number of food instruments redeemed by Peer Group Category B and C vendors, rounded up to the nearest one cent.
- (10) *Tolerance Factor.* A percentage adjustment applied to the CARV to account for differences in vendor prices due to store size and the variety of brands and package sizes stocked by the store as part of the MADR calculation.

AUTHORITY

Federal

7 C.F.R. §246.2: *Above-50-percent vendors* means vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by the Food and Nutrition Service (FNS).

7 C.F.R. § 246.2: *Cash-value voucher* means a fixed-dollar amount check, voucher, electronic benefit (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables.

7 C.F.R. § 246.2: *Food instrument* means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

7 C.F.R. § 246.12(a)(1): *Management*. The state agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction. The state agency may permit only authorized vendors and farmers, home food delivery contractors, and direct distribution sites to accept food instruments and cash-value vouchers.

7 C.F.R. § 246.12(g)(4): *Vendor selection criteria: competitive price*. The state agency must establish allowable reimbursement levels for each peer group.

7 C.F.R. § 246.12(g)(4)(i)(D): State agencies must ensure that above-50-percent (A-50) vendors do not inflate the competitive price criteria and allowable reimbursement levels for peer groups or result in higher total food costs if participants transact their food instruments at A-50 vendors rather than non-A50 vendors. The state agency must compute statewide average costs per food instrument; average payments per food instrument for A-50 vendors may not exceed average payments per food instrument for non A-50 vendors. If average payments per food instrument for A-50 vendors exceed average payments for non A-50 vendors, the state must take necessary action to ensure compliance such as adjusting payment levels.

7 C.F.R. § 246.12(h)(3)(viii): *Food instrument redemption*. State agencies must establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group and competitive price criteria.

State

Health & Safety Code § 123280: This section authorizes the Department to establish a statewide program known as the California Special Supplemental Nutrition Program for Women, Infants, and Children. The program was established for the purpose of providing nutritional food supplements to low-income pregnant, postpartum and lactating women, as well as infants and children under five years of age, who have been determined to be nutritionally at risk.

Health & Safety Code § 123290: The Department shall develop and maintain a system for the delivery of supplemental foods.

Health & Safety Code § 123310: The Department shall authorize vendors to accept food instruments and develop a reimbursement system to compensate vendors for the delivery of WIC supplemental foods.

Health & Safety Code § 123315 (a)(7-8): Authorized vendors must accept up to the maximum allowable department reimbursement as payment in full for the maximum

allowable quantity of food listed on the food instrument. Vendors shall comply with Department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60000(a) This section is being adopted to define terms not found in existing federal or state regulations.

- (1) This definition is included to clarify the actual selling price is the price that a vendor enters on a food instrument in exchange for reimbursement for the sale of authorized supplemental foods, which may be less than a vendor's posted price for a supplemental food. The actual selling price of a supplemental food may not exceed the vendor's posted price, as this would be an overcharge pursuant to Cal. Code of Regs., tit. 22, §40741(e)(3)(A).
- (2) (A-B) The Competitive Average Redemption Value (CARV) establishes a reliable basis to compare vendors' redemption prices because it reflects the true "market price" of a food instrument. UCD compared the redemptions of large 6+ register vendors to wholesale price data for both WIC supplemental foods and control items. In their analysis, they found the same "markup" for WIC vs. non-WIC foods; thereby establishing the redemption data for these large vendors reflects true "market prices". The Department is using the Peer Group Category B 6-9 and 10+ Register Count Subgroups to determine the CARV because the vendors in these Subgroups most closely match the 6+ register vendors whose redemption data was reviewed by UCD. In calculating MADR rates, the Department is using redemption data from a 12 week period as it allows for a normal distribution of prices over time while also capturing market fluctuations in food prices. The CARV is defined for both Unit-Priced and Non-Unit Priced Food Instruments in order to determine an average price for food instruments that contain a single supplemental food in a specific quantity, versus food instruments that contain either one or several supplemental foods that are not limited by a particular package size or food type.
- (3) In the adoption of Health & Safety Code § 123280, the California Legislature authorized the Department of Public Health to administer the California Special Supplemental Food Program for Women, Infants, and Children (WIC) to serve nutritionally at-risk low-income pregnant, postpartum and lactating women, as well as children under five years of age.
- (4-5) The Department is distinguishing between two different types of food instruments for the purpose of calculating the CARV or the statewide average. Food instruments are differentiated to be either unit-priced or non-unit priced. For example, unit-priced food instrument 2202 contains a one gallon container of milk, and 2205 contains two one gallon containers of milk.

For these unit-priced food instruments, an average is calculated by aggregating the units redeemed across the different food instruments containing the unit-priced supplemental food, thereby reflecting an average of all redemptions for that authorized supplemental food.

Non-unit priced food instrument 2203 also contains a single authorized food of whole milk, but because the food instrument can be redeemed for one gallon and one quart of whole milk, an average cannot be calculated at the unit or package size level. Non-unit priced food instruments arrive at an average by averaging all redemptions for the individual food instrument.

- (6) This definition is necessary to identify that the Department uses a numerical system to identify food instruments and CVVs which corresponds to the supplemental food or combination of supplemental foods in the “What to Buy” section found on the face of a food instrument or CVV.
- (7) 7 C.F.R. § 246.12(h)(3)(viii) requires state agencies to establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor’s peer group and competitive price criteria as established in the vendor authorization process. The Maximum Allowable Department Reimbursement rate represents the Department’s limits on reimbursement.
- (8) Federal regulation (7 C.F.R. § 246.12(g)(4)) and state statute (Health and Safety Code §123310), require state agencies to design a vendor reimbursement system which classifies vendors with common characteristics into distinct peer groups.
- (9) (A-B) 7 C.F.R. § 246.12(g)(4)(i)(D) requires reimbursement levels for A-50 vendors to be cost-neutral. Payments to A-50 vendors may not result in higher food costs to the Department than if participants were to transact their food instruments at non A-50 vendor. States may not reimburse A-50 vendors more than the average of other vendors. The statewide average represents the average cost of food instruments for non A-50 vendors. In calculating MADR rates for A-50 vendors, redemption data from a 12 week period is used, as it allows for a normal distribution of prices over time while also capturing fluctuations in food prices. The statewide average is defined for both unit-priced and non-unit priced food instruments in order to distinguish the mathematical differences in arriving at an average for food instruments which contain a single supplemental food defined by a specific quantity as opposed to food instruments which contain either one or several supplemental foods that cannot be limited to a particular package size or food type.
- (10) Pursuant to 7 C.F.R. § 246.12(h)(3)(viii), state agencies are required to establish and apply limits on the amount of reimbursements allowed for food instruments based on a vendor’s peer group and competitive price criteria.

The Department encourages participants to consume a wide variety of WIC authorized supplemental foods. In order to accommodate the disparity in prices for food options carried by vendors that offer a wide variety of WIC authorized supplemental foods as well as the disparities in grocer business models, the Department has worked to establish a methodology which fairly compensates vendors for these dissimilarities. As such, the Department created tolerance factors or percentage adjustments that, in combination with the CARV, create a limit or ceiling on vendor reimbursements. For a more complete discussion of tolerance factors, please refer to 60200(c)(3)(A-C) for the related Regulations and Statement of Reasons.

60100 Maximum Allowable Department Reimbursement Rates for Cash-Value Vouchers

PROPOSED REGULATION

60100 Maximum Allowable Department Reimbursement Rates for Cash-Value Vouchers. (a) The MADR rate for CVVs shall be the amount printed on each CVV. Vendors shall be reimbursed for CVVs as follows:

- (1) The Department shall reimburse vendors for the actual selling price of the fruits and vegetables when the cost of the quantity purchased by the participant is less than the MADR rate for the CVV.
- (2) The Department shall reimburse vendors the MADR rate for the fruit and vegetable CVV when the actual selling price of the quantity of fruits and vegetables purchased by the participant equals or exceeds the MADR rate.
 - (A) If the actual selling price of fruits and vegetables chosen by a participant exceeds the MADR rate for the fruit and vegetable CVVs and the participant wishes to purchase the full quantity selected, the vendor shall accept and collect payment from the participant for the amount by which the actual selling price exceeds the MADR rate of the CVV.

AUTHORITY

Federal

7 C.F.R. § 246.2: *Cash-Value Voucher (CVV)* means a fixed-dollar amount check, voucher, electronic benefit (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables.

7 C.F.R. § 246.12(h)(3)(v): *Purchase price on food instruments and cash-value vouchers.* The vendor must ensure that the purchase price is entered on food instruments and CVVs in accordance with the procedures described in the vendor agreement. The purchase price must include only the authorized supplemental foods actually provided and must be entered on the food instrument or CVV before it is signed.

7 C.F.R. § 246.12(h)(3)(x): *No charge for authorized supplemental foods or restitution from participants.* The vendor may not charge participants for authorized supplemental foods obtained with food instruments or CVVs. In addition, the vendor may not seek restitution from participants for food instruments or CVVs not paid or partially paid by the state agency. The state agency may allow participants to pay the difference when the purchase of authorized fruits and vegetables exceeds the value of the CVV.

State

Health & Safety Code § 123290: The Department shall develop and maintain a system for the delivery of supplemental foods.

Health & Safety Code § 123315 (a)(7-8): Authorized vendors must accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument. Vendors shall comply with Department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60100 (a) CVVs are defined in federal regulations to be of a fixed-dollar amount and are to be exchanged for fresh fruits and vegetables only. Produce is sold either by the item or weight and, as such, cannot be limited to a specific quantity. This provision clarifies that the Department shall print the MADR rate on each CVV as the maximum reimbursement rate to the vendor and provides the reimbursement guidelines.

- (1) This provision states that vendors will be reimbursed the vendor's selling price if their selling price is less than the MADR printed on the CVV. Federal regulations require vendors to provide only the authorized supplemental foods listed on the CVV. (7 C.F.R. §246.12(h)(3)(ii)) Vendors may not provide cash or credit in exchange for cash value vouchers.
- (2) This provision states that vendors will be reimbursed the MADR printed on the CVV if their selling price is more than the MADR. This is to ensure that vendors are reimbursed at cost effective prices and the Program can achieve cost containment goals of serving the most possible participants.
 - (A) 7 C.F.R. § 246.12(h)(3)(x) prohibits vendors from charging participants for authorized foods obtained with food instruments or CVVs, however, participants may choose to pay the difference between the selling price of fruits and vegetables and the CVV's face value. In support of better nutrition, the Department has chosen to allow participants to pay the difference when the purchase of authorized fruits and vegetables exceeds the value of the CVV in order to encourage participants to purchase more fruits and vegetables.

60200 Maximum Allowable Department Reimbursement Rates for Food Instruments

PROPOSED REGULATION

60200 Maximum Allowable Department Reimbursement Rates for Food Instruments (a)

The Department shall reimburse vendors the lesser of the vendor's posted price, the actual selling price, or the MADR of all of the supplemental foods purchased by the participant and included on the food instrument.

(b) If the vendor submits a food instrument for payment in an amount that exceeds the MADR, that food instrument will be rejected and returned to the vendor by the Department or its agent. When a food instrument is rejected, a vendor must reduce the amount requested for reimbursement on the food instrument so that it does not exceed the MADR and resubmit the food instrument.

(1) Vendors may not seek or accept payment for any difference between the vendor's posted price or the actual selling price of the supplemental foods purchased and the MADR rate for a food instrument when the vendor's posted price or actual selling price of the supplemental foods exceeds the MADR rate.

(c) The MADR rate for a food instrument shall be assigned based on the MADR rate in effect at the time the food instrument is initially submitted by the vendor to the Department through the Vendor WIC Information eXchange (VWIX) and shall be calculated according to the vendor's assigned Peer Group Category and Subgroup as follows:

(1) The MADR rate for Peer Group Category A vendors shall be the Statewide Average.

(2) The MADR (MADR) rate for vendors assigned to Peer Group Category B Register Count Subgroups shall be calculated by adding the applicable tolerance factor to the CARV:

$$\text{MADR} = \text{CARV} + \text{Tolerance Factor}$$

(A) Tolerance factors for Peer Group Category B vendors shall be determined based on whether a food item number is a Single Item Food Instrument or a Combination Item Food Instrument.

1. Single Item Food Instruments contain a single supplemental food in the "What to buy" section on the face of the food instrument.

2. Combination Food Instruments contain two or more different supplemental foods as found in the "What to buy" section of the food instrument.

(B) Each Peer Group Category B Register Count Subgroup's MADR rate for single item food instruments shall be calculated using the Register Count Subgroup's Tolerance Factor for Single Item Food Instruments

as follows:

1. 1-2 Register Count Subgroup: 28% of CARV
2. 3-5 Register Count Subgroup: 22% of CARV
3. 6-9 Register Count Subgroup: 16% of CARV
4. 10+ Register Count Subgroup: 10% of CARV

(C) Each Peer Group Category B Register Count Subgroup's MADR rate for combination food instruments shall be calculated using the Register Count Subgroup's Tolerance Factor for Combination Food Instruments as follows:

1. 1-2 Register Count Subgroup: 49% of CARV
2. 3-5 Register Count Subgroup: 43% of CARV
3. 6-9 Register Count Subgroup: 37% of CARV
4. 10+ Register Count Subgroup: 31% of CARV

(3) The MADR rates for Peer Group Category C vendors shall be the CARV.

AUTHORITY

Federal

7 C.F.R. § 246.2: *Food instrument* means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

7 C.F.R. § 246.12(g)(4): *Vendor selection criteria: competitive price*. The state agency must establish allowable reimbursement levels for each peer group.

7 C.F.R. § 246.12(g)(4)(i)(D): State agencies must ensure that above-50-percent (A-50) vendors do not inflate the competitive price criteria and allowable reimbursement levels for peer groups or result in higher total food costs if participants transact their food instruments at A-50 vendors rather than non-A50 vendors. The state agency must compute statewide average costs per food instrument; average payments per food instrument for A-50 vendors may not exceed average payments per food instrument for non A-50 vendors. If average payments per food instrument for A-50 vendors exceed average payments for non A-50 vendors the state must take necessary action to ensure compliance, such as adjusting payment levels.

7 C.F.R. § 246.12(h)(3)(ii)(A): The vendor may not provide unauthorized food items, nonfood items, cash or credit in exchange for either food instruments or CVVs.

7 C.F.R. § 246.12(h)(3)(v): *Purchase price on food instruments and Cash-Value vouchers*. The vendor must ensure that the purchase price is entered on FIs and CVVs in accordance with the procedures described in the vendor agreement. The purchase

price must include only the authorized supplemental foods actually provided and must be entered on the FI or CVV before it is signed.

7 C.F.R. § 246.12(h)(3)(viii): *Food instrument redemption*. Federal regulations require state agencies to establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group and competitive price criteria. In setting reimbursement levels, the state agency may include a factor to reflect fluctuations in wholesale prices.

7 C.F.R. § 246.12(h)(3)(x): *No charge for authorized supplemental foods or restitution from participants*. The vendor may not charge participants, parents or caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments or CVVs. In addition, the vendor may not seek restitution from these individuals for food instruments or CVVs not paid or partially paid by the state agency.

State

Health & Safety Code § 123290: The Department shall develop and maintain a system for the delivery of supplemental foods.

Health & Safety Code § 123310: The Department shall authorize vendors to accept food instruments and develop a reimbursement system to compensate vendors for the delivery of WIC supplemental foods.

Health & Safety Code § 123315 (a)(7-8): Authorized vendors must accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument. Vendors shall comply with Department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60200 (a) Between October 2009 and September 2011, California's food costs per participant rose 4.6% while other Western Region state agencies experienced a 7.7% decline. The USDA's concerns about California's rapidly rising food costs were formally addressed by the USDA in its 2011 State Technical Assistance Review (STAR). In an effort to control costs, on May 25, 2012, the USDA imposed an interim MADR methodology which effectively limited 1-2 and 3-4 register vendors to 15% and 11%, respectively, above the average redemption of vendors with at least five registers.

In the first twelve months since implementing the interim MADR methodology, reimbursements to A50 vendors were reduced approximately \$23 million from the prior year and the reimbursements to 1 to 4 register vendors were reduced approximately \$68 million from the prior year. For peer groups with 1-2 registers, the program realized a 44% savings of \$64 million in this same time period. The Department does not underestimate the magnitude of these savings. However, the Department seeks to implement a more permanent methodology which retains the cost containment results

of the interim MADR methodology yet better represents the challenges our vendors, both small and large, face in cost effectively delivering WIC supplemental foods to participants.

The California WIC program offers a wide variety of brands and package sizes as part of its WIC Authorized Food List, or WAFL, at no charge to participants. Although the program encourages smart shopping, participants are not required to shop for the best prices. To address vendor costs to the program, federal regulations set forth in 7 C.F.R. § 246.12(h)(3)(viii) require state agencies to apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group and competitive price criteria in order to contain costs. In pursuit of cost containment goals, federal regulations found in 7 C.F.R. § 246.12(g)(4)(ii)(C) further require states to reassess the effectiveness of their peer grouping structure and competitive price criteria in order to "enhance system performance." In combination with the new peer grouping structure and competitive price criteria, the Department finds it necessary to also modify its reimbursement methodology.

Federal regulations set forth in 7 C.F.R. § 246.12(h)(3)(ii) authorize vendors to provide only the authorized supplemental foods listed on the CVV or food instrument. Pursuant to 7 C.F.R. § 246.12(h)(3)(viii), state agencies must apply limits to reimbursement rates to food instruments according to peer groups. 7 C.F.R. § 246.12(h)(3)(v) further requires a state agency's redemption procedures ensure vendors enter the selling price of the actual quantity of authorized supplemental foods received by the participant. If this selling price is less than the MADR rate for that food instrument, the vendor will be reimbursed the vendor's posted price, or if less, the actual selling price of the supplemental foods purchased in order to ensure that the Department is charged a price for authorized supplemental foods that is no more than the price charged to other customers. This section complies with Health and Safety Code 123315(a)(3) and the vendor agreement, vendors must provide supplemental foods at the current posted price or at less than the current price charged to other customers.

- (b) If a vendor submits a food instrument with a selling price that exceeds the MADR rate, the food instrument will be rejected and the vendor must reduce the price to an allowable level for reimbursement. The Department will reject all food instruments that exceed the MADR rate as the MADR represents the Department's limit on vendor reimbursement pursuant to 7 C.F.R. § 246.12(g)(4). As such, the MADR rate represents the maximum reimbursement a vendor may be paid for a food instrument regardless of whether or not the vendors prices exceed the MADR.
 - (1) Pursuant to 7 C.F.R. § 246.12(h)(3)(x), participants must receive authorized supplemental foods without additional charges and vendors may not seek restitution from participants or the Department for food instruments not paid or partially paid by the Department. The purpose of this regulation is to ensure that no hardship is placed upon the participant.
- (c) This regulation clarifies for both the vendor and the Department the date that will be used to determine the MADR rate for a food instrument. MADR rates for food

instruments are assigned based on the MADR rate in effect at the time a food instrument is submitted to the Department by the vendor in order to apply the most current redemption rate and to ensure accuracy between posted MADR rates and redemption values since normal business practices would result in the vendor submitting the food instrument for reimbursement as soon as possible. The date of submission is the closest verifiable date to when the participant actually redeems the food instrument.

- (1) Federal regulations require that reimbursements to A-50 vendors do not exceed reimbursements to non A-50 vendors (7 C.F.R. § 246.12(g)(4)(i)(D)). The Department has set the MADR rates for Peer Group Category A vendors as the Statewide Average as set forth in section 60000(a)(8).
- (2) (A-C) In order to fully understand the economics behind how grocers price foods, the Department contracted with agricultural economists at the University of California, Davis (UCD) to conduct a study of vendor reimbursement patterns. For the purposes of this study, A-50 vendors were excluded from the analyses as their MADR rates are federally mandated as no more than the Statewide Average. UCD compared the redemptions of large 6+ register vendors to wholesale price data for both WIC supplemental foods and control items. In their analysis, they found the same “markup” for WIC vs. non-WIC foods; thereby establishing the redemption data for these large vendors to be a reliable basis on which to establish percentage adjustments. Based on these findings, the Department will add a Tolerance Factor to the CARV for Peer Group Category B vendors for the purposes of calculating MADR rates.

In arriving at the Tolerance Factor for the various Peer Group Category B Register Count Subgroups, the team sought to capture the differences in the cost of doing business for store size as well as an associated factor which accounts for the larger variety of brands, package sizes and flavors found in full-line grocery stores. As such, the Cost Differential Tolerance (CDT) addresses the variance in costs depending on store size. For example, a large chain store has more buying power than a small store, so the small store would have a higher CDT. The second percentage adjustment, known as the Heterogeneity Differential Tolerance (HDT), is also needed to address the variation of prices within a specific food instrument due to the possible food choices, brands, and package sizes. For example, a Combination Food Instrument that includes several products which are available in many brands and package sizes would have a higher HDT than a Single Item Food Instrument containing only one type of supplemental food.

The Department then worked with UCD to analyze redemption data in order to recommend Tolerance Factors for the different peer groups using a multiplier factor of 2.5 standard deviations for the HDT to allow for maximum flexibility in redemption for the full-line grocery stores which offer a larger

product offering than smaller stores. The recommended Tolerance Factors for the 6-9 and 10+ register count subgroups are found in Table 1 below, one for Single Item Food Instruments and a second for Combination Food Instruments. The percentage adjustments were derived by calculating the CDT and HDT for the eight food item numbers representing the major food instruments present in the standard women/children, infant, and therapeutic food packages. These individual percentage adjustments were then weighted based upon each food instrument's relative share of redemption to arrive at a single Tolerance Factor for each of the Single Item and Combination Food Instruments. The Department is proposing the following percentage adjustments to the CARV for the 6-9 and 10+ register count subgroups:

Table 1 Recommended Tolerance Factors Determined by Number of Items per FI		
Register size	Single Item FI	Combination FI
6 – 9	16%	37%
10+	10%	31%

The UCD analysis revealed that the variation of redemption amounts within the 1-2 register stores resembled redemption patterns that would be expected of larger stores with a wide range of varieties offered for each food item on a food instrument. However, shelf price surveys of the 1-2 register stores indicated that in actuality very few options exist in many of these smaller stores for each of the food items, if the item was even stocked by the store. Therefore, the variation of redemption amounts must be caused by factors other than increased cost of doing business and variety of products offered in the stores. As such, UCD acknowledged that this phenomenon also exists, albeit to a smaller extent, in the 3-5 register stores. UCD and the Department employed several different techniques in analyzing the redemption data in order to limit the influence of outlying redemption data on the CDT and HDT; however, all analyses resulted in percentage adjustments that were unreasonable in light of the federal funding requirement of cost containment.

The Department has adopted UCD's recommendation to not utilize information for the 1-2 and 3-5 register vendors as there were trends in the redemption data for these vendor groups that indicated the significant presence of profit-motivated pricing rather than competition-controlled pricing. Instead, the Department is using the observed difference between the 10+ and 6-9 register tolerance factors and extending this differential to both the 3-5 and 1-2 register vendors, as recommended in **Table 2** below:

Table 2		
Recommended Tolerance Factors Determined by Number of Items per FI		
Register size	Single Item FI	Combination FI
1 – 2	28%	49%
3 – 5	22%	43%

The Department proposes a 6% differential between the percentage adjustments of the peer groups based upon the observed difference between the calculated percentage adjustments for the 6-9 and 10+ register vendors.

- (3) Peer groups are established pursuant to regulations set forth in proposed Section 50000 of this Regulatory Alert. Peer Group Category C vendors do not meet the requirements for full-line grocers or A-50 vendors. Research findings from UCD demonstrate that register count and variety of stocked foods are characteristics impacting redemption pricing. These findings support establishing a separate peer group for full-line grocery stores versus non-full line grocery stores to assist in achieving federally-required cost-containment. Peer Group Category C stores do not have a business model designed around a majority WIC customer base and therefore do not customize their product offerings to WIC participants. A-50 vendors, in contrast, cater their selection toward WIC customers by offering a wide variety of authorized supplemental foods. A-50 vendors are limited by federal law to no more than the statewide average.

The Department has determined that full-line grocery stores require tolerance to accommodate a variety of food selections. Peer Group Category C vendors do not offer this variety. In addition, Peer Group Category C vendors' redemption data demonstrates higher average costs for frequently redeemed food items, making cost containment more difficult. It is the Department's position that for these reasons, non-full line grocery stores shall be limited to the CARV as their pricing practices are not consistent with cost containment goals and their business models lack the variety of foods that would justify a higher tolerance factor.

60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate

PROPOSED REGULATION

60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate

(a) The MADR rates shall be calculated every 4 weeks on Thursday using the prior 12 weeks of data, beginning on a Tuesday and ending on the Tuesday prior to the calculation date. The Department will have 10 days to review the calculated rates and make manual adjustments as specified in subsection (b) below. The rates shall go into effect at 12:01am on the Friday following the end of the Department's 10 day review period.

- (1) The MADR rate shall be calculated for all food item numbers for Peer Group Category A if there are at least 30 unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period.
 - (2) The MADR rate shall be calculated for all food item numbers for Peer Group Category B if there are at least 30 unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.
 - (3) The MADR rate shall be calculated for all food item numbers for Peer Group Category C if there are at least 30 unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.
- (b) The Department may manually adjust the MADR rates or the calculation methods, as specified below.
- (1) Upon implementation of this section, if a food item number does not have at least thirty (30) unique vendors in the 6-9 and 10+ Register Count Subgroups with redemptions during the immediately preceding 12-week period used for calculations the Department will make a one-time calculation to determine the MADR for food item numbers calculated as follows:
 - (A) The average of the MADRs for each food item number for the three 10+ register store peer groups under the peer group and MADR systems in effect prior to the implementation of this regulation shall be set as the new MADR for the 10+ register Count Subgroup for that food item number.
 - (B) A substitute CARV shall be derived from the new MADR calculated in (b)(1)(A) above using the calculation rules in Section 60200(c). The substitute CARV shall be used as the basis for calculating all other peer group substitute MADRs.
 - (2) When a food item number does not have at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that food item number

- during the 12-week redemption period, the Department may manually adjust the MADR for Peer Group Category A to comply with federal requirements of cost neutrality by comparing the simple averages of the prices at which the food item number was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A.
- (3) When a food item number does not have at least thirty (30) unique vendors in the 6-9 and 10+ Register Count Subgroups with redemptions during the immediately preceding 12-week period used for calculations, the previous period's MADR rate for Peer Group Category B and C vendors will remain in effect. The Department may calculate a substitute CARV for food item numbers that do not have thirty (30) unique vendor redemptions of that food item number in any of the preceding six (6) four (4) week MADR periods.
- (A) When the Department calculates a substitute CARV for food item numbers pursuant to subsection (b)(2) above, the Department shall use data from the Peer Group Category B 6-9 and 10+ Register Count Subgroups collected during the most recent semiannual collection of shelf prices for determination of cost competitiveness to calculate the substitute CARV for food item numbers. The substitute CARV will be determined by averaging the sum of the average prices of the foods included on the food instrument for all vendors in a peer group based on the most recent semi-annual collection of shelf prices.
- (B) Where no submitted shelf price data is available from the semiannual collection of shelf prices, the Department shall collect shelf price data from Peer Group Category B 6-9 and 10+ Register Count Subgroups for calculation of a substitute CARV. When the Department collects data for this purpose, it will be from a minimum of eight (8) rural and eight (8) urban vendors as those terms are as defined in Cal. Code Regs., tit. 22, § 40740(h)(2) in the Peer Group Category B 6-9 Register Count Subgroup and from a minimum of eight (8) rural and (8) urban vendors in the Peer Group Category B 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. Using this data, the substitute CARV will be calculated as a dollar sum of all of the collected shelf prices for a food item divided by the total number of shelf prices collected.
- (C) The Department may manually adjust the MADR rate to temporarily accommodate extreme fluctuations in wholesale food prices as reported by price and inflation information from other California State agencies and departments or nationally recognized sources of commodity food pricing information.
- (c) The Department will remove partially-redeemed food instruments (FIs) when calculating the Statewide Average for food item numbers 6000, 6003, and 6107.
- (1) In order to identify a partially-redeemed FI, upon completion and Department verification of the prices submitted as part of the semi-annual shelf price collection, the Department will calculate a minimum full redemption value for

each food item number in (c) by determining the lowest shelf price for each market basket item reported by Peer Group B and C vendors in the most recent complete shelf price submission required by W.B.R. §70600. The minimum full redemption value is a threshold dollar amount below which the Department will consider a food instrument to be partially-redeemed. The Department shall identify the minimum full redemption value for each food item number in one of three ways, dependent on the availability of reported shelf prices as follows:

- (A) The minimum full redemption value for each food instrument identified in (1) will be determined by adding the lowest reported shelf price of each individual market basket food item included in the food item number. Any redemption amount below the minimum full redemption value shall be deemed a partially-redeemed FI for purposes of calculating the statewide average.

For example, food item number 6003 includes three food items (one gallon milk, lower fat, sixteen ounces of whole grains, and thirty six ounces of breakfast cereal), all of which are included in the Market Basket. If the lowest reported shelf prices for each item are as follows, the minimum full redemption value possible for this food item would be:

1 gallon milk, lower fat	\$2.50
1 (16 oz.) whole grains	\$2.00
<u>36 oz. breakfast cereal</u>	<u>\$4.00</u>
Total Minimum Full Redemption Value	\$8.50

Any redemption below \$8.50 would be considered a partially-redeemed FI.

- (B) If a food item number does not have reported shelf prices for all of the supplemental food types included in the market basket, the Department will not calculate a minimum full redemption value for that food item number.

AUTHORITY

Federal

7 C.F.R. § 246.2: *Partially-redeemed food instrument* means a paper food instrument which is redeemed for less than all of the supplemental foods authorized for that food instrument.”

7 C.F.R. § 246.12(a)(1): *Management*. The state agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction. The state agency may permit only authorized vendors and farmers, home food delivery contractors, and direct distribution sites to accept food instruments and cash-value vouchers.

7 C.F.R. § 246.12(g)(4)(i)(D): State agencies must ensure that above-50-percent (A-50) vendors do not inflate the competitive price criteria and allowable reimbursement levels for peer groups or result in higher total food costs if participants transact their food instruments at A-50 vendors rather than non-A50 vendors. To comply with this requirement, the state agency must compare the average cost of each type of food instrument redeemed by A-50 vendors against the average cost of the same type of food instrument redeemed by regular vendors. The state agency must compute statewide average costs per food instrument at least quarterly to monitor compliance with this requirement. If average payments per food instrument for A-50 vendors exceed average payments for non A-50 vendors, the State must take necessary action to ensure compliance, such as adjusting payment levels. A state agency may exclude partially-redeemed food instruments from a quarterly cost neutrality assessment based on an empirical methodology approved by FNS. A state agency may not exclude food instruments from the quarterly cost neutrality assessment based on a rate of partially-redeemed food instruments.

7 C.F.R. § 246.12(h)(3)(viii): *Food instrument redemption*. Federal regulations require state agencies to establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor’s peer group and competitive price criteria. In setting reimbursement levels, the state agency may include a factor to reflect fluctuations in wholesale prices.

State

Health & Safety Code § 123290: The Department shall develop and maintain a system for the delivery of supplemental foods.

Health & Safety Code § 123310: The Department shall authorize vendors to accept food instruments and develop a reimbursement system to compensate vendors for the delivery of WIC supplemental foods.

Health & Safety Code § 123315 (a)(7-8): Authorized vendors must accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument. Vendors shall comply with Department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60300 (a) This regulation codifies existing Department procedures regarding redemption data collection and updating procedures. Observing redemption over 12 weeks ensures that adequate data is available to calculate a mean without significant influence from outlier data points and normalizes the data set over time. Based on UCD's review of literature on retail grocer pricing and the relative infrequency of price changes found in the wholesale price data, the Department is adopting a system in which the MADR will be calculated no less frequently than once monthly. The Department determined that calculating the MADRS every two weeks is unnecessary, as wholesale and retail prices do not fluctuate with any significance in periods shorter than four weeks. Additionally, extending the current two-week MADR period to four weeks streamlines the update procedure for the Department and eases the burden of checking for MADR updates on the WIC authorized vendor.

(1-3) This subsection ties calculation of the CARV and Statewide Average to a minimum number of vendors with redemptions during the 12 week calculation period. The *Interim Guidance on WIC Vendor Cost Containment June 2006* issued by USDA recommends that at least 30 vendors be placed in a peer group to increase "the likelihood that the prices of the vendors in the group will approximate a normal distribution," (page 46). Since the Department is observing the mean of a dataset, it is important to ensure that it "is not skewed by the high or low prices of one or two vendors" and ensure that the mean is truly representative of the whole. Therefore, the Department is adopting the USDA's recommendation of a minimum of 30 vendors be required as the threshold for calculating MADR.

(b) Federal regulations set forth in 7 C.F.R. § 246.12(h)(3)(viii) allows state agencies to factor in the fluctuations of wholesale prices when setting maximum allowable reimbursements. The Department also shall manually adjust MADRs as specified.

(1) (A-B) Because of historically low redemption of certain food item numbers, upon implementation of this regulation there will be food item numbers for which there is insufficient redemption data and/or shelf price data. An alternate method of calculating initial MADRs for the implementation of the new MADR methodology will be required for these food item numbers. The little redemption that has occurred in these food codes in the 10+ register stores has been redeemed below the current MADRs, rather than at the current MADRs, suggesting that appropriate tolerance currently exists at those MADR levels. The Department has determined that it is reasonable

that until sufficient redemption or shelf price data can be obtained, the current MADR for the 10+ register stores may remain. A substitute CARV can be calculated from the substitute MADR for the 10+ register store, allowing the MADRs for the other peer groups to be derived proportionately based on the calculation methodology in Section 60200(c).

- (2) For food item numbers with fewer than the Department's requirement of a minimum of thirty vendors with redemption during the 12 week redemption period, the Department may manually adjust the MADR for Peer Group A to the simple average of the purchase price of the Peer Group Category B and C Vendors. This adjustment is made pursuant to the USDA's *Supplemental FY 2013 WIC State Plan Guidance*, requiring that state agencies remediate all food instruments that do not meet Federal cost neutrality requirements and have at least ten redemptions by both the non-above 50 percent vendors and above 50 percent vendors for the fourth quarter of the Federal Fiscal Year.
- (3) When fewer than 30 vendors have redeemed a food item number over 12 weeks, there is a risk that the mean could be "skewed by the high or low prices of one or two vendors," (page 46, *Interim Guidance on WIC Vendor Cost Containment: June 2006*, USDA). The Department has determined that the most recent calculations of the CARV and Statewide Average are the best indicators of average redemption in these food item numbers. Therefore, the prior MADR will remain in effect. However, the Department acknowledges that a MADR rate should not remain static for an excessive period of time as inflation or deflation can cause the CARV and Statewide Average to increase or decrease over time, thereby necessitating a manual adjustment after six four-week MADR periods, or 24 weeks. Since redemption in these food instruments is low, the Department has determined that adjustment more frequently than six months is not warranted.
 - (A) The Department has determined that the shelf prices from WIC Authorized Vendors in the 6-9 and 10+ subgroups of Peer Group Category B, collected on a semi-annual basis, are the best source of information for estimating a competitive average to use in substitution of the CARV. Since shelf price information will be collected for the purpose of determining cost competitiveness within peer groups, shelf price information will eventually be available for this purpose.
 - (B) Until comprehensive shelf price information is available and at other times when specific product prices are not available, a method of updating these seldom-redeemed food item numbers must be established. Selecting a sampling of eight vendors from the peer groups that build the CARV (each of the 6-9 and 10+ subgroups, both urban and rural) will ensure that a sufficient and representative sample of data is collected in order to prevent the influence of outliers, which is

consistent with the Department's regulations requiring a minimum of 30 vendors in a redemption set.

- (4) Federal regulations set forth in 7 C.F.R. § 246.12(h)(3)(viii) allow state agencies to factor in the fluctuations of wholesale prices when setting maximum allowable reimbursement rates. To calculate MADR rates, the Department uses the prior 12 weeks of redemption data and its MADR methodology may, at times, not be responsive enough to adequately compensate vendors for unexpected fluctuations in wholesale food prices. Sudden increases in wholesale food prices include but are not limited to, those that occur as a result of a natural disaster, extreme weather conditions, or war. The Department has determined that sudden market fluctuations must be verified by nationally-recognized sources of commodity food pricing information or information from other California State agencies because these sources provide food pricing information that is commonly relied upon as neutral and objective by the food industry. In the event of extreme fluctuations in food prices, the Department shall manually adjust the MADR on a temporary basis to ensure fair compensation for vendors until food prices stabilize and standard calculation methods can be employed as defined in 60200.
- (c) Federal regulations limit reimbursements to above-50-percent vendors to the average of all non-above-50-percent, or Peer Group B and C, reimbursements. Federal regulations set forth in 7 C.F.R. § 246.12(g)(4)(i)(D) allow states to “exclude partially-redeemed food instruments from a quarterly cost neutrality assessment based on an empirical methodology approved by FNS.” State agencies must ensure that payments to above-50-percent vendors do not result in higher costs to the program than if participants transact their food instruments at regular vendors. (Id.) “If average payments per food instrument for above-50-percent vendors exceed average payments per food instrument to regular vendors then the Department must take action to ensure compliance, such as adjusting payment levels to above-50-percent vendors”. (Id.) Partially-redeemed food instruments from regular vendors affect both the Department’s quarterly cost neutrality assessment and its calculation of the Statewide Average. In order to calculate a Statewide Average that more accurately reflects actual prices for supplemental foods while maintaining federal mandates for cost neutrality, the Department is excluding selected partially-redeemed food instruments from the calculation of the Statewide Average for three food instruments of relative significance for which shelf prices will be collected for all foods on the FI.

In order for this methodology to have any meaningful impact on the Statewide Average, a relatively significant amount of redemption is required. Therefore, the food codes were selected based upon relative significance of total dollars redeemed. Any food code to which the partially-redeemed FI methodology is applied would need to represent at least 0.1% of total dollars redeemed. This criterion, together with the requirement for all items on the food instrument to be

included in the Market Basket, leaves only three food codes eligible for exclusion of partially-redeemed FI: 6000, 6003, and 6107. The USDA has approved implementing this methodology for these three non-formula, non-CVV food codes for which all shelf prices are available.

Food Item Number	Description	% of Total Redemption April 1, 2013 through June 30, 2013
6000	1 Gallon Whole Milk 1 (16 oz.) Whole Grains 36 oz. Breakfast Cereal	5.32%
6003	1 Gallon Lower Fat Milk 1 (16 oz.) Whole Grains 36 oz. Breakfast Cereal	15.50%
6107	2 Gallons Lower Fat Milk 1 (16 oz.) Dry Beans, Peas or Lentils 36 oz. Breakfast Cereal	4.04%

(d) Infant formula FIs must be fully redeemed and will therefore be excluded from the food item numbers to which the partially-redeemed FI methodology will be applied. Cash value vouchers (CVVs) will be excluded from the food item numbers to which the partially-redeemed FI methodology will be applied because USDA has indicated that CVVs need not be included in cost neutrality assessments. The MADR for CVVs are set by federal regulation for all Peer Groups and are not influenced by partial redemptions by other vendors.

(1) The Department has decided to use a method that uses the shelf price data reported by vendors to determine partially-redeemed FIs. This system more reliably captures partially-redeemed food instruments than a system in which food instruments are excluded from the Statewide Average based on a rate of partially-redeemed food instruments. Partially-redeemed FIs will be determined by identifying the lowest shelf price for each individual food type reported by Peer Group B and C vendors in the semi-annual shelf price submission required by W.B.R. §70600 to ensure that the aggregated shelf prices accurately reflect the true minimum value of a fully redeemed food item number. Market basket shelf prices only include non-sale prices. Using the lowest statewide shelf price for each food item minimizes the risk that some sale-priced, fully-redeemed FIs will be excluded as partially-redeemed FIs. This methodology has been approved by USDA for use in California and is in use in other states.

Shelf prices will be collected pursuant to W.B.R. §70600 once every six months and the minimum full redemption value will be updated once shelf price submission has been completed and verified by the Department. The Department is using a partially-redeemed FI methodology based on the lowest shelf prices of Peer Group B and C vendors because when calculating

cost neutrality, federal regulations allow only for the exclusion of partially redeemed FIs from non-A50 vendors.

- (A) Collection of market basket item shelf prices enables the Department to calculate a minimum full redemption value below which the Department can assume a food instrument has been partially-redeemed. Because the shelf prices collected do not include sale prices, there may be some fully-redeemed FIs for vendors with very low sale prices which may be falsely excluded from the calculation of the Statewide Average as partially redeemed FIs. The Department believes this methodology is reasonable because the lowest shelf price for each item reported by any vendor across all peer groups represents a true floor in the price of that item.
- (B) Because the partially-redeemed FI methodology depends on the collection and use of shelf price data, partially-redeemed FIs cannot be determined for food item numbers for which some or all shelf prices are unavailable. Therefore, a minimum full redemption value will not be calculated and partially-redeemed FIs will not be excluded from the calculation of the statewide average for such food item numbers.