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REGULATORY BULLETIN 2018-05

NOTICE OF FINAL ACTION

Subject

Final Action on the Notice of Proposed Changes posted as [Regulatory Alert 2018-05: Amendments to Sections 60000, 60100, 60200, and 60300](#) on November 20, 2018, which is available on the WIC “Laws & Regulations” webpage at: <https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/LawsandRegulations.aspx>.

Date of Adoption

The Final Action will be effective April 7, 2019.

Stakeholder Comments and Responses

Please see Attachment 1 of this Regulatory Bulletin for the stakeholder comments and the Department’s responses.

Regulation

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 the vendor entered on the paper food instrument, or transmitted for reimbursement through an electronic benefit transfer (EBT) capable Point of Sale System, at the time of sale. The Actual Selling Price must take into account all store, coupon, advertised, or other discounts applied to the sale.

(2) *Authorized Product List Category.* An Authorized Product List (APL) Category is the Department’s classification of authorized supplemental foods by category in the APL.



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Examples of APL Categories include the Breakfast Cereal, Eggs, and Legumes Categories.

(3) *Authorized Product List Subcategory*. An Authorized Product List (APL) Subcategory is the Department's classification of similar foods within an APL Category. For example, the Yogurt APL Category includes three (3) APL Subcategories: Yogurt - Whole Milk, Yogurt - Low Fat, and Yogurt - Non Fat.

(4) *Benefit Unit*. A Benefit Unit is the standard unit of measurement for an APL Subcategory. For example, the Benefit Unit for each of the Breakfast Cereal APL Subcategories is an ounce, while the Benefit Unit for the Peanut Butter APL Subcategory is a jar.

(5) *Competitive Average Redemption Value*.

(A) For the paper food instrument system, the Competitive Average Redemption Value (CARV) is a twelve (12)-week average, calculated using paper food instrument redemption data from Large Full Line Grocers.

1. For Unit-Priced Food Instruments: The CARV shall be calculated as a dollar sum of all redemptions by Large Full Line Grocers for the same supplemental food across all paper food instruments that include only that supplemental food, divided by the sum of the Quantity of Units contained on the paper food instruments redeemed by Large Full Line Grocers, rounded up to the nearest one (1) cent.
2. For Non-Unit Priced Food Instruments: The CARV shall be calculated for each Food Item Number as a dollar sum of all redemptions by Large Full Line Grocers, divided by the number of paper food instruments redeemed by Large Full Line Grocers, rounded up to the nearest one (1) cent.

(B) For the EBT food instrument system, the CARV is an average calculated using EBT transaction data from Large Full Line Grocers.

1. For Universal Product Code (UPC) level calculations: The CARV shall be calculated as a dollar sum of all EBT transactions by Large Full Line Grocers for the same UPC, divided by the quantity of UPCs redeemed by Large Full Line Grocers, rounded up to the nearest one (1) cent.
2. For APL Subcategory level calculations: The CARV shall be calculated by Benefit Unit as a dollar sum of all EBT transactions by Large Full Line Grocers across all UPCs within the same APL Subcategory, divided by the quantity of Benefit Units redeemed by Large Full Line Grocers, rounded up to the nearest one (1) cent.

(6) *Department.* The Department is the California Department of Public Health and the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).

(7) *Food Instruments, Non-Unit Priced.* Non-Unit Priced Food Instruments are paper food instruments, as defined in 7 Code of Federal Regulations part 246.2 and adopted by WIC Regulatory Bulletin 2012-01, that contain either a single supplemental food or a combination of various supplemental foods in both the “What to buy” section and identified by the Food Item Number found on the face of the paper food instrument, but do not specify a specific quantity or package size in the “What to buy” section. An example of a Non-Unit Priced Food Instrument is a paper food instrument for sixteen (16) to eighteen (18) ounces of peanut butter.

(8) *Food Instruments, Unit-Priced.* Unit-Priced Food Instruments are paper food instruments, as defined in 7 Code of Federal Regulations part 246.2 and adopted by WIC Regulatory Bulletin 2012-01, that contain one or more quantities of a single supplemental food with a specific package size and are differentiated for quantity in both the “What to buy” section and the Food Item Number found on the face of the paper food instrument. An example of a Unit-Priced Food Instrument is a paper food instrument for two (2) twelve and a half (12.5) ounce cans of infant formula.

(9) *Food Item Number.* A Food Item Number is a four (4)-digit number found on the face of a paper food instrument or cash-value voucher (CVV) that corresponds to an individual supplemental food or group of supplemental foods by quantity or dollar amount.

(10) *Large Full Line Grocers.* Large Full Line Grocers are vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+, as defined in section 50200.

(11) *Maximum Allowable Department Reimbursement.* The Maximum Allowable Department Reimbursement (MADR) rate is the maximum reimbursement paid to WIC authorized vendors in exchange for providing WIC supplemental foods to program participants. MADR rates are determined based on the type of food instrument, e.g., paper food instruments or EBT food instruments. MADR rates for paper food instruments are calculated based on redemption by Food Item Number. MADR rates for EBT food instruments are calculated based on redemption by an authorized food product’s APL Category, APL Subcategory, and/or UPC.

(12) *Peer Groups.* Peer Groups are the classification of authorized vendors into groups, based on common characteristics or criteria that affect food prices, for purposes of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels. Regulations defining Peer Group Categories and Register Count Subgroups are located in section 50000 *et seq.*

(13) *Quantity of Units*. Quantity of Units is the number of supplemental food items contained on a Unit-Priced Food Instrument.

(14) *Statewide Average*.

(A) For the paper food instrument system, the Statewide Average is a twelve (12)-week average of paper food instrument redemption data from Peer Group Category B and C vendors, excluding paper food instruments that are identified as partially-redeemed pursuant to section 60300, subsection (f).

1. For Unit-Priced Food Instruments: The Statewide Average shall be calculated as a dollar sum of all redemptions by Peer Group Category B and C vendors for the same supplemental food across all paper food instruments that include only that supplemental food, divided by the sum of the Quantity of Units contained on the paper food instruments redeemed by Peer Group Category B and C vendors, rounded up to the nearest one (1) cent. This calculation shall exclude paper food instruments that are identified as partially-redeemed pursuant to section 60300, subsection (f).

2. Non-Unit Priced Food Instruments: The Statewide Average shall be calculated for each Food Item Number as a dollar sum of all redemptions by Peer Group Category B and C vendors, divided by the number of paper food instruments redeemed by Peer Group Category B and C vendors, rounded up to the nearest one (1) cent. This calculation shall exclude paper food instruments that are identified as partially-redeemed pursuant to section 60300, subsection (f).

(B) For the EBT food instrument system, the Statewide Average is an average of EBT redemption data from Peer Group Category B and C vendors.

1. For UPC-level calculations: The Statewide Average shall be calculated as a dollar sum of all EBT redemptions by Peer Group Category B and C vendors for the same UPC, divided by the quantity of UPCs redeemed by Peer Group Category B and C vendors, rounded up to the nearest one (1) cent.

2. For APL Subcategory-level calculations: The Statewide Average shall be calculated by Benefit Unit as a dollar sum of all EBT redemptions for Peer Group Category B and C vendors across all UPCs within the same APL Subcategory, divided by the quantity of Benefit Units redeemed by Peer Group Category B and C vendors, rounded up to the nearest one (1) cent.

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

60100 Maximum Allowable Department Reimbursement Rates for Cash-Value Vouchers and Cash-Value Benefits.

(a) The MADR rate for cash-value vouchers (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 of fruits and vegetables purchased by the participant is less than the MADR rate for the CVV.

(2) The Department shall reimburse vendors the MADR rate for the CVV when the Actual Selling Price of the quantity of fruits and vegetables purchased by the participant equals or exceeds the MADR rate for the CVV.

(A) If the Actual Selling Price of the quantity of fruits and vegetables chosen by a participant exceeds the MADR rate for the CVV 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 for the CVV.

(b) The MADR rate for cash-value benefits (CVBs) shall be the amount of the cash benefit issued to a participant less the amount of any prior cash benefit redemptions during the month of issuance. Vendors shall be reimbursed for CVBs as follows:

(1) The Department shall reimburse vendors for the Actual Selling Price of the fruits and vegetables when the cost of the quantity of fruits and vegetables purchased by the participant is less than the MADR rate for the CVB.

(2) The Department shall reimburse vendors the MADR rate for the CVB when the Actual Selling Price of the quantity of fruits and vegetables purchased by the participant equals or exceeds the MADR rate for the CVB.

(A) If the Actual Selling Price of the quantity of fruits and vegetables chosen by a participant exceeds the MADR rate for the CVB 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 for the CVB.

60200 Maximum Allowable Department Reimbursement Rates for Food Instruments and Authorized Food Products Other than Fruits and Vegetables.

(a) For all authorized food products other than fruits and vegetables, the Department shall reimburse vendors the lesser of the vendor's posted price, the Actual Selling Price, or the MADR rate for:

(1) All of the supplemental foods purchased by the participant and included on the food instrument; or

(2) Each authorized food product purchased by the participant and included in the participant's electronic benefits.

(b) Requests for reimbursement in excess of the MADR rate will be processed as follows:

(1) In the paper food instrument system, 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, the 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.

(2) In the EBT food instrument system, if the Actual Selling Price transmitted by the vendor for an authorized food product exceeds the MADR rate, the vendor shall be paid the MADR rate in effect at the time of the transaction.

(3) If the vendor's posted price or Actual Selling Price exceeds the MADR rate, the vendor shall not seek or accept payment from a participant for any difference between the vendor's posted price or Actual Selling Price and the MADR rate.

(c) In the paper food instrument system, 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 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 fFood item nNumber is a Single Item Food Instrument or a Combination 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 (2) or more different supplemental foods in the “What to buy” section on the face 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.

(d) In the EBT food instrument system, the MADR rate for an authorized food product shall be assigned based on the MADR rate in effect at the time of the transaction 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 rate for vendors assigned to Peer Group Categories B and C shall be calculated by adding the applicable tolerance factor to the CARV.

(A) Tolerance Factors for Peer Group Category B and C vendors shall be determined based on whether a MADR rate is calculated at the UPC level or the APL Subcategory level.

(B) For a UPC level calculation, an authorized food product’s MADR rate shall be

calculated using the Peer Group Category or Register Count Subgroup's Tolerance Factor for UPCs as follows:

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

1. Peer Group Category B, 1-2 Register Count Subgroup: 49% of CARV
2. Peer Group Category B, 3-5 Register Count Subgroup: 43% of CARV
3. Peer Group Category B, 6-9 Register Count Subgroup: 37% of CARV
4. Peer Group Category B, 10+ Register Count Subgroup: 31% of CARV
5. Peer Group Category C: 25% of CARV

(C) For an APL Subcategory level calculation, an authorized food product's MADR rate shall be calculated using the Peer Group Category or Register Count Subgroup's Tolerance Factor for APL Subcategories as follows:

$$\text{MADR} = (\text{CARV} + \text{Tolerance Factor}) \times (\text{Number of Benefit Units for the Authorized Food Product})$$

1. Peer Group Category B, 1-2 Register Count Subgroup: 55% of CARV
2. Peer Group Category B, 3-5 Register Count Subgroup: 49% of CARV
3. Peer Group Category B, 6-9 Register Count Subgroup: 43% of CARV
4. Peer Group Category B, 10+ Register Count Subgroup: 37% of CARV
5. Peer Group Category C: 31% of CARV

60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate.

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

(1) For Peer Group Category A, the MADR rate shall be calculated for all Food Item Numbers for which there are at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that Food Item Number during the twelve (12)-week redemption period.

(2) For Peer Group Category B, the MADR rate shall be calculated for all Food Item Numbers for which there are at least thirty (30) unique Large Full Line Grocers with redemptions for that Food Item Number during the twelve (12)-week redemption period.

(3) For Peer Group Category C, the MADR rate shall be calculated for all Food Item Numbers for which there are at least thirty (30) unique Large Full Line Grocers with redemptions for that Food Item Number during the twelve (12)-week redemption period.

(b) For the EBT food instrument system, the MADR rates for authorized food products other than fruits and vegetables shall be calculated every seven (7) days on Monday using the prior thirty-one (31) days of data, beginning on a Friday and ending on the Sunday prior to the calculation date. The Department will have three (3) days to review the calculated rates and make manual adjustments as specified in subsection (e) below. The rates shall go into effect at 12:01 am on Thursday following the end of the Department's three (3)-day review period.

(1) For Peer Group Category A:

(A) When there are at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for an authorized food product during the immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate shall be calculated at the UPC level.

(B) When there are fewer than thirty (30) unique vendors in Peer Group Categories B and C with redemptions for an authorized food product during the immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate calculation will default to the APL Subcategory level.

(C) When there are fewer than thirty (30) unique vendors in Peer Group Categories B and C with redemptions for an APL Subcategory during the immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate calculation period will be extended to the immediately preceding ninety (90)-day period ending on the Sunday prior to the calculation date, provided there is at least one (1) redemption for that APL Subcategory in the ninety (90)-day period.

(D) When there are zero (0) redemptions from vendors in Peer Group Categories B and C for an APL Subcategory during the immediately preceding ninety (90)-day period ending on the Sunday prior to the calculation date, the previous period's MADR rate will remain in effect for all UPCs in that APL Subcategory.

(2) For Peer Group Categories B and C:

(A) When there are at least thirty (30) unique Large Full Line Grocers with redemptions for an authorized food product during the immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate shall be calculated at the UPC level.

(B) When there are fewer than thirty (30) unique Large Full Line Grocers with redemptions for an authorized food product during the immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate calculation will default to the APL Subcategory level.

(C) When there are fewer than thirty (30) unique Large Full Line Grocers with redemptions for an APL Subcategory during the immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate calculation period will be extended to the immediately preceding ninety (90)-day period ending on the Sunday prior to the calculation date, provided there is at least one (1) redemption for that APL Subcategory in the ninety (90)-day period.

(D) When there are zero (0) redemptions from Large Full Line Grocers for an APL Subcategory during the immediately preceding ninety (90)-day period ending on the Sunday prior to the calculation date, the previous period's MADR rate will remain in effect for all UPCs in that APL Subcategory.

(c) The Department will calculate MADR rates for the implementation of the EBT food instrument system (Initial EBT MADR Rates) based on the following four (4)-tiered structure:

(1) Tier One: For infant formula, the Initial EBT MADR Rates will be calculated by Peer Group Category and, if applicable, Register Count Subgroup, using the per-unit MADR rate for paper food instruments in effect on May 6, 2019, for the specific infant formula brand, can size, and type.

(2) Tier Two:

(A) Tier Two Foods include foods in the following APL Categories and APL Subcategories:

1. Breakfast Cereal
2. Cheese
3. Dry Beans, Peas, or Lentils (Mature Seed)
4. Eggs
5. Juice

6. Milk, Low Fat (1% fat)
7. Milk, Nonfat (Fat free or Skim)
8. Milk, Whole
9. Peanut Butter
10. Soft Corn Tortillas
11. 100% Whole Wheat Bread

(B) Except as provided in subsections (c)(2)(B)1. or (c)(2)(B)2., when a shelf price is collected for a Tier Two Food, the MADR rate will be calculated by Benefit Unit using the single highest shelf price as the MADR rate for that food's APL Category, with no additional tolerance. These MADR rates shall apply to all Peer Group Categories and Register Count Subgroups. Only shelf prices submitted by vendors authorized as of January 1, 2019, in response to the August 2018 Mandatory Vendor Shelf Price Submission required pursuant to section 70600, will be used for calculating Initial EBT MADR rates for Tier Two Foods. These MADR rates shall be the Initial EBT MADR Rates for each Tier Two Food, except:

1. When the Department collects prices for two or more Tier Two Foods in the same APL Category, other than Low Fat and Nonfat Milk, the highest shelf price collected for the APL Category will apply only to those APL Subcategories for which shelf prices are not collected. For those APL Subcategories for which shelf prices are collected, the MADR rate for the APL Subcategory will be calculated by Benefit Unit using the single highest shelf price as the MADR rate for that food's APL Subcategory, with no additional tolerance.
2. MADR rates for APL Subcategories for foods listed in subsection (c)(4)(A)1.-10. (Tier Four Foods) will be calculated using the methodology described in subsection (c)(4)(B).

(3) Tier Three:

(A) Tier Three Foods include foods in the following APL Categories and APL Subcategories:

1. Infant Cereal
2. Infant Fruits and Vegetables
3. Infant Meats

4. Yogurt, Low Fat
5. Yogurt, Nonfat
6. Yogurt, Whole

(B) For all Tier Three Foods, the Initial EBT MADR Rates will be calculated by Benefit Unit using a substitute CARV and a Tolerance Factor of forty-nine percent (49%). The substitute CARV for each Tier Three Food will be calculated for all Peer Group Categories and Register Count Subgroups as the highest per-unit MADR rate in effect on May 6, 2019, for the single item paper food instrument(s) that contains the Tier Three food, divided by the number of Benefit Units included on the paper food instrument.

(4) Tier Four:

(A) Tier Four Foods include foods in the following APL Categories and APL Subcategories:

1. Canned Beans
2. Evaporated Milk, Lower Fat (Skim and 1%)
3. Evaporated Milk, Whole
4. Fish
5. Lactose-free Milk, Lower Fat (Skim and 1%)
6. Lactose-free Milk, Whole
7. Milk, Reduced Fat (2%)
8. Powdered Dry Milk, Nonfat
9. Soy-Based Beverage
10. Tofu

(B) For all Tier Four Foods, the Initial EBT MADR Rates will be calculated by Benefit Unit using a substitute CARV and a Tolerance Factor of forty-nine percent (49%). The substitute CARV for each Tier Four Food will be calculated for all Peer Group Categories and Register Count Subgroups as the highest shelf price collected by the Department for that Tier Four Food from a survey of Large Full Line Grocers, divided by the number of Benefit Units for the item. When

collecting shelf price data for this purpose, the Department will include data from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup, and from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2).

(5) The Initial EBT MADR Rates applicable to each food will remain in effect until sufficient redemption data is available to calculate a MADR rate for that food as outlined in subsection (b) above.

(6) After completion of the pilot in Solano and Napa Counties, the EBT MADR rates will be reset to the Initial EBT MADR Rates set forth in subsection (c) for statewide roll out of EBT.

(d) For the paper food instrument system, the Department may manually adjust the MADR rates or the calculation methods, as specified below.

(1) 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 twelve (12)-week redemption period, the Department may manually adjust the MADR rate 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.

(2) When a Food Item Number does not have at least thirty (30) unique Large Full Line Grocers with redemptions during the immediately preceding twelve (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 calculation periods.

(A) When the Department calculates a substitute CARV for Food Item Numbers pursuant to subsection (d)(2) above, the Department shall use data from the Large Full Line Grocers collected during the most recent semi-annual 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 semi-annual collection of shelf prices, the Department shall collect shelf price data from Large

Full Line Grocers 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 in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2). Using this data, the substitute CARV will be calculated as a dollar sum of all of the collected shelf prices for a food type divided by the total number of shelf prices collected.

(3) 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.

(e) For the EBT food instrument system, the Department may manually adjust the MADR rates or the calculation methods, as specified below.

(1) For Peer Group Category A, the Department may manually adjust the Statewide Average on a quarterly basis to comply with federal requirements of cost neutrality.

(A) Where there are redemptions for a UPC at Peer Group Category B and C vendors, quarterly cost neutrality will be measured by comparing the simple average of the prices at which that UPC was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A. If the simple average for Peer Group Category B and C vendors is exceeded by the simple average for Peer Group Category A vendors, the Statewide Average will be set at the simple average of the prices redeemed by Peer Group Category B and C vendors for the next MADR cycle.

(B) Where there are no redemptions for a UPC at Peer Group Category B and C vendors, quarterly cost neutrality will be measured by comparing the simple average of the prices at which that UPC was redeemed by vendors in Peer Group Category A to the simple average of the prices redeemed by Peer Group Category B and C vendors for all UPCs in the APL Subcategory to which the UPC belongs. If the simple average for Peer Group Category B and C vendors for the APL Subcategory is exceeded by the simple average for Peer Group Category A vendors, the Statewide Average will be set at the simple average of the prices redeemed by Peer Group Category B and C vendors in the APL Subcategory for the next MADR cycle.

(2) For newly authorized APL Subcategories where no transaction data is available, the Department shall collect shelf price data from Large Full Line Grocers for calculation of a substitute CARV and substitute Statewide Average by Benefit Unit. When the Department collects data for this purpose, it will be from a minimum of

eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight (8) rural vendors and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2). Using this data, the substitute CARV and substitute Statewide Average will be calculated as a dollar sum of all of the collected shelf prices for the newly authorized APL Subcategory divided by the sum of the Benefit Units for the items collected.

(3) 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, or the manufacturer of a rebated contract food item.

(f) The Department will remove partially-redeemed food instruments (Partially-Redeemed FIs) when calculating the Statewide Average for non-infant formula Food Item Numbers for which at least seventy-five percent (75%) of the food types and container sizes listed on the food instrument are included in the Market Basket, and for which redemption represents at least one-tenth of a percent (0.1%) of overall food expenditures, less CVV redemptions. Food Item Numbers will be selected for removal on a semi-annual basis thirty (30) days after the Department's request for vendors to submit shelf prices pursuant to section 70600, subsection (c), using redemption information from the most recently completed quarterly Vendor Cost Neutrality Assessment, as required pursuant to 7 Code of Federal Regulations part 246.12(g)(4)(i)(D).

(1) In order to identify a Partially-Redeemed FI, the Department will determine a minimum full redemption value (MFRV) at the peer group level for each Food Item Number that meets the criteria in subsection (f) above. The MRFV is a threshold dollar amount below which the Department will consider a food instrument to be partially-redeemed. Upon completion and Department verification of the prices submitted as part of the semi-annual shelf price collection, the Department shall sum the lowest reported shelf prices submitted by each vendor. The Department shall then identify the vendor in each Peer Group Category B subgroup and in Peer Group Category C whose lowest reported prices have the lowest sum. Once the Department identifies the vendor within each peer group with the lowest sum, the Department shall use the low shelf prices submitted by those vendors to establish the MFRVs for eligible Food Item Numbers at the peer group level as follows:

(A) If the Food Item Number meets the criteria in subsection (f) above and all food types and container sizes that comprise the Food Item Number are included in the Market Basket, the Department will determine the MFRV for the Food Item Number by summing the lowest shelf prices submitted by a vendor identified through the process in subsection (f)(1) for each of the food types included on

the Food Item Number. Any redemption amount below the MFRV shall be deemed a Partially-Redeemed FI for purposes of calculating the Statewide Average.

For example, Food Item Number 6003 includes three (3) food types (one (1) gallon milk, lower fat, sixteen (16) ounces of whole grains, and thirty-six (36) ounces of breakfast cereal), all of which are included in the Market Basket. If the lowest reported shelf prices for the identified vendor's items are as follows, the MFRV for this Food Item Number would be:

1 gallon milk, lower fat	\$2.50
1 (16 oz.) whole grains	\$2.00
36 oz. breakfast cereal	\$4.00

Total Minimum Full Redemption Value \$8.50

In this example, any redemption below eight dollars and fifty cents (\$8.50) would be considered a Partially-Redeemed FI.

(B) If the Food Item Number meets the criteria in subsection (f) above, but less than one hundred percent (100%) of the food types and container sizes that comprise the Food Item Number are included in the Market Basket, the Department will determine the MFRV by summing the lowest shelf prices submitted by a vendor identified through the process in subsection (f)(1) above for each of the food types included in the Food Item Number. For purposes of this calculation, all non-Market Basket items will be treated as having a shelf price of zero. Any redemption amount below the MFRV shall be deemed a Partially-Redeemed FI for purposes of calculating the Statewide Average.

For example, Food Item Number 6013 includes four (4) Market Basket items (one (1) gallon milk, lower fat, one (1) dozen eggs, sixteen (16) ounces cheese, and sixteen (16) ounces dry beans), as well as one (1) quart of milk, which is not included in the Market Basket. If the lowest reported shelf prices for the identified vendor's items are as follows, the MFRV for this Food Item Number would be:

1 gallon milk, lower fat	\$2.50
1 dozen eggs	\$1.50
1 (16 oz.) cheese	\$2.50
1 (16 oz.) dry beans, peas, or lentils	\$0.50

Subtotal	\$7.00
1 quart milk, lower fat (no shelf price collected)	\$0.00
Total Minimum Full Redemption Value	\$7.00

In this example, any redemption below seven dollars (\$7.00) would be considered a Partially-Redeemed FI.

Attachment 1

Regulatory Bulletin 2018-05: Amendments to Sections 60000, 60100, 60200, and 60300 Stakeholder Comments and Responses to Comments

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

March 7, 2019

Health and Safety Code section 123322 authorizes the California Department of Public Health (Department) to establish regulations regarding the 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 the regulations set forth in Regulatory Alert 2018-05. This Attachment is intended to provide responses to stakeholder comments on the proposed amendments to sections 60000, 60100, 60200, and 60300 set forth in Regulatory Alert 2018-05. Revisions to the proposed regulation as a result of the stakeholder comment period, if any, will be adopted into California regulation.

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How to Use This Document

This document from the California Department of Public Health/Women, Infants and Children Division (Department) consists of written stakeholder letters provided during the stakeholder comment period that ended December 14, 2018, as well as the Department's responses to stakeholders' comments.

This document contains a reproduction of the two stakeholder letters provided to the Department, with each stakeholder comment enumerated in the margin of each letter. Comments are denoted using a numbering system that identifies the stakeholder's letter and the specific comment number within each letter. For example, comment 2.1 refers to the first comment in stakeholder Letter 2. The Department's responses to each of the comments in a stakeholder's letter follow immediately after the letter and use the same numbering system. Thus, response 2.1 addresses comment 2.1 in stakeholder Letter 2.

Written Comment Letters Received

In response to the proposed amendments to sections 60000, 60100, 60200, and 60300 set forth in Regulatory Alert 2018-05, the Department received two comment emails from the following individuals/organizations:

1. Kenneth Bowman, Family Fresh Nutritional Center, December 4, 2018
2. Timothy James, Sr. Manager, California Grocers Association, December 13, 2018

Letter 1: Family Fresh Nutritional Center

From: [Kenneth Bowman](#)
To: [WICRegulations](#)
Subject: Regulatory Alert 2012-02
Date: Tuesday, December 04, 2018 4:57:59 PM

Good Afternoon CA WIC Regulations Staff,

I have a questions about how MADR will be calculated.

Is there a provision for small single register Category A stores?

WC Authorized vendors in Category A often have fewer store locations and lower volume of total sales than Full-Line Grocers who may have hundreds of locations. This often means stores in Category A are likely to pay more when purchasing many of the WIC-approved foods since manufacturers often allow national Full-Line grocers to open up wholesale accounts with lower pricing rates. Since stores in Category A likely pay more to purchase items their prices on average may be higher.

Category A stores have unique supply chain challenges, but they provide a unique benefit to WIC recipients. Single register regional/local Category A stores may deserve additional consideration when calculating MADR. Many Category A stores have built their business to maximize the benefit to the WIC recipient. The 1-on-1 personal service and neighborhood feel of a single register Category A store provides exactly the kind of service that goes beyond simply providing nutritional value.

Thank you in advance for your consideration in this matter.

As requested my information is below:

My information is below:
Name: Kenneth Bowman
Company Name: Family Fresh Nutritional Center
Address: 1706 S Western Avenue Los Angeles, CA 90006
Email Address: [REDACTED]
Stakeholder Group Represented: Authorized WIC Vendor

Best Regards,
Ken,
Ken Bowman
Cell: [REDACTED]

1.1

Response to Letter 1

- 1.1 The commenter, writing on behalf of WIC-authorized vendor Family Fresh Nutritional Center, provides information about Peer Group Category A vendors, including their unique benefit to WIC participants, their common business considerations, and their supply chain challenges due to their smaller number of store locations and lower sales volumes compared to national, full-line grocers. The commenter asks if the Department will have a provision for single-register Peer Group Category A stores in order to accommodate the higher prices these vendors pay when purchasing WIC-authorized foods compared to national, full-line grocers.

The Department recognizes the importance of Peer Group Category A vendors to the California WIC Program. Pursuant to federal regulations, the Department is required to ensure that average reimbursements for food items sold by above-50-percent (Peer Group Category A) vendors do not exceed the average reimbursements for the same food items sold by non-Peer Group Category A vendors. By reimbursing Peer Group Category A vendors at the Statewide Average, the Department is already reimbursing Peer Group Category A vendors, regardless of their specific register count, the maximum amount possible while complying with 7 Code of Federal Regulation part 246.12(g)(4)(i)(D) and (g)(4)(vi).

Letter 2: California Grocers Association

December 13, 2018

Ms. Christine Nelson
Chief, WIC Division
California Department of Public Health
3901 Lennane Drive
Sacramento, CA 95834



RE: Regulatory Alert 2018-05 Comments

Dear Ms. Nelson,

On behalf of the California Grocers Association, I am writing to provide comments regarding Regulatory Alert 2018-05 amending WIC Bulletin Regulations, Article 3, to revise sections 60000, 60100, and 60200, and 60300, pursuant to Health and Safety Code section 123322. We appreciate the effort taken in these proposed regulations to update the frequency and accuracy of calculating MADR's. These changes will more accurately reflect marketplace conditions in a timely manner. Specific to the regulation language we are respectfully requesting adjustments which we believe will improve the regulation.

2.1

The proposed regulation in Section 60300 (b) establishes the weekly recalculation of the MADRs under the EBT system. It does not specify when vendors will be notified of the new MADRs as required by H&S Code section 123320 (a)(3). We recommend that the MADRs be published within 24-hours of their calculation to allow vendors to review the new MADRs for possible errors or other problems.

2.2

In the proposed regulation Section 60300 (e)(3) states "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." We recommend that the department clarify this language to include wholesale price increases for rebated contract food items, such as infant formula, as a possible extreme fluctuation in wholesale food prices that may need to be addressed through a manual MADR adjustment. WIC vendors are required to offer these food items and have no choice but to pay whatever the manufacture demands. Wholesale price increases for rebated contract food items should be immediately accounted for in the MADR calculations, not after several weeks or months of sales of the higher priced product has taken place. We suggest adding to the regulation the phrase "... or anytime the wholesale price of a rebated contract food item is increased."

2.3

Thank you for your consideration of our comments on the proposed regulation. As always, please consider CGA and the grocery industry a partner in your work to provide all California with good nutrition.

Sincerely,

TIMOTHY M. JAMES
Sr. Manager, Local Government Relations

CALIFORNIA GROCERS ASSOCIATION | 1215 K Street, Suite 700 | Sacramento, CA | T: 916.448.3545 | F: 916.448.2793 | www.cagrocers.com

Responses to Letter 2

- 2.1** The commenter, writing on behalf of the California Grocers Association, expresses appreciation for the proposed amendments presented in Regulatory Alert 2018-05. The commenter is requesting specific changes to the proposed amendments to WIC Bulletin Regulation section 60300, which the Department addresses below.
- 2.2** First, the commenter states that the regulation language in section 60300, subsection (b), “establishes the weekly recalculation of the MADRs under the EBT system,” but does not specify when vendors will be notified of the new MADR rates. The commenter states that notifying vendors of new MADR rates is required under Health and Safety Code section 123320, subdivision (a)(3). For this reason, the commenter recommends that newly calculated MADR rates should be published within 24 hours of their calculation so that vendors can review the new MADR rates for “possible errors or other problems.”

The Department will not publish newly calculated MADR rates within 24 hours of their calculation as recommended by the commenter. Department practice is to review MADR rates and, if needed, make manual adjustments before finalizing MADR rates. Publishing the MADR rates before they have been finalized would be premature, cause confusion regarding the effective MADR rate for the week, and be inconsistent with the current practice of providing vendors only the final MADR rates following Department review. As the commenter noted, the Department has made considerable efforts to ensure that the proposed MADR rate calculations are as responsive as possible to actual market fluctuations. Publishing MADR rates before they become effective would unnecessarily complicate the MADR rate calculation process and would require the Department to post amended rates, further complicating the Department’s efforts to inform vendors of effective MADR rates.

After the Department has successfully piloted the California WIC Program’s EBT food instrument system, the Department will publish final EBT MADR rates on the web on a weekly basis. The Department will make EBT MADR rates available in an electronic file containing the effective date for the most recent MADR rates and listing MADR rates at the UPC level by peer group. The Department also seeks to make final EBT MADR rates available on the web **during** the pilot; however, if this information is not readily available for online

publication due to the demands of the pilot, the Department will make information about EBT MADR rates available to vendors upon request.

- 2.3** Second, the commenter recommends amending the proposed language in section 60300, subsection (e)(3). Under this subsection, the Department may make manual adjustments to MADR rates in order to temporarily accommodate extreme fluctuations in wholesale food prices. The commenter recommends that the Department amend the proposed language in section 60300, subsection (e)(3), to specifically identify “wholesale price increases for rebated contract food items, such as infant formula, as a possible extreme fluctuation in wholesale food prices that may need to be addressed” through manual adjustments to MADR rates. The commenter states that WIC vendors are required to offer rebated contract food items and “have no choice but to pay whatever the manufacturer demands.” The commenter also indicates that wholesale price increases for these food items should be “immediately accounted for” in the MADR rate calculations. The commenter is suggesting that the Department amend section 60300, subsection (e)(3), to include the following language: “...or anytime the wholesale price of a rebated contract food item is increased.”

The Department already considers the contract infant formula manufacturer’s wholesale price when determining whether prices have undergone an extreme fluctuation. While the increased frequency of calculations of MADR rates for EBT will ensure that MADR rates will be more responsive to wholesaler price fluctuations, lessening the dependence on manual adjustments, in light of the commenter’s concerns, the Department will amend the proposed language for this subsection as follows: “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, nationally recognized sources of commodity food pricing information, or the manufacturer of a rebated contract food item.”