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EDMUND G. BROWN JR.  
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October 12, 2018

REGULATORY ALERT 2018-04

## NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

### Purpose

For the California Department of Public Health (CDPH) to inform stakeholders of the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) of CDPH's plan to amend California WIC Authorized Food List WIC Bulletin Regulations sections 82100, 82250, 82350, 82500, 82550, 82600, 82650, 82700, 82750, 82800, 82850, 82900, 82950, and 83000, pursuant to Health and Safety Code Section 123322.

### Stakeholder Workgroup Information

In accordance with Health and Safety Code Section 123322, CDPH will meet with stakeholders by webinar on October 23, 2018 to receive input on the amendments to the WIC Authorized Food List regulations. If you are interested in participating in this stakeholder workgroup, please send an e-mail by close of business on October 18, 2018 with the subject line reading "WIC Authorized Food List Amendments Stakeholder RSVP" to

[WICRegulations@cdph.ca.gov](mailto: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)

CDPH will contact you by October 19, 2018 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 stakeholders regarding the adoption of the proposed action. The comment period will be open for 20 calendar days, from October 13, 2018 through



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3901 Lennane Drive MS 8600 Sacramento, CA 95834  
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(916) 928-8500 [Division Website](http://www.wicworks.ca.gov) (www.wicworks.ca.gov)



November 2, 2018. Send your comments electronically, with the Regulatory Alert number in the subject line, to the following e-mail address: [WICRegulations@cdph.ca.gov](mailto: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If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.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 amend the following rules in California regulation via regulatory bulletin.

#### **82100 WIC Authorized Food List: Breakfast Cereal.**

(a) Breakfast Cereal Category

- (1) The following breakfast cereals are authorized by brand and product name in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:

- (A) B & G Foods — Cream of Wheat Whole Grain;<sup>1</sup>
- (B) General Mills — Cheerios;<sup>1</sup>
- (C) General Mills — MultiGrain Cheerios;<sup>1</sup>
- (D) General Mills — Honey Kix;<sup>1</sup>
- (E) General Mills — Kix;<sup>1</sup>
- (F) General Mills — Total Whole Grain;<sup>1</sup>
- (G) Kellogg's — Corn Flakes;
- (H) Kellogg's — Frosted Mini Wheats Original;<sup>1</sup>
- (I) Kellogg's — Frosted Mini Wheats Little Bites;<sup>1</sup>
- (J) Kellogg's — Special K Original;
- (K) Malt-O-Meal — Malt-O-Meal Hot Cereal Original;
- ~~(L) Mill Select Early On — Puffed Wheat;<sup>1</sup>~~
- ~~(M)~~ (L) Post — Bran Flakes;<sup>1</sup>
- ~~(N)~~ (M) Post — Grape-Nuts;<sup>1</sup>
- ~~(O)~~ (N) Post — Honey Bunches of Oats Honey Roasted;
- ~~(P)~~ (O) Quaker — Life Original;<sup>1</sup>
- ~~(Q)~~ (P) Quaker — Oatmeal Squares Brown Sugar;<sup>1</sup> and
- ~~(R)~~ (Q) Quaker — Oatmeal Squares Cinnamon.<sup>1</sup>

- (2) The following crisp rice or crispy rice breakfast cereals are authorized by brand in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:

- (A) Best Yet;
- (B) Essential Everyday
- ~~(B)~~ (C) First Street;
- ~~(G)~~ (D) Food Club;
- ~~(D)~~ (E) Great Value;
- ~~(E)~~ (F) Hospitality;
- ~~(F)~~ (G) HY-TOP;
- ~~(G)~~ (H) Hy-Vee;
- ~~(H)~~ (I) IGA;
- ~~(I)~~ Kiggins;
- (J) Kroger;
- (K) Malt-O-Meal;
- (L) Market Pantry;
- ~~(M)~~ ~~Mill Select Early On;~~<sup>4</sup>
- ~~(N)~~ (M) Parade;
- ~~(O)~~ (N) Raley's;
- ~~(P)~~ (O) Ralston Foods;
- ~~(Q)~~ (P) Red & White;
- ~~(R)~~ (Q) Shurfine;
- ~~(S)~~ (R) Signature Kitchens;
- (S) Special Value
- (T) Springfield;
- (U) Stater Bros.;
- (V) Sunny Select;
- (W) Valu Time;
- (X) Western Family; and
- (Y) WinCo Foods.

(3) The following instant oatmeals in old-fashioned, classic, regular, or original flavors are authorized by brand in eleven and eight-tenths (11.8) ounce to twelve (12) ounce containers of individual serving packets in the Breakfast Cereal Category:

- (A) Best Yet;<sup>1</sup>
- (B) Early On;<sup>1</sup>
- ~~(G) First Street;~~<sup>4</sup>
- (C) Essential Everyday;<sup>1</sup>

- (D) Food Club;<sup>1</sup>
- ~~(E) Great Value;~~<sup>4</sup>
- ~~(F) (E) Hy-Vee;~~<sup>1</sup>
- ~~(G) IGA;~~<sup>4</sup>
- ~~(H) (E) Kroger;~~<sup>1</sup>
- ~~(I) (G) Raley's;~~<sup>1</sup>
- ~~(J) (H) Ralston Foods;~~<sup>1</sup>
- ~~(K) Red & White;~~<sup>4</sup>
- ~~(L) (I) Shurfine;~~<sup>1</sup>
- ~~(M) (J) Signature Kitchens;~~<sup>1</sup>
- ~~(N) Special Value;~~<sup>4</sup>
- ~~(O) (K) Springfield;~~<sup>1</sup>
- ~~(P) (L) Stater Bros;~~<sup>1</sup>
- ~~(Q) (M) Sunny Select;~~<sup>1</sup>
- ~~(R) (N) Western Family;~~<sup>1</sup> and
- ~~(S) (O) WinCo Foods.~~<sup>1</sup>

- (4) The following types of breakfast cereal are never authorized for purchase as part of the Breakfast Cereal Category:
- (A) Grits;
  - (B) Hot breakfast cereal with added fruits and nuts;
  - (C) Hot breakfast cereal with added sweeteners, including sugar, artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners; and
  - (D) Organic cereal.

<sup>1</sup> This cereal contains 51% or more whole grain by weight.

**82250 WIC Authorized Food List: Cheese.**

(a) Cheese Category

- (1) Any brand of non-organic cheese is authorized in the Cheese Category when the cheese has all of the following characteristics:
- (A) Is made in the United States of America;
  - (B) Is sold in a sixteen (16) ounce package in one of the following ways:
    1. Individually wrapped mozzarella string-cheese sticks; or
    2. Blocks or rounds of the following cheeses:
      - A. Orange, or white, or yellow cheddar (mild, medium, sharp, or longhorn)

- B. Colby
  - C. Jack
  - D. Mozzarella
  - E. Marbled or blends of cheeses authorized by this subsection (for example, colby-jack)
- (C) Is of regular fat content, lowfat, or fat free; ~~and~~
- (D) Is of regular sodium content or low sodium; and
- (E) Is pasteurized.
- (2) The following types of cheese are never authorized for purchase as part of the Cheese Category:
- (A) Diced, grated, sliced, crumbled, or shredded cheese;
  - (B) Cheese that is purchased from or sliced at the deli;
  - (C) Cheese with added ingredients, including but not limited to peppers or spices; and
  - (D) Organic Cheese.

**82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils.**

- (a) Dry Beans, Peas, or Lentils Category
- (1) Any brand and variety of dry beans, peas, or lentils are authorized in the Dry Beans, Peas, or Lentils Category when the dry beans, peas, or lentils are sold ~~in bulk or~~ in sixteen (16) ounce containers.
  - (2) Authorized varieties of dry beans, peas, or lentils include but are not limited to:
    - (A) Black;
    - (B) Black-eyed peas;
    - (C) Garbanzo (chickpeas);
    - (D) Great northern;
    - (E) Kidney;
    - (F) Lentils;
    - (G) Lima;
    - (H) Mixed;
    - (I) Navy;
    - (J) Pink;
    - (K) Pinto;
    - (L) Red; and
    - (M) Split peas.
  - (3) The following types of beans, peas, or lentils are never authorized for

purchase as part of the Dry Beans, Peas, or Lentils Category:

- (A) Canned or frozen beans, peas, or lentils;
- (B) Dry beans, peas, or lentils with added sugars, fats, or oils;
- (C) Dry beans, peas, or lentils with added vegetables, fruits, or meat;
- (D) Dry beans, peas, or lentils with artificial, reduced-calorie, or no calorie sweeteners;
- (E) Dry beans, peas, or lentils with flavors or spices or bean soup mixes with flavoring packets or spices; ~~and~~
- (F) Soy nuts; and
- (G) Dry beans, peas, or lentils that are sold in bulk and not pre-packaged.

**82500 WIC Authorized Food List: Fruits and Vegetables.**

- (a) Fruits and Vegetables Category
  - (1) All food items authorized in the Fruits and Vegetables Category and subcategories are authorized for purchase using a cash value voucher.
  - (2) Fresh Fruits and Vegetables Subcategory
    - (A) Any type, variety, and brand of fresh fruits and vegetables in any combination is authorized in the Fresh Fruits and Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
      - 1. Organic or non-organic fresh fruits and vegetables;
      - 2. Whole or cut fresh fruits and vegetables;
      - 3. Bagged fresh fruits and vegetables;
      - 4. Bagged or packaged salad mixtures; and
      - 5. Garlic, onion, ginger, jalapeños, peppers, and chilies.
    - (B) The following foods are never authorized for purchase as part of the Fresh Fruits and Vegetables Subcategory:
      - 1. Food or products from a salad bar or deli; party trays; fruit baskets; and decorative vegetables and fruits, including but not limited to chilies or garlic on a string and painted pumpkins;
      - 2. Nuts or fruit-nut mixtures;
      - 3. Edible blossoms, such as squash blossoms;
      - 4. Bagged salad with added ingredients, such as dressing, croutons, and cheese;
      - 5. Vegetable or fruit kits with added ingredients, such as dressing, cheese, dips, or sauces;
      - 6. Dried vegetables;
      - 7. Herbs and spices, such as parsley, basil, cilantro, and mint;

8. Fruits and vegetables with added fats, oils, or sugars; and
  9. Fruits and vegetables with artificial, reduced-calorie, or no-calorie sweeteners.
- (3) Dried Fruits Subcategory
- (A) Any variety, size, and brand of dried fruits without added fats, sugars, or oils in any type of container ~~or bulk~~ is authorized as part of the Dried Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic dried fruits;
  2. Freeze-dried fruits; and
  3. Dried fruits with or without pits.
- (B) The following foods are never authorized for purchase as part of the Dried Fruits Subcategory:
1. Dried fruits with artificial, reduced-calorie, or no-calorie sweeteners;
  2. Dried fruits with added artificial or natural flavors, including essences;
  3. Dried or freeze-dried vegetables;
  4. Fruit snacks or fruit bites; ~~and~~
  5. Trail mix; and
  6. Dried fruits that are sold in bulk and not pre-packaged
- (4) Canned Fruits Subcategory
- (A) Any brand, variety, and size of canned fruits in any type of container that are packed in water or juice and do not contain added sugars are authorized in the Canned Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic canned fruits;
  2. Natural or unsweetened applesauce; and
  3. Canned fruits mixed with canned vegetables when a fruit is listed as the first ingredient.
- (B) The following types of fruits are never authorized for purchase as part of the Canned Fruits Subcategory:
1. Canned fruits packed in syrup, such as heavy, light, or extra light syrup;
  2. Canned fruits with added sugars, salt, fats, or oils;
  3. Canned fruits with artificial, reduced-calorie, or no-calorie sweeteners;
  4. Canned fruits that do not list a fruit as the first ingredient;

5. Canned fruit cocktail;
6. Mixed fruit with cherries;
7. Cranberry sauce;
8. Pie filling; and
9. Home-canned or home-preserved fruits.

(5) Canned Vegetables Subcategory

- (A) Any brand, size, and variety of regular or low sodium canned vegetables in any type of container is authorized in the Canned Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic canned vegetables;
  2. Sweet potatoes or yams without added sugars or syrup;
  3. Tomatoes or tomato products including but not limited to strained, crushed, diced, paste, or pureed tomatoes; and
  4. Canned vegetables mixed with canned fruits when a vegetable is listed as the first ingredient.
- (B) The following foods are never authorized for purchase as part of the Canned Vegetables Subcategory:
1. Canned tomato products with added sugars, fats, or oils;
  2. Canned tomato products with artificial, reduced-calorie, or no-calorie sweeteners;
  3. Canned vegetables with added fats or oils;
  4. Canned vegetable mixtures with mature beans;
  5. Canned vegetables that do not list a vegetable as the first ingredient;
  6. Pickled, creamed, or sauced canned vegetables;
  7. Soups, ketchup, relishes, olives, salsa, stewed tomatoes, or tomato sauces (tomato, pizza, or spaghetti);
  8. Canned mature beans, including but not limited to black-eyed peas, kidney beans, and pinto beans; and
  9. Home-canned or home-preserved vegetables.

(6) Frozen Fruits Subcategory

- (A) Any brand, size, and variety of organic or non-organic frozen fruits in any type of container are authorized in the Frozen Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Frozen fruits mixed with frozen vegetables when a fruit is listed as the first ingredient.



- (B) The following types of fruits are never authorized for purchase as part of the Frozen Fruits Subcategory:
  - 1. Frozen fruits with added ingredients, oils, salts, or sugars;
  - 2. Frozen fruits with artificial, reduced-calorie, or no-calorie sweeteners; and
  - 3. Frozen fruits that do not list a fruit as the first ingredient.
- (7) Frozen Vegetables Subcategory
  - (A) Any brand, size, and variety of organic or non-organic frozen vegetables in any type of container are authorized in the Frozen Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
    - 1. Sweet potatoes or yams without added sugars or syrup;
    - 2. Frozen mature or immature beans; and
    - 3. Frozen vegetables mixed with frozen fruits when a vegetable is listed as the first ingredient.
  - (B) The following types of vegetables are never authorized for purchase as part of the Frozen Vegetables Subcategory:
    - 1. Frozen vegetables with added sugars, oils, or fats;
    - 2. Breaded or flavored frozen vegetables;
    - 3. French fries, tater tots, hash browns, or mashed potatoes;
    - 4. Frozen vegetables that do not list a vegetable as the first ingredient;
    - 5. Frozen vegetables with added ingredients, such as sauces, cheese, butter, pasta, or rice; and
    - 6. Frozen vegetables with artificial, reduced-calorie, or no-calorie sweeteners.

**82550 WIC Authorized Food List: Infant Cereal.**

(a) Infant Cereal Category

- (1) The following infant cereals are authorized by brand and product name in eight (8) ounce or sixteen (16) ounce containers in the Infant Cereal Category:
  - ~~(A) Baby Basics — Oatmeal;~~
  - ~~(B) Baby Basics — Rice;~~
  - ~~(C) (A) Beech-Nut — Multigrain,~~
  - ~~(D) (B) Beech-Nut — Single Grain Oatmeal;~~
  - (C) Beech-Nut — Organic Multigrain
  - (D) Beech-Nut — Organic Oatmeal

- (E) ~~Beech-Nut — Single Grain Rice~~ Single Grain;
  - (F) ~~Comforts for Baby — Oatmeal~~;
  - (G) ~~Comforts for Baby — Rice~~;
  - (H) ~~Early On — Multi Grain~~;
  - (I) ~~Early On — Oatmeal~~;
  - (J) ~~Early On — Rice~~;
  - (K) ~~Earth's Best Organic — Whole Grain Multi-Grain~~;
  - (L) ~~Earth's Best Organic — Whole Grain Oatmeal~~;
  - (M) ~~Earth's Best Organic — Whole Grain Rice~~;
  - (N) Gerber — Barley
  - (O) ~~Gerber — MultiGrain~~;
  - (P) ~~Gerber — Oatmeal~~;
  - (Q) ~~Gerber — Organic Oatmeal~~
  - (R) ~~Gerber — Organic Rice~~;
  - (S) ~~Gerber — Rice~~;
  - (T) ~~Gerber — Whole Wheat~~;
  - (U) ~~Healthy Times Special Nourish Organic — Barley~~;
  - (V) ~~Healthy Times Special Nourish Organic — Brown Rice~~;
  - (W) ~~Healthy Times Special Nourish Organic — Mixed Grain~~;
  - (X) ~~Healthy Times Special Nourish Organic — Oatmeal~~;
  - (Y) ~~Healthy Times Special Nourish Organic — Rice~~;
  - (Z) Mom's Choice — Rice; and
  - (AA) ~~Tippy Toes — Oatmeal~~;
  - (AB) ~~Tippy Toes — Rice~~;
  - (AC) ~~Up & Up — Oatmeal; and~~
  - (AD) ~~Up & Up — Rice.~~
  - (R) Yummy Naturals — Multigrain.
- (2) The following types of infant cereal are never authorized for purchase as part of the Infant Cereal Category:
- (A) Infant cereal with added ingredients, including formula, milk, fruits, vegetables, probiotics, and DHA; and
  - (B) Infant cereal with added sugars, artificial sweeteners, reduced-calorie sweeteners, and no-calorie sweeteners.

**82600 WIC Authorized Food List: Infant Formula.**

- (a) Infant Formula Category
  - (1) Authorized infant formula shall be selected and prescribed for a participant by a competent professional authority. Participants may only purchase the brand, type (physical form), size, and number of prescribed cans included in their electronic benefits or printed on their food instrument(s).
  - (2) Contract Formula
    - (A) Authorized contract infant formula must meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and is selected through a competitive bidding process. The list of the current contract formulas can be found at:  
<https://www.cdph.ca.gov/Programs/CFH/DWICSN/CDPH%20Document%20Library/WICFoods/FormulaFlyerEn.pdf>.
  - (3) Non-Contract Formula
    - (A) Non-contract brand infant formula is all infant formula that is not covered by an infant formula cost containment contract awarded by the State agency. Non-contract brand formula may only be issued in food package III for participants with qualifying conditions with medical documentation pursuant to 7 Code of Federal Regulations part 246.10(d)(1)(i) (2015).
  - (4) The following types of infant formula are never authorized for purchase as part of the Infant Formula Category:
    - (A) Low iron or no iron formula.

**82650 WIC Authorized Food List: Infant Fruits and Vegetables.**

- (a) Infant Fruits and Vegetables Category
  - (1) Any infant fruits and/or vegetables product made by the brands listed in (a)(2)(A)-(Q) is authorized in the Infant Fruits and Vegetables Category when it has the all of the following characteristics:
    - (A) Is sold in ~~three and a half (3.5) ounce or four (4) ounce~~ containers other than pouches;
    - (B) Is sold individually or in multi-packs;
    - (C) Is organic or non-organic;
    - (D) Lists a fruit or vegetable as the first ingredient; and
    - (E) Contains only single ingredient fruits or vegetables, or combinations of two (2) or more single ingredient fruits or vegetables.
  - (2) The following brands are authorized in the Infant Fruits and Vegetables Category:
    - (A) Beech-Nut;
    - (B) Early On-~~Baby~~;

- (C) Earth's Best Organic;
  - (D) First Choice;
  - ~~(E) Full Circle~~;
  - ~~(F) (E) Gerber~~;
  - (F) Happy Baby Organics
  - ~~(G) Healthy Times~~;
  - ~~(H) (G) Mom's Natural Choice~~;
  - ~~(I) (H) Mom's Organic Choice~~;
  - ~~(J) (I) O Organics~~;
  - ~~(K) Organic~~;
  - (J) Parent's Choice
  - (K) Pic Select Fresh
  - (L) Raley's Organic;
  - ~~(M) Sista Girl~~;
  - ~~(N) (M) Tippy Toes~~;
  - (N) Tippy Toes Organic;
  - (O) Wild Harvest;
  - (P) Yummy Naturals; and
  - (Q) Yummy Organics.
- ~~(3)~~ When purchasing authorized containers of infant fruits and vegetables that are sold individually, participants may not purchase both three and a half (3.5) ounce and four (4) ounce containers using the same food instrument.
- ~~(4)~~ (3) The following infant foods are never authorized for purchase as part of the Infant Fruits and Vegetables Category:
- (A) Infant fruits and vegetables in pouches;
  - (B) Infant fruits and vegetables mixed with cereal, meat, pasta, or rice;
  - (C) Infant fruits and vegetables with added sugars, salt, spices, starch, fiber, or DHA;
  - (D) Infant fruits and vegetables with added sweeteners including artificial, reduced-calorie, or no-calorie sweeteners;
  - (E) Infant fruits and vegetables that do not list a fruit or vegetable as the first ingredient;
  - (F) Dried or powdered infant fruits and vegetables;
  - (G) Infant desserts, puddings, or smoothies;
  - (H) Infant juice;
  - (I) Infant dinners; and

(J) Graduates or toddler infant food.

**82700 WIC Authorized Food List: Infant Meats.**

(a) Infant Meats Category

- (1) Any infant meat or poultry product made by the brands listed in (a)(2)(A)-(K) is authorized in the Infant Meats Category when it has all of the following characteristics:
  - (A) Meat or poultry is the single major ingredient;
  - (B) Is sold in two and a half (2.5) ounce containers other than pouches;
  - (C) Is sold individually or in multi-packs;
  - (D) Is organic or non-organic; and
  - (E) May contain added broth or gravy.
- (2) The following brands are authorized in the Infant Meats Category:
  - (A) Beech-Nut;
  - (B) Early On-Baby;
  - (C) Earth's Best Organic
  - ~~(C) First Choice;~~
  - ~~(D) Full Circle;~~
  - ~~(E) (D) Gerber;~~
  - ~~(F) (E) Mom's Natural Choice;~~
  - ~~(G) (F) O Organics;~~
  - ~~(H) (G) Raley's Organic;~~
  - ~~(I) (H) Tippy Toes;~~
  - (I) Tippy Toes Organic
  - (J) Wild Harvest; and
  - (K) Yummy Naturals.
- (3) The following infant foods are never authorized for purchase as part of the Infant Meats Category:
  - (A) Infant meats in pouches;
  - (B) Infant meats with added sugars, salt, spices, fiber, or DHA;
  - (C) Infant meats with artificial, reduced-calorie, or no-calorie sweeteners;
  - (D) Infant meats mixed with vegetables, fruits, cereal, pasta, or rice;
  - (E) Infant dinners; and
  - (F) Graduates or toddler infant food.

**82750 WIC Authorized Food List: Milk.**

(a) Milk Category

- (1) If no other type of milk is included in a participant's electronic benefits or is specified on a food instrument, any brand of non-organic milk that has all of the following characteristics is authorized as part of a participant's food package in the Milk Category:
  - (A) Plain fluid cow's milk;
  - (B) One percent (1%) lowfat (light) or nonfat (fat free or skim);
  - (C) Pasteurized or ultra-pasteurized; and
  - (D) Sold in one (1) gallon containers.
- (2) Plain fluid cow's milk in half gallon containers is authorized in the Milk Category as part of a participant's food package under the following circumstances: when a participant selects a homeless food package or when the maximum monthly allowance cannot be met by issuing one (1) gallon containers. Plain fluid cow's milk in half gallon containers is only authorized for purchase when it meets the requirements in section (a)(1)(A) and (C) and only when half gallon is included in a participant's electronic benefits or is printed on a participant's food instrument.
- (3) Whole milk is authorized in the Milk Category as part of the standard food package issuance to one-year-old children (12 through 23 months). Whole milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C), and (D) and only when it is the type of milk included in a participant's electronic benefits or is printed on a participant's food instrument. Half gallon containers of whole milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
- (4) Two percent (2%) milk is authorized in the Milk Category as part of the participant food package issued to one-year-old children (12 through 23 months) for whom overweight or obesity is a concern when prescribed by a competent professional authority, based on an individual nutritional assessment. Two percent (2%) milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C) and (D) and only when it is included in a participant's electronic benefits or is the type of milk printed on a participant's food instrument. Half gallon containers of two percent (2%) milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
- (5) Lactose-free milk in half gallon containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Lactose free milk in half gallon containers is authorized for purchase when it meets the requirements in section (a)(1)(A)-(C) and only when half gallon lactose-free milk is included in a participant's electronic benefits or is printed on a participant's food instrument. Whole lactose-free milk in half gallon containers is authorized in the Milk Category as part of standard food package issuance to one-year-old children when half gallon whole lactose-free milk is included in a participant's electronic benefits or is printed on a participant's food instrument.

- (6) Evaporated milk in twelve (12) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Evaporated milk that is one percent (1%) lowfat or nonfat (fat free or skim) in twelve (12) ounce containers is authorized for purchase when it meets the requirements in sections (a)(1)(B)-(C) above and only when it is the type and fat-level of milk included in a participant's electronic benefits or is printed on a participant's food. Whole evaporated milk in twelve (12) ounce containers is authorized for purchase when it meets the requirements in section (a)(1)(C) above and only when whole evaporated milk is included in a participant's electronic benefits or is printed on a participant's food instrument.
- (7) Powdered dry milk in nine and six tenths (9.6) ounce and twenty-five and six tenths (25.6) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Pasteurized powdered dry milk that is nonfat (fat free or skim) in nine and six-tenths (9.6) ounce and twenty-five and six-tenths (25.6) ounce containers is authorized for purchase only when it is included in a participant's electronic benefits or is the type of milk printed on a participant's food instrument.
- (8) The following types of milk are never authorized for purchase in the Milk Category:
- (A) Unpasteurized (raw) milk;
  - (B) Cultured milks, such as Acidophilus milk, buttermilk, or kefir milk;
  - ~~(C) Buttermilk;~~
  - ~~(D)~~ (C) Specialty milks, other than those listed in (a)(5)-(7), such as calcium-fortified milk, milk with added DHA, Ultra Heat Treated (UHT) shelf-stable milk, A2 milk, ultra-filtered milk, or protein-fortified milk;
  - ~~(E)~~ (D) Flavored milk, including but not limited to chocolate or strawberry;
  - ~~(F)~~ (E) Goat's milk;
  - ~~(G)~~ (F) Soy milk;
  - ~~(H)~~ (G) Non-dairy milk substitutes;
  - ~~(I)~~ Milk with added DHA;
  - ~~(J)~~ (H) Milk sold in pint sized containers;
  - ~~(K)~~ (I) Milk in glass bottles;
  - ~~(L)~~ (J) Sweetened condensed or filled milk; and
  - ~~(M)~~ Ultra heat treated (UHT) shelf stable milk; and
  - ~~(N)~~ (K) Organic milk.

**82800 WIC Authorized Food List: Peanut Butter.**

- (a) Peanut Butter Category
- (1) Any brand of peanut butter is authorized in the Peanut Butter Category when

it has all of the following characteristics:

- (A) Conforms to the F.D.A. standard of identity for peanut butter in 21 Code of Federal Regulations part 164.150;
  - (B) Is sold in sixteen (16) to eighteen (18) ounce containers; and
  - (C) Is of regular or low sodium content.
- (2) Authorized peanut butters may be any texture, such as:
- (A) Creamy;
  - (B) Smooth;
  - (C) Crunchy;
  - (D) Super crunchy;
  - (E) Chunky;
  - (F) Super chunky; and/or
  - (G) Old fashioned or natural.
- (3) The following varieties of peanut butter are never authorized for purchase as part of the Peanut Butter Category:
- (A) Honey nut roasted peanut butter
  - (B) "Grind your own" peanut butter;
  - (C) Peanut butter spread;
  - (D) Lowfat or reduced fat peanut butter;
  - (E) Peanut butter with added ingredients, such as jams, jellies, chocolate, marshmallows, or honey;
  - (F) Peanut butter with added supplements, such as omega-3 fatty acids or flax seed;
  - (G) Peanut butter with artificial, reduced-calorie, or no-calorie sweeteners; and
  - (H) Organic peanut butter.

**82850 WIC Authorized Food List: Soy.**

- (a) Soy Category
  - (1) The following soy-based beverage products are authorized in the Soy Category:
    - (A) 8th Continent Soymilk
      - 1. Original flavor; and
      - 2. Sold in refrigerated half gallon containers.
    - (B) Great Value Soymilk
      - 1. Original flavor; and



2. Sold in refrigerated half gallon containers.
  - ~~(B)~~ (C) Pacific Ultra Soy
    1. Original flavor; and
    2. Sold in shelf-stable quart-sized containers.
  - ~~(G)~~ (D) Silk Soymilk
    1. Original flavor; and
    2. Sold in refrigerated half gallons or refrigerated quart-sized containers.
  - ~~(D)~~ (E) WESTSOY Organic Plus Soymilk
    1. Plain flavor; and
    2. Sold in shelf-stable ~~half gallons and~~ quart-sized containers.
- (2) All authorized soy-based beverages are authorized both individually and in multi-packs.
- (3) The following types of soy-based beverages are never authorized for purchase as part of the Soy Category:
  - (A) Flavored soy-based beverage, such as chocolate or vanilla; ~~and~~
  - (B) Light, lowfat, fat free, and non-fat soy-based beverage; and
  - (C) Unsweetened soy-based beverage.

**82900 WIC Authorized Food List: Tofu.**

(a) Tofu Category

- (1) The following tofus, as identified below by brand/product name and texture, in sixteen (16) ounce packages are authorized in the Tofu Category:
  - (A) Azumaya
    1. Extra Firm
    2. Firm
    3. Silken
  - (B) House Foods
    1. Premium Extra Firm
    2. Premium Firm
    3. Premium Medium Firm
  - (C) Nasoya
    1. Organic Silken
  - (D) O Organics
    1. Organic Sprouted Super Firm

- (E) ~~We Chong~~
  - ~~1. Firm~~
  - ~~2. Silken~~
  - ~~3. Soft~~
- (2) The following types of tofu are never authorized for purchase as part of the Tofu Category:
  - (A) Tofu with added fats, sugars, sweeteners (artificial, reduced-calorie, or no-calorie), oils, sodium, flavoring, or seasoning;
  - (B) Cubed, dried, baked, or fried tofu; and
  - (C) Tofu that is sold in bulk and not pre-packaged.

**82950 WIC Authorized Food List: Whole Grains.**

- (a) Whole Grains Category
  - (1) Brown Rice Subcategory
    - (A) Any brand of brown rice is authorized in the Brown Rice Subcategory of the Whole Grains Category when it has all of the following characteristics:
      - 1. Is sold in ~~bulk or in~~ sixteen (16) ounce packages;
      - 2. Is of any variety of brown rice, such as basmati and jasmine;
      - 3. Is short, medium, or long grain; and
      - 4. Is regular, quick, or instant.
    - (B) The following types of rice are never authorized for purchase as part of the Brown Rice Subcategory:
      - 1. Ready-to-serve rice;
      - 2. Brown rice mixed with any other type of rice; and
      - 3. Organic brown rice.
  - (2) Bulgur Subcategory
    - (A) Any brand of bulgur is authorized in the Bulgur Subcategory of the Whole Grains Category when it has the following characteristics:
      - 1. Is sold in ~~bulk or in~~ sixteen (16) ounce packages; and
      - 2. Is organic or non-organic.
  - (3) Corn Tortillas Subcategory
    - (A) The following soft corn tortillas (white or yellow), identified by brand and product name, in sixteen (16) ounce packages are authorized in the Corn Tortillas Subcategory of the Whole Grains Category:
      - ~~4. Acapulco Tortilleria Mexicatessen — King Size White Corn Tortillas~~

- ~~2.~~ ~~Carlita — Corn Tortillas Soft Taco Style~~
1. Chavez Supermarket — Corn Tortillas
- ~~3~~ 2. Chi-Chi's — White Corn Taco Style Tortillas
- ~~4~~ 3. Don Pancho — White Corn Tortillas
- ~~5.~~ ~~Early On — White Corn Tortillas~~
- ~~6.~~ ~~Early On — Yellow Corn Tortillas~~
- ~~7.~~ ~~El Comal — Corn Tortillas~~
4. El Super — Tortillas De Maiz
5. Essential Everyday — White Corn Tortillas 5.5" Soft Taco Style
- ~~8.~~ ~~Fiesta — Corn Tortillas~~
- ~~9~~ 6. Guerrero — Tortillas de Maiz Blanco
- ~~10.~~ ~~Herdez — White Corn Tortillas Soft Taco Size~~
7. IGA — White Corn Tortillas
8. Kroger — Yellow Corn Tortillas
- ~~14~~ 9. La Banderita — Corn Tortillas
- ~~12~~ 10. La Banderita — Grande Corn Tortillas
11. La Banderita — Yellow Corn Tortillas
- ~~13~~ 12. La Burrita — Corn Tortillas
- ~~14.~~ ~~La Fe Tortilleria — Corn Tortillas King Size~~
- ~~15.~~ ~~La Mexicana — Corn Tortillas~~
- ~~16.~~ ~~La Perla Mexicana — King Size White Corn Tortillas~~
- ~~17.~~ ~~La Perla Mexicana — King Size Yellow Corn Tortillas~~
- ~~18.~~ ~~La Rosa — Corn Tortillas La Grande~~
- ~~19.~~ ~~La Rosa — Yellow Corn Tortillas La Grande~~
- ~~20.~~ ~~La Tapatia — Premium Corn Tortillas~~
- ~~21.~~ ~~La Tapatia — White Corn Tortillas/Tortillas Blancas~~
- ~~22.~~ ~~Marcela Valladolid — White Corn Tortillas~~
- ~~23.~~ ~~Mi Rancho — Mama's White Corn Tortillas~~
- ~~24~~ 13. Mi-Rancho Tortillas — Soft White Corn Tortillas
- ~~25~~ 14. Mission — Yellow Corn Tortillas Extra Thin
- ~~26~~ 15. Northgate Gonzalez Market — White Corn Tortillas de Maiz
- ~~27~~ 16. Northgate Gonzalez Market — Yellow Corn Tortillas de Maiz
- ~~28~~ 17. Ozuna — Corn Tortillas
- ~~29.~~ ~~Romero's — Stone Ground Corn Tortillas Large King Size~~

~~30~~ 18. Romero's — Whole Grain Corn Tortillas

~~31. Santa Fe Tortilla Company — White Corn Tortillas~~

~~32. Santa Fe Tortilla Company — Yellow Corn Tortillas~~

~~33. Sol De Oro — Premium Corn Tortillas~~

19. Tortilleria Santacruz — Corn Tortillas

~~34. Vallarta Supermarkets — Vallarta Tortilla de Maiz~~

~~35. Vallarta Supermarkets — Vallarta Tortilla de Maiz Amaril~~

(B) The following type of Corn Tortillas is never authorized for purchase as part of the Corn Tortillas Subcategory:

1. Organic Corn Tortillas.

(4) Oatmeal or Oats Subcategory

(A) Any brand of oatmeal or oats is authorized in the Oatmeal or Oats Subcategory of the Whole Grains Category when it has all of the following characteristics:

1. Is sold ~~in bulk or~~ in sixteen (16) ounce packages;
2. Is plain;
3. Is of any variety of oatmeal or oats, including old fashioned or crystal wedding;
4. Is rolled, cut, or steel cut; and
5. Is regular-cooking, instant-cooking, or quick-cooking.

(B) The following types of oatmeal or oats are never authorized for purchase as part of the Oatmeal or Oats Subcategory:

1. Individual and flavored oatmeal packets; and
2. Organic oatmeal or oats.

(5) Whole Grain Barley Subcategory

(A) Any brand of whole grain barley is authorized in the Whole Grain Barley Subcategory of the Whole Grains Category when it has the following characteristics:

1. Is sold ~~in bulk or~~ in sixteen (16) ounce packages; and
2. Is organic or non-organic.

(B) The following type of barley is never authorized for purchase as part of the Whole Grain Barley Subcategory:

1. Pearled barley.

(6) Whole Wheat Bread Subcategory

(A) Any brand of whole wheat bread (loaves, buns, or rolls) is authorized in the Whole Wheat Bread Subcategory of the Whole Grains Category when it has all of the following characteristics:

1. Is sold in sixteen (16) ounce packages; and
  2. The package has “100% Whole Wheat” printed on the front label.
- (B) Whole wheat bread (loaves, buns, or rolls) made by an in-store bakery is allowed if it meets the requirements of subsection (A).
- (C) The following type of whole wheat bread is never authorized for purchase as part of the Whole Wheat Bread Subcategory:
1. Organic whole wheat bread.
- (7) Whole Wheat Pasta Subcategory
- (A) The following whole wheat pastas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Pasta Subcategory of the Whole Grains Category:
1. Allegra — Whole Wheat Spaghetti
  2. Barilla — Whole Grain Angel Hair
  3. Barilla — Whole Grain Elbows
  4. Barilla — Whole Grain Linguine
  5. Barilla — Whole Grain Medium Shells
  - ~~2~~ 6. Barilla — Whole Grain Penne
  7. Barilla — Whole Grain Rotini
  - ~~3~~ 8. Barilla — Whole Grain Spaghetti
  9. Barilla — Whole Grain Thin Spaghetti
  - ~~4. Bella Terra Organic — Organic Whole Wheat Capellini~~
  - ~~5. Bella Terra Organic — Organic Whole Wheat Spaghetti~~
  - ~~6~~ 10. Essential Everyday — Whole Wheat Elbow Macaroni
  - ~~7~~ 11. Essential Everyday — Whole Wheat Penne Rigate
  - ~~8~~ 12. Essential Everyday — Whole Wheat Rotini
  - ~~9~~ 13. Essential Everyday — Whole Wheat Spaghetti
  - ~~10~~ 14. Essential Everyday — Whole Wheat Thin Spaghetti
  - ~~11~~ 15. Full Circle — Organic Whole Wheat Angel Hair
  - ~~12~~ 16. Full Circle — Organic Whole Wheat Spaghetti
  17. Great Value — Whole Wheat Elbows
  18. Great Value — Whole Wheat Linguine
  19. Great Value — Whole Wheat Penne
  20. Great Value — Whole Wheat Rotini
  - ~~13~~ 21. Great Value — Whole Wheat Spaghetti
  22. Great Value — Whole Wheat Thin Spaghetti

- ~~44~~ 23. Hodgson Mill — Whole Wheat Angel Hair
- ~~45~~ 24. Hodgson Mill — Whole Wheat Elbows
- ~~46~~ 25. Hodgson Mill — Whole Wheat Spaghetti
- ~~47~~ 26. Hodgson Mill — Whole Wheat Spirals
- ~~48~~ 27. Hodgson Mill — Whole Wheat Thin Spaghetti
- ~~49~~ 28. Kroger — 100% Whole Grain Penne Rigate
- ~~20~~ 29. Kroger — 100% Whole Grain Rotini
- ~~24~~ 30. Kroger — 100% Whole Grain Spaghetti
- ~~22~~ 31. Kroger — 100% Whole Grain Thin Spaghetti
- 32. O Organics — Organic Whole Wheat Elbow Macaroni
- 33. O Organics — Organic Whole Wheat Linguine
- ~~23~~ 34. O Organics — Organic Whole Wheat Penne Rigate
- 35. O Organics — Organic 100% Whole Wheat Rotini
- ~~24~~ 36. O Organics — Organic Whole Wheat Spaghetti
- 37. O Organics — Organic Whole Wheat Thin Spaghetti
- ~~25~~ 38. Racconto — Whole Wheat Capellini
- ~~26~~ 39. Racconto — Whole Wheat Elbows
- ~~27~~ 40. Racconto — Whole Wheat Farfalle
- ~~28~~ 41. Racconto — Whole Wheat Linguine
- ~~29~~ 42. Racconto — Whole Wheat Penne Rigate
- ~~30~~ 43. Racconto — Whole Wheat Rigatoni
- ~~34~~ 44. Racconto — Whole Wheat Rotini
- ~~32~~ 45. Racconto — Whole Wheat Spaghetti
- ~~33~~ 46. Ronzoni Healthy Harvest — 100% Whole Grain Linguine
- ~~34~~ 47. Ronzoni Healthy Harvest — 100% Whole Grain Penne Rigate
- ~~35~~ 48. Ronzoni Healthy Harvest — 100% Whole Grain Rotini
- ~~36~~ 49. Ronzoni Healthy Harvest — 100% Whole Grain Spaghetti
- ~~37~~ 50. Ronzoni Healthy Harvest — 100% Whole Grain Thin Spaghetti
- 51. Signature Select — Whole Wheat Elbow Macaroni
- 52. Signature Select — Whole Wheat Linguine
- 53. Signature Select — Whole Wheat Penne Rigate
- 54. Signature Select — Whole Wheat Rotini
- 55. Signature Select — Whole Wheat Spaghetti
- 56. Signature Select — Whole Wheat Thin Spaghetti

- ~~38~~ 57. Simple Truth Organic — Organic Whole Wheat Penne Rigate
- ~~39~~ 58. Simple Truth Organic — Organic Whole Wheat Rotini
- ~~40~~ 59. Simple Truth Organic — Organic Whole Wheat Spaghetti
- ~~44~~ 60. Simply Balanced — Organic Whole Wheat Farfalle
- ~~42.~~ ~~Simply Balanced — Organic Whole Wheat Fusilli~~
- ~~43~~ 61. Simply Balanced — Organic Whole Wheat Penne Rigate
- ~~44~~ 62. Simply Balanced — Organic Whole Wheat Spaghetti
- 63. Springfield — Whole Wheat Penne Rigate
- 64. Springfield — Whole Wheat Rotini
- ~~45~~ 65. Western Family — 100% Whole Wheat Penne Rigate
- ~~46~~ 66. Western Family — 100% Whole Wheat Spaghetti
- 67. WinCo Foods — Whole Wheat Penne
- 68. WinCo Foods — Whole Wheat Rotini
- 69. WinCo Foods — Whole Wheat Spaghetti

(8) Whole Wheat Tortillas Subcategory

(A) The following whole wheat tortillas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Tortillas Subcategory of the Whole Grains Category:

- ~~1.~~ ~~Acapulco Tortilleria Mexicatessen — Whole Wheat Flour Tortillas~~
- ~~2.~~ ~~Carlita — 100% Whole Wheat Flour Tortillas~~
- ~~3~~ 1. Chi-Chi's — Whole Wheat Tortillas Fajita Style
- ~~4~~ 2. Don Pancho — Soft Taco Style Whole Wheat Tortillas Soft Taco & Wraps Style
- ~~5.~~ ~~Early On — Whole Wheat Tortillas~~
- ~~6.~~ ~~El Comal — 100% Whole Wheat Flour Tortillas~~
- ~~7.~~ ~~Esperanza's Tortilleria — Whole Wheat Flour Tortillas~~
- 3. Essential Everyday — 100% Whole Wheat Flour Tortillas
- ~~8.~~ ~~Fiesta — Whole Wheat Tortillas~~
- ~~9.~~ ~~Food Club — Whole Wheat Tortillas Fajita Style~~
- ~~40~~ 4. Frestillas — 100% Whole Wheat Tortillas
- 5. Great Value — Whole Wheat Flour Tortillas
- ~~44~~ 6. Guerrero — Tortillas de Harina Integral
- ~~42~~ 7. Herdez — Whole Wheat Tortillas Fajita Style/Trigo Integral Fajita Style
- 8. IGA — Whole Wheat Tortillas Taco Style

- ~~43~~ 9. Kroger — ~~Soft Taco Sized~~ 100% Whole Wheat Tortillas Soft Taco Size
  - ~~44~~ 10. La Banderita — 100% Whole Wheat Flour Tortillas Fajita
  - ~~45~~ 11. La Banderita — 100% Whole Wheat Flour Tortillas Soft Taco
  - ~~46.~~ ~~La Perla Mexicana — Whole Wheat Tortillas~~
  - ~~47.~~ ~~La Reina — Whole Wheat Flour Tortillas~~
  - ~~48.~~ ~~La Rosa — 100% Whole Wheat Flour Tortillas~~
  - ~~49.~~ ~~La Victoria — Whole Wheat Tortillas Soft Taco~~
  - 12. Market Pantry — 100% Whole Wheat Tortillas
  - ~~20.~~ ~~Mi Casa — Wheat Tortillas~~
  - ~~24~~ 13. Mi-Rancho Tortillas — Whole Wheat Flour Tortillas
  - 14. Mission — 100% Whole Wheat Flour Tortillas Fajita
  - ~~22~~ 15. Mission — 100% Whole Wheat Flour Tortillas ~~Medium-Soft Taco~~
  - ~~23~~ 16. Ortega — Whole Wheat Tortillas
  - ~~24~~ 17. Ozuna — Whole Wheat Tortillas
  - ~~25.~~ ~~Romero's — 100% Whole Wheat Grain Flour Tortillas~~
  - ~~26~~ 18. Romero's — 100% Whole Wheat Grain Flour Tortillas Regular/Soft Taco Size
  - ~~27.~~ ~~Santa Fe Tortilla Company — Whole Wheat Tortillas~~
  - 19. Signature Select — Whole Wheat Flour Tortillas Soft Taco Style
  - ~~28~~ 20. Tortilleria Santacruz — 100% Whole Wheat Flour Tortillas
  - ~~29.~~ ~~Vallarta Supermarkets — 100% Whole Wheat Tortillas~~
  - ~~30.~~ ~~Vallarta Supermarkets — Tortilla de Trigo/Whole Wheat Flour Tortillas~~
- (B) The following type of whole wheat tortillas is never authorized for purchase as part of the Whole Wheat Tortillas Subcategory:
- 1. Organic whole wheat tortillas.
- (9) The following types of whole grains are never authorized for purchase as part of the Whole Grains Category:
- (A) Whole grains that are not plain and that have added ingredients, such as fruits, nuts, or spices;
  - (B) Bread, tortillas, rice, oats, or pasta that is refrigerated or frozen;
  - (C) Refrigerated or frozen dough and mixes;
  - (D) Whole grains with artificial, reduced-calorie, or no-calorie sweeteners; ~~and~~



- (E) ~~Homemade whole grains; and~~
  - ~~(F) Whole grains that are sold in bulk and not pre-packaged.~~
- (10) ~~If buying whole grains in bulk, a participant shall only purchase one type of whole grain per food instrument.~~

**83000 WIC Authorized Food List: Yogurt.**

(a) Yogurt Category

- (1) Whole cow's milk yogurt is authorized in the Yogurt Category as the standard yogurt for issuance to one-year-old (12 through 23 months) children. Whole cow's milk yogurt is authorized for purchase only when whole yogurt is included in a participant's electronic benefits or is printed on the participant's food instrument.
- (2) Lowfat and nonfat cow's milk yogurt are authorized in the Yogurt Category as part of the food packages issued to the following types of participants and only when lowfat or nonfat yogurt is included in a participant's electronic benefits or is printed on the participant's food instrument:
  - (A) Children twenty-four (24) months of age or older;
  - (B) Pregnant and partially breastfeeding women;
  - (C) Postpartum women;
  - (D) Fully breastfeeding women; and
  - (E) Children aged one-year-old (12 through 23 months) for whom overweight and obesity is a concern and when prescribed by a competent professional authority based on an individual nutritional assessment.
- (3) The following cow's milk yogurts, as identified by brand and product name, fat level, and flavor, in thirty-two (32) ounce containers are authorized in the Yogurt Category:
  - (A) Alta Dena
    - 1. Plain (nonfat, lowfat, or whole)
    - 2. Strawberry (lowfat)
    - 3. Vanilla (lowfat)
  - (B) Berkeley Farms
    - 1. Plain (nonfat, lowfat)
    - 2. Strawberry (lowfat)
    - 3. Vanilla (lowfat)
  - ~~(B) Coburn Farms~~
    - ~~1. Plain (lowfat)~~
    - ~~2. Vanilla (lowfat)~~

(C) Crystal

1. Plain (low fat)

~~(G)~~ (D) Dannon

1. ~~All Natural~~ Plain (nonfat, lowfat, or whole)
2. Strawberry (whole)
- ~~3. All Natural~~ Vanilla (lowfat, whole)
- ~~3. Strawberry (Nonfat)~~

(E) Early On

1. Plain (fat free)
2. Strawberry (lowfat)

(F) Essential Everyday

1. Blended Plain (fat free, lowfat, or whole)
2. Blended Strawberry (lowfat)
3. Blended Vanilla (lowfat)

~~(D)~~ Food Club

- ~~4. Plain (fat free)~~

~~(E)~~ (G) Great Value

1. Plain (nonfat)
2. Strawberry (lowfat)
3. Vanilla (lowfat)

~~(F)~~ (H) Kroger

1. Blended Plain (lowfat)
2. Plain (nonfat)

~~(G)~~ (I) LALA

1. Plain (low\_fat)
2. Vanilla (low fat)

~~(H)~~ (J) Lucerne

1. Plain (fat free, whole)
2. Strawberry (lowfat)
- ~~3. Vanilla (lowfat)~~

~~(I)~~ (K) Market Pantry

1. Plain (nonfat)

~~(J)~~ (L) Mountain High

- ~~4. Original Plain (whole)~~

- ~~2~~ 1. Plain (fat free, lowfat, or whole)
  - ~~3~~ 2. ~~Original~~ Strawberry (whole)
  - ~~4.~~ ~~Original Vanilla (whole)~~
  - ~~5~~ 3. Vanilla (fat free, lowfat, or whole)
- ~~(K)~~ (M) Springfield
1. ~~Blended Strawberry~~ Plain (lowfat)
  2. ~~Premium Plain~~ Strawberry (lowfat)
- ~~(L)~~ (N) Stater Bros.
1. Plain (fat free)
  2. Blended Strawberry (lowfat)
  3. Blended Vanilla (lowfat)
  4. ~~Plain (fat free, low fat)~~
- (O) Sunnyside Farms
1. Original Plain (lowfat)
  2. Original Strawberry (lowfat)
  3. Original Vanilla (lowfat)
- ~~(M)~~ Tillamook
4. ~~Plain & Simple (lowfat)~~
- ~~(N)~~ (P) Western Family
1. Plain (~~non-fat~~, low-fat)
  2. ~~Strawberry (low fat)~~
- (Q) WinCo Foods
1. Plain (nonfat, whole)
  2. Strawberry (lowfat)
  3. Vanilla (lowfat)
- ~~(O)~~ (R) Yoplait
1. Plain (nonfat)
  2. Original Strawberry (low fat)
  3. Original Vanilla (low fat)
- (4) The following yogurts are never authorized for purchase as part of the Yogurt Category:
- (A) Any type, brand, fat level, or flavor of yogurt not listed in (a)(3), including but not limited to Greek yogurt, lactose-free yogurt, soy yogurt, and goat's milk yogurt;
  - (B) Yogurt with mix-in ingredients, such as granola, candy pieces, honey, or

- nuts;
- (C) Drinkable yogurts;
- (D) Yogurt with artificial, reduced-calorie, or no-calorie sweeteners; and
- (E) Organic yogurt.

### **Nature of the Regulation**

CDPH proposes amendment of the WIC Authorized Food List Bulletin Regulations as set forth in Attachment 1 of this notice. These proposed regulations would amend the existing regulations to update authorized brand specific foods; eliminate the authorization of bulk foods; revise the list of milk prohibitions; make changes necessary for the Department's transition to EBT; and make other miscellaneous revisions in the WIC Bulletin Regulation sections included in this notice.

### **Reason for the Regulation**

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

### **Authority**

#### *Federal:*

The Child Nutrition Act of 1966, title 42 of the United States Code, 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 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, the WIC Program is funded and administered by the United States Department of Agriculture (USDA), Food and Nutrition Service, pursuant 7 Code of Federal Regulations, part 246.

The WIC Program is also subject to federal memoranda and directives from USDA.

#### *State:*

The WIC Program was established under the authority of Health and Safety Code section 123275 et seq. The regulations for CDPH's administration of the WIC Program are contained in the California Code of Regulations, title 22, sections 40601 through 40815, and in the WIC Regulatory Bulletins posted at:

<https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/LawsandRegulations.aspx>.

**Questions and Additional Information:**

If you have any questions, please contact CDPH at [WICRegulations@cdph.ca.gov](mailto:WICRegulations@cdph.ca.gov).

A handwritten signature in blue ink, appearing to read 'C. Lopez', with a long horizontal flourish extending to the right.

Catherine Lopez, M.Ed.  
Assistant Division Chief – Services  
Women, Infants and Children Division  
California Department of Public Health

Attachment 1

**WIC Authorized Food List  
Amendments  
and  
Statement of Reasons**

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

**October 12, 2018**

Health & Safety Code § 123322 authorizes the California Department of Public Health to establish regulations regarding the authorized foods 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 proposes to amend WIC Authorized Food List Bulletin Regulation sections 82100, 82250, 82350, 82500, 82550, 82600, 82650, 82700, 82750, 82800, 82850, 82900, 82950, and 83000 as specified in Regulatory Alert 2018-04.

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# 82100 WIC Authorized Food List: Breakfast Cereal

## PROPOSED REGULATION

### *82100 WIC Authorized Food List: Breakfast Cereal.*

(a) Breakfast Cereal Category

(1) The following breakfast cereals are authorized by brand and product name in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:

- (A) B & G Foods — Cream of Wheat Whole Grain;<sup>1</sup>
- (B) General Mills — Cheerios;<sup>1</sup>
- (C) General Mills — MultiGrain Cheerios;<sup>1</sup>
- (D) General Mills — Honey Kix;<sup>1</sup>
- (E) General Mills — Kix;<sup>1</sup>
- (F) General Mills — Total Whole Grain;<sup>1</sup>
- (G) Kellogg's — Corn Flakes;
- (H) Kellogg's — Frosted Mini Wheats Original;<sup>1</sup>
- (I) Kellogg's — Frosted Mini Wheats Little Bites;<sup>1</sup>
- (J) Kellogg's — Special K Original;
- (K) Malt-O-Meal — Malt-O-Meal Hot Cereal Original;
- ~~(L) Mill Select Early On — Puffed Wheat;<sup>1</sup>~~
- ~~(M)~~ (L) Post — Bran Flakes;<sup>1</sup>
- ~~(N)~~ (M) Post — Grape-Nuts;<sup>1</sup>
- ~~(O)~~ (N) Post — Honey Bunches of Oats Honey Roasted;
- ~~(P)~~ (O) Quaker — Life Original;<sup>1</sup>
- ~~(Q)~~ (P) Quaker — Oatmeal Squares Brown Sugar;<sup>1</sup> and
- ~~(R)~~ (Q) Quaker — Oatmeal Squares Cinnamon.<sup>1</sup>

(2) The following crisp rice or crispy rice breakfast cereals are authorized by brand in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:

- (A) Best Yet;
- (B) Essential Everyday
- ~~(B)~~ (C) First Street;
- ~~(G)~~ (D) Food Club;
- ~~(D)~~ (E) Great Value;
- ~~(E)~~ (F) Hospitality;

- ~~(F)~~ (G) HY-TOP;
- ~~(G)~~ (H) Hy-Vee;
- ~~(H)~~ (I) IGA;
- ~~(I)~~ ~~Kiggins~~;
- (J) Kroger;
- (K) Malt-O-Meal;
- (L) Market Pantry;
- ~~(M)~~ ~~Mill Select Early On~~;<sup>4</sup>
- ~~(N)~~ (M) Parade;
- ~~(O)~~ (N) Raley's;
- ~~(P)~~ (O) Ralston Foods;
- ~~(Q)~~ (P) Red & White;
- ~~(R)~~ (Q) Shurfine;
- ~~(S)~~ (R) Signature Kitchens;
- (S) Special Value
- (T) Springfield;
- (U) Stater Bros.;
- (V) Sunny Select;
- (W) Valu Time;
- (X) Western Family; and
- (Y) WinCo Foods.

(3) The following instant oatmeals in old-fashioned, classic, regular, or original flavors are authorized by brand in eleven and eight-tenths (11.8) ounce to twelve (12) ounce containers of individual serving packets in the Breakfast Cereal Category:

- (A) Best Yet;<sup>1</sup>
- (B) Early On;<sup>1</sup>
- ~~(C)~~ ~~First Street~~;<sup>4</sup>
- (C) Essential Everyday;<sup>1</sup>
- (D) Food Club;<sup>1</sup>
- ~~(E)~~ ~~Great Value~~;<sup>4</sup>
- ~~(F)~~ (E) Hy-Vee;<sup>1</sup>
- ~~(G)~~ ~~IGA~~;<sup>4</sup>
- ~~(H)~~ (F) Kroger;<sup>1</sup>

- ~~(H)~~ (G) Raley's;<sup>1</sup>
- ~~(J)~~ (H) Ralston Foods;<sup>1</sup>
- ~~(K)~~ Red & White;<sup>1</sup>
- ~~(L)~~ (I) Shurfine;<sup>1</sup>
- ~~(M)~~ (J) Signature Kitchens;<sup>1</sup>
- ~~(N)~~ Special Value;<sup>1</sup>
- ~~(O)~~ (K) Springfield;<sup>1</sup>
- ~~(P)~~ (L) Stater Bros;<sup>1</sup>
- ~~(Q)~~ (M) Sunny Select;<sup>1</sup>
- ~~(R)~~ (N) Western Family;<sup>1</sup> and
- ~~(S)~~ (O) WinCo Foods.<sup>1</sup>

- (4) The following types of breakfast cereal are never authorized for purchase as part of the Breakfast Cereal Category:
- (A) Grits;
  - (B) Hot breakfast cereal with added fruits and nuts;
  - (C) Hot breakfast cereal with added sweeteners, including sugar, artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners; and
  - (D) Organic cereal.

<sup>1</sup> This cereal contains 51% or more whole grain by weight.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for breakfast cereal in all applicable food packages are as follows:

Must contain a minimum of 28 mg iron per 100 g dry cereal.

Must contain  $\leq 21.2$  g sucrose and other sugars per 100 g dry cereal ( $\leq 6$  g per dry oz). At least half of the cereals authorized on a State agency's food list must have whole grain

as the primary ingredient by weight AND meet labeling requirements for making a health claim as a “whole grain food with moderate fat content”.<sup>3</sup>

<sup>3</sup>FDA *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at <http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm073634.htm>.

*Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## **STATEMENT OF REASONS**

### *82100 WIC Authorized Food List: Breakfast Cereal*

(a)(1)~~(L)~~ The Department proposes to remove Mill Select Early On Puffed Wheat as an authorized cereal. In 2018, the manufacturer notified the Department that it no longer makes this product.

(a)(2)(A)-(Y) The Department proposes to amend the existing list of authorized crisp rice and crispy rice breakfast cereals by adding and deleting products. The Department held an open submission period for instant oatmeal breakfast cereals in May 2018. This submission period was intended to: 1) confirm that currently authorized products

continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(2) and (a)(4) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted crisp rice and crispy rice breakfast cereals products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized crisp rice and crispy rice breakfast cereals as specified below.

**Added:**

- Essential Everyday
- Special Value

**Deleted:**

- Kiggins
- Mill Select Early On

(a)(3)(A)-(O) The Department proposes to amend the existing list of authorized instant oatmeal breakfast cereals by adding and removing products. The Department held an open submission period for instant oatmeal breakfast cereals in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(3) and (a)(4) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted instant oatmeal cereal products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized instant oatmeal breakfast cereals as specified below.

**Added:**

- Essential Everyday

**Deleted:**

- First Street
- Great Value
- IGA
- Red & White
- Special Value

## 82250 WIC Authorized Food List: Cheese

### PROPOSED REGULATION

#### **82250 WIC Authorized Food List: Cheese.**

- (a) Cheese Category
- (1) Any brand of non-organic cheese is authorized in the Cheese Category when the cheese has all of the following characteristics:
- (A) Is made in the United States of America;
  - (B) Is sold in a sixteen (16) ounce package in one of the following ways:
    - 1. Individually wrapped mozzarella string-cheese sticks; or
    - 2. Blocks or rounds of the following cheeses:
      - A. Orange, ~~or white, or yellow~~ cheddar (mild, medium, sharp, or longhorn)
      - B. Colby
      - C. Jack
      - D. Mozzarella
      - E. Marbled or blends of cheeses authorized by this subsection (for example, colby-jack)
  - (C) Is of regular fat content, lowfat, or fat free; ~~and~~
  - (D) Is of regular sodium content or low sodium; and
  - (E) Is pasteurized.
- (2) The following types of cheese are never authorized for purchase as part of the Cheese Category:
- (A) Diced, grated, sliced, crumbled, or shredded cheese;
  - (B) Cheese that is purchased from or sliced at the deli;
  - (C) Cheese with added ingredients, including but not limited to peppers or spices; and
  - (D) Organic Cheese.

### AUTHORITY

#### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for cheese in all applicable food packages are as follows:

Domestic cheese made from 100 percent pasteurized milk. Must conform to FDA standard of identity (21 CFR part 133); Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, part-skim or whole Mozzarella, pasteurized process American, or blends of any of these cheeses are authorized. Cheeses that are labeled low, free, reduced, less or light in sodium, fat or cholesterol are WIC eligible.

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## **STATEMENT OF REASONS**

### *82250 WIC Authorized Food List: Cheese*

(a)(1)(B)2.A. The Department proposes to add yellow cheddar to the types of authorized cheddar. The Department currently authorizes orange cheddar, yellow cheddar is another name for orange cheddar; therefore, the Department finds it appropriate to add yellow cheddar to the list of authorized types of cheddar in order to help participants and vendors identify WIC authorized cheddars.



(a)(1)(E) The Department proposes to add pasteurization as a cheese requirement. Some cheese manufacturers use heat treating processes other than pasteurization that do not meet the federal requirements for cheese found in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018); therefore, the Department proposes to add this requirement to ensure that all authorized cheese meets federal WIC requirements.

## 82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils

### PROPOSED REGULATION

#### *82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils.*

- (a) Dry Beans, Peas, or Lentils Category
- (1) Any brand and variety of dry beans, peas, or lentils are authorized in the Dry Beans, Peas, or Lentils Category when the dry beans, peas, or lentils are sold ~~in bulk or~~ in sixteen (16) ounce containers.
  - (2) Authorized varieties of dry beans, peas, or lentils include but are not limited to:
    - (A) Black;
    - (B) Black-eyed peas;
    - (C) Garbanzo (chickpeas);
    - (D) Great northern;
    - (E) Kidney;
    - (F) Lentils;
    - (G) Lima;
    - (H) Mixed;
    - (I) Navy;
    - (J) Pink;
    - (K) Pinto;
    - (L) Red; and
    - (M) Split peas.
  - (3) The following types of beans, peas, or lentils are never authorized for purchase as part of the Dry Beans, Peas, or Lentils Category:
    - (A) Canned or frozen beans, peas, or lentils;
    - (B) Dry beans, peas, or lentils with added sugars, fats, or oils;
    - (C) Dry beans, peas, or lentils with added vegetables, fruits, or meat;
    - (D) Dry beans, peas, or lentils with artificial, reduced-calorie, or no calorie sweeteners;
    - (E) Dry beans, peas, or lentils with flavors or spices or bean soup mixes with flavoring packets or spices; ~~and~~
    - (F) Soy nuts; and
    - (G) Dry beans, peas, or lentils that are sold in bulk and not pre-packaged.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for dry beans, peas, or lentils in all applicable food packages are as follows:

Any type of mature dry beans, peas, or lentils in dry-packaged or canned<sup>5</sup> forms. Examples include but are not limited to black beans, black-eyed peas, garbanzo beans (chickpeas), great northern beans, white beans (navy and pea beans), kidney beans, mature lima (“butter beans”), fava and mung beans, pinto beans, soybeans/edamame, split peas, lentils, and refried beans. All categories exclude soups. May not contain added sugars, fats, oils, vegetables, fruits or meat as purchased. Canned legumes may be regular or lower in sodium content.<sup>11</sup>

<sup>5</sup> “Canned” refers to processed food items in cans or other shelf-stable containers, e.g., jars, pouches.

<sup>11</sup> The following are not authorized in the mature legume category: soups; immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, yellow beans, and wax beans; baked beans with meat, e.g., beans and franks; and beans containing added sugars (with the exception of baked beans), fats, oils, meats, fruits or vegetables.

### *Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014), (p.38).

### *State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b)

Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *82350 WIC Authorized Food List: Dry Beans, Peas, or Lentils*

(a)(1) The Department is proposing to repeal the authorization of dry beans, peas, or lentils sold in bulk that are not pre-packaged. The Department proposes to add criteria prohibiting the sale of bulk foods, other than fresh produce, in preparation for its transition to Electronic Benefit Transfer (EBT). EBT food instrument systems require a product to be included in the Department's Authorized Product List (APL) in order to be purchased or sold through the WIC Program. As promulgated in Regulatory Bulletin 2018-01, the Department has chosen to include only IFPS PLU codes for produce in its APL because of their accepted uniform usage throughout the grocery industry.

Unlike the standardized produce PLUs, there are no standard PLUs for bulk foods. IFPS PLUs include generic codes for "retailer assignment," but grocery stores do not use these generic PLUs in a uniform manner. USDA's *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014), requires that a PLU shall occur in only one APL food category or subcategory. In order to comply with federal guidance and to prevent conflicts in the APL resulting from vendor-specific PLU product identifiers, the Department is proposing to remove all bulk foods other than fresh produce from the WIC Authorized Food List.

(a)(3)(G) The Department proposes to add dry beans, peas, or lentils sold in bulk that are not pre-packaged to the list of items prohibited for sale for the reasons described directly above in (a)(1).

## 82500 WIC Authorized Food List: Fruits and Vegetables

### PROPOSED REGULATION

#### ***82500 WIC Authorized Food List: Fruits and Vegetables.***

- (a) Fruits and Vegetables Category
  - (1) All food items authorized in the Fruits and Vegetables Category and subcategories are authorized for purchase using a cash value voucher.
  - (2) Fresh Fruits and Vegetables Subcategory
    - (A) Any type, variety, and brand of fresh fruits and vegetables in any combination is authorized in the Fresh Fruits and Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
      - 1. Organic or non-organic fresh fruits and vegetables;
      - 2. Whole or cut fresh fruits and vegetables;
      - 3. Bagged fresh fruits and vegetables;
      - 4. Bagged or packaged salad mixtures; and
      - 5. Garlic, onion, ginger, jalapeños, peppers, and chilies.
    - (B) The following foods are never authorized for purchase as part of the Fresh Fruits and Vegetables Subcategory:
      - 1. Food or products from a salad bar or deli; party trays; fruit baskets; and decorative vegetables and fruits, including but not limited to chilies or garlic on a string and painted pumpkins;
      - 2. Nuts or fruit-nut mixtures;
      - 3. Edible blossoms, such as squash blossoms;
      - 4. Bagged salad with added ingredients, such as dressing, croutons, and cheese;
      - 5. Vegetable or fruit kits with added ingredients, such as dressing, cheese, dips, or sauces;
      - 6. Dried vegetables;
      - 7. Herbs and spices, such as parsley, basil, cilantro, and mint;
      - 8. Fruits and vegetables with added fats, oils, or sugars; and
      - 9. Fruits and vegetables with artificial, reduced-calorie, or no-calorie sweeteners.
  - (3) Dried Fruits Subcategory
    - (A) Any variety, size, and brand of dried fruits without added fats, sugars, or oils in any type of container ~~or bulk~~ is authorized as part of the Dried Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:

1. Organic or non-organic dried fruits;
  2. Freeze-dried fruits; and
  3. Dried fruits with or without pits.
- (B) The following foods are never authorized for purchase as part of the Dried Fruits Subcategory:
1. Dried fruits with artificial, reduced-calorie, or no-calorie sweeteners;
  2. Dried fruits with added artificial or natural flavors, including essences;
  3. Dried or freeze-dried vegetables;
  4. Fruit snacks or fruit bites; ~~and~~
  5. Trail mix; and
  6. Dried fruits that are sold in bulk and not pre-packaged
- (4) Canned Fruits Subcategory
- (A) Any brand, variety, and size of canned fruits in any type of container that are packed in water or juice and do not contain added sugars are authorized in the Canned Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Organic or non-organic canned fruits;
  2. Natural or unsweetened applesauce; and
  3. Canned fruits mixed with canned vegetables when a fruit is listed as the first ingredient.
- (B) The following types of fruits are never authorized for purchase as part of the Canned Fruits Subcategory:
1. Canned fruits packed in syrup, such as heavy, light, or extra light syrup;
  2. Canned fruits with added sugars, salt, fats, or oils;
  3. Canned fruits with artificial, reduced-calorie, or no-calorie sweeteners;
  4. Canned fruits that do not list a fruit as the first ingredient;
  5. Canned fruit cocktail;
  6. Mixed fruit with cherries;
  7. Cranberry sauce;
  8. Pie filling; and
  9. Home-canned or home-preserved fruits.
- (5) Canned Vegetables Subcategory

- (A) Any brand, size, and variety of regular or low sodium canned vegetables in any type of container is authorized in the Canned Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
    - 1. Organic or non-organic canned vegetables;
    - 2. Sweet potatoes or yams without added sugars or syrup;
    - 3. Tomatoes or tomato products including but not limited to strained, crushed, diced, paste, or pureed tomatoes; and
    - 4. Canned vegetables mixed with canned fruits when a vegetable is listed as the first ingredient.
  - (B) The following foods are never authorized for purchase as part of the Canned Vegetables Subcategory:
    - 1. Canned tomato products with added sugars, fats, or oils;
    - 2. Canned tomato products with artificial, reduced-calorie, or no-calorie sweeteners;
    - 3. Canned vegetables with added fats or oils;
    - 4. Canned vegetable mixtures with mature beans;
    - 5. Canned vegetables that do not list a vegetable as the first ingredient;
    - 6. Pickled, creamed, or sauced canned vegetables;
    - 7. Soups, ketchup, relishes, olives, salsa, stewed tomatoes, or tomato sauces (tomato, pizza, or spaghetti);
    - 8. Canned mature beans, including but not limited to black-eyed peas, kidney beans, and pinto beans; and
    - 9. Home-canned or home-preserved vegetables.
- (6) Frozen Fruits Subcategory
- (A) Any brand, size, and variety of organic or non-organic frozen fruits in any type of container are authorized in the Frozen Fruits Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
    - 1. Frozen fruits mixed with frozen vegetables when a fruit is listed as the first ingredient.
  - (B) The following types of fruits are never authorized for purchase as part of the Frozen Fruits Subcategory:
    - 1. Frozen fruits with added ingredients, oils, salts, or sugars;
    - 2. Frozen fruits with artificial, reduced-calorie, or no-calorie sweeteners; and
    - 3. Frozen fruits that do not list a fruit as the first ingredient.

- (7) Frozen Vegetables Subcategory
- (A) Any brand, size, and variety of organic or non-organic frozen vegetables in any type of container are authorized in the Frozen Vegetables Subcategory of the Fruits and Vegetables Category. This includes but is not limited to the following:
1. Sweet potatoes or yams without added sugars or syrup;
  2. Frozen mature or immature beans; and
  3. Frozen vegetables mixed with frozen fruits when a vegetable is listed as the first ingredient.
- (B) The following types of vegetables are never authorized for purchase as part of the Frozen Vegetables Subcategory:
1. Frozen vegetables with added sugars, oils, or fats;
  2. Breaded or flavored frozen vegetables;
  3. French fries, tater tots, hash browns, or mashed potatoes;
  4. Frozen vegetables that do not list a vegetable as the first ingredient;
  5. Frozen vegetables with added ingredients, such as sauces, cheese, butter, pasta, or rice; and
  6. Frozen vegetables with artificial, reduced-calorie, or no-calorie sweeteners.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for fruits and vegetables<sup>4 5 6 8 9</sup> in all applicable food packages are as follows:

Any variety of fresh (as defined by 21 CFR 101.95) whole or cut fruit without added sugars.

Any variety of fresh (as defined by 21 CFR 101.95) whole or cut vegetable, except white potatoes, without added sugars, fats, or oils (orange yams and sweet potatoes are allowed).



Any variety of canned fruits (must conform to FDA standard of identity as appropriate (21 CFR part 145)); including applesauce, juice pack or water pack without added sugars, fats, oils, or salt (i.e., sodium). The fruit must be listed as the first ingredient.

Any variety of frozen fruits without added sugars, fats, oils, or salt (i.e., sodium).

Any variety of canned or frozen vegetables, except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, or oils. Vegetable must be listed as the first ingredient. May be regular or lower in sodium. Must conform to FDA standard of identity as appropriate (21 CFR part 155).

Any type of dried fruits or dried vegetable, except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, oils, or salt (i.e., sodium).

Any type of immature beans, peas, or lentils, fresh or in canned forms. Any type of frozen beans (immature or mature). Beans purchased with the CVV may contain added vegetables and fruits, but may not contain added sugars, fats, oils, or meat as purchased. Canned beans, peas, or lentils may be regular or lower in sodium content. State agencies must allow organic forms of WIC-eligible fruits and vegetables.

<sup>4</sup> Processed refers to frozen, canned,<sup>5</sup> or dried.

<sup>5</sup> "Canned" refers to processed food items in cans or other shelf-stable containers, e.g., jars, pouches.

<sup>6</sup> The following are not authorized: herbs and spices; creamed vegetables or vegetables with added sauces; mixed vegetables containing noodles, nuts or sauce packets, vegetable-grain (pasta or rice) mixtures; fruit-nut mixtures; breaded vegetables; fruits and vegetables for purchase on salad bars; peanuts or other nuts; ornamental and decorative fruits and vegetables such as chili peppers on a string; garlic on a string; gourds; painted pumpkins; fruit baskets and party vegetable trays; decorative blossoms and flowers, and foods containing fruits such as blueberry muffins and other baked goods. Home-canned and home-preserved fruits and vegetables are not authorized.

<sup>8</sup> Excludes white potatoes, mixed vegetables containing white potatoes, dried white potatoes; catsup or other condiments; pickled vegetables; olives; soups; juices; and fruit leathers and fruit roll-ups. Canned tomato sauce, tomato paste, salsa and spaghetti sauce without added sugar, fats, or oils are authorized.

<sup>9</sup> State agencies have the option to allow only lower sodium canned vegetables for purchase with the cash-value voucher.

*Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014), (p.38).

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *82500 WIC Authorized Food List: Fruits and Vegetables*

(a)(3)(A) The Department is proposing to repeal the authorization of dried fruits sold in bulk sold in bulk that are not pre-packaged. The Department proposes to add criteria prohibiting the sale of bulk foods, other than fresh produce, in preparation for its transition to Electronic Benefit Transfer (EBT). EBT food instrument systems require a product to be included in the Department's Authorized Product List (APL) in order to be purchased or sold through the WIC Program. As promulgated in Regulatory Bulletin 2018-01, the Department has chosen to include only IFPS PLU codes for produce in its APL because of their accepted uniform usage throughout the grocery industry.

Unlike the standardized produce PLUs, there are no standard PLUs for bulk foods. IFPS PLUs include generic codes for "retailer assignment," but grocery stores do not use these generic PLUs in a uniform manner. USDA's *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014) requires that a PLU shall occur in only one APL food category or subcategory. In order to comply with federal guidance and to prevent conflicts in the APL resulting from vendor-specific PLU product identifiers, the Department is proposing to remove all bulk foods other than fresh produce from the WIC Authorized Food List

(a)(3)(B)6. The Department proposes to add dried fruits sold in bulk that are not pre-packaged to the list of items prohibited for sale for the reasons described directly above in (a)(3)(A).

## 82550 WIC Authorized Food List: Infant Cereal

### PROPOSED REGULATION

#### *82550 WIC Authorized Food List: Infant Cereal.*

- (a) Infant Cereal Category
- (1) The following infant cereals are authorized by brand and product name in eight (8) ounce or sixteen (16) ounce containers in the Infant Cereal Category:
- ~~(A)~~ ~~Baby Basics~~ ~~Oatmeal~~;
  - ~~(B)~~ ~~Baby Basics~~ ~~Rice~~;
  - ~~(C)~~ (A) Beech-Nut — Multigrain,
  - ~~(D)~~ (B) Beech-Nut — ~~Single Grain~~ Oatmeal;
  - (C) Beech-Nut — Organic Multigrain
  - (D) Beech-Nut — Organic Oatmeal
  - (E) Beech-Nut — ~~Single Grain~~ Rice Single Grain;
  - ~~(F)~~ ~~Comforts for Baby~~ ~~Oatmeal~~;
  - ~~(G)~~ ~~Comforts for Baby~~ ~~Rice~~;
  - ~~(H)~~ ~~Early On~~ ~~Multi Grain~~;
  - ~~(I)~~ (F) Early On — Oatmeal;
  - ~~(J)~~ ~~Early On~~ ~~Rice~~;
  - ~~(K)~~ (G) Earth's Best Organic — Whole Grain Multi-Grain;
  - ~~(L)~~ (H) Earth's Best Organic — Whole Grain Oatmeal;
  - ~~(M)~~ (I) Earth's Best Organic — Whole Grain Rice;
  - (J) Gerber — Barley
  - ~~(N)~~ (K) Gerber — MultiGrain;
  - ~~(O)~~ (L) Gerber — Oatmeal;
  - ~~(P)~~ (M) Gerber — Organic Oatmeal
  - ~~(Q)~~ (N) Gerber — Organic Rice;
  - ~~(R)~~ (O) Gerber — Rice;
  - ~~(S)~~ (P) Gerber — Whole Wheat;
  - ~~(T)~~ ~~Healthy Times Special Nourish Organic~~ ~~Barley~~;
  - ~~(U)~~ ~~Healthy Times Special Nourish Organic~~ ~~Brown Rice~~;
  - ~~(V)~~ ~~Healthy Times Special Nourish Organic~~ ~~Mixed Grain~~;
  - ~~(W)~~ ~~Healthy Times Special Nourish Organic~~ ~~Oatmeal~~;

~~(X) Healthy Times Special Nourish Organic Rice;~~

~~(Q) Mom's Choice — Rice; and~~

~~(Y) Tippy Toes Oatmeal;~~

~~(Z) Tippy Toes Rice;~~

~~(AA) Up & Up Oatmeal; and~~

~~(BB) Up & Up Rice.~~

(R) Yummy Naturals — Multigrain.

- (2) The following types of infant cereal are never authorized for purchase as part of the Infant Cereal Category:
- (A) Infant cereal with added ingredients, including formula, milk, fruits, vegetables, probiotics, and DHA; and
  - (B) Infant cereal with added sugars, artificial sweeteners, reduced-calorie sweeteners, and no-calorie sweeteners.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for infant cereal in all applicable food packages are as follows:

Infant cereal must contain a minimum of 45 mg of iron per 100 g of dry cereal.<sup>12</sup>

<sup>12</sup> Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not allowed.

### *Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

### *State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *82550 WIC Authorized Food List: Infant Cereal*

(a) The Department proposes to add “Category” to the beginning of this section to make this section uniform with the other CDPH Food Category sections in Article 5.

(a)(1)(A)-(R) The Department proposes to amend the existing list of authorized infant cereals by adding and deleting products. The Department held an open submission period for infant cereals in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(2) and (a)(4) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted infant cereal products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods.

Moreover, the proposed amendments in this section include minor name changes to some authorized infant cereal products.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized infant cereals as specified below.

**Added:**

- Beech-Nut — Organic Multigrain
- Beech-Nut — Organic Oatmeal
- Gerber — Barley
- Mom's Choice — Rice
- Yummy Naturals — Multigrain

**Deleted:**

- Baby Basics — Oatmeal
- Baby Basics — Rice
- Comforts for Baby — Oatmeal
- Comforts for Baby — Rice
- Early On — Multi Grain
- Early On — Rice
- Healthy Times Special Nourish Organic — Barley
- Healthy Times Special Nourish Organic — Brown Rice
- Healthy Times Special Nourish Organic — Mixed Grain
- Healthy Times Special Nourish Organic — Oatmeal
- Healthy Times Special Nourish Organic — Rice
- Tippy Toes — Oatmeal
- Tippy Toes — Rice
- Up & Up — Oatmeal
- Up & Up — Rice

**Names Changed:**

- Beech-Nut Single Grain Rice to Beech-Nut Rice Single Grain
- Beech-Nut Single Grain Oatmeal to Beech-Nut Oatmeal

## 82600 WIC Authorized Food List: Infant Formula

### PROPOSED REGULATION

#### ***82600 WIC Authorized Food List: Infant Formula.***

- (a) Infant Formula Category
  - (1) Authorized infant formula shall be selected and prescribed for a participant by a competent professional authority. Participants may only purchase the brand, type (physical form), size, and number of prescribed cans included in their electronic benefits or printed on their food instrument(s).
  - (2) Contract Formula
    - (A) Authorized contract infant formula must meet the requirements in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2015), and is selected through a competitive bidding process. The list of the current contract formulas can be found at:  
<https://www.cdph.ca.gov/Programs/CFH/DWICSN/CDPH%20Document%20Library/WICFoods/FormulaFlyerEn.pdf>.
  - (3) Non-Contract Formula
    - (A) Non-contract brand infant formula is all infant formula that is not covered by an infant formula cost containment contract awarded by the State agency. Non-contract brand formula may only be issued in food package III for participants with qualifying conditions with medical documentation pursuant to 7 Code of Federal Regulations part 246.10(d)(1)(i) (2015).
  - (4) The following types of infant formula are never authorized for purchase as part of the Infant Formula Category:
    - (A) Low iron or no iron formula.

### AUTHORITY

#### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods:* The minimum requirements and specifications for infant formula in all applicable food packages are as follows:

Infant formula . . .

All authorized infant formulas must:

- (1) Meet the definition for an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and meet the requirements for an infant formula under section 412 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107;
- (2) Be designed for enteral digestion via an oral or tube feeding;
- (3) Provide at least 10 mg iron per liter (at least 1.5 mg iron/100 kilocalories) at standard dilution;
- (4) Provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution.
- (5) Not require the addition of any ingredients other than water prior to being served in a liquid state.

Exempt infant formula . . .

All authorized exempt infant formula must:

- (1) Meet the definition and requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107; and
- (2) Be designed for enteral digestion via an oral or tube feeding.

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.



## **STATEMENT OF REASONS**

### *82600 WIC Authorized Food List: Infant Formula*

(a)(1) This proposed amendment specifies the manner in which participants and vendors can identify authorized infant formula in an EBT transaction. The Department proposes to amend the existing infant formula regulations in preparation for its transition to EBT.

## 82650 WIC Authorized Food List: Infant Fruits and Vegetables

### PROPOSED REGULATION

#### ***82650 WIC Authorized Food List: Infant Fruits and Vegetables.***

- (a) Infant Fruits and Vegetables Category
- (1) Any infant fruits and/or vegetables product made by the brands listed in (a)(2)(A)-(Q) is authorized in the Infant Fruits and Vegetables Category when it has the all of the following characteristics:
- (A) Is sold in ~~three and a half (3.5) ounce or four (4) ounce~~ containers other than pouches;
  - (B) Is sold individually or in multi-packs;
  - (C) Is organic or non-organic;
  - (D) Lists a fruit or vegetable as the first ingredient; and
  - (E) Contains only single ingredient fruits or vegetables, or combinations of two (2) or more single ingredient fruits or vegetables.
- (2) The following brands are authorized in the Infant Fruits and Vegetables Category:
- (A) Beech-Nut;
  - (B) Early On-~~Baby~~;
  - (C) Earth's Best Organic;
  - (D) First Choice;
  - ~~(E) Full Circle;~~
  - ~~(F) (E)~~ Gerber;
  - (F) Happy Baby Organics
  - ~~(G) Healthy Times;~~
  - ~~(H) (G)~~ Mom's Natural Choice;
  - ~~(H) (H)~~ Mom's Organic Choice;
  - ~~(J) (I)~~ O Organics;
  - ~~(K) Organic;~~
  - (J) Parent's Choice
  - (K) Pic Select Fresh
  - (L) Raley's Organic;
  - ~~(M) SistaGirl;~~
  - ~~(N) (M)~~ Tippy Toes;

(N) Tippy Toes Organic;

(O) Wild Harvest;

(P) Yummy Naturals; and

(Q) Yummy Organics.

~~(3) When purchasing authorized containers of infant fruits and vegetables that are sold individually, participants may not purchase both three and a half (3.5) ounce and four (4) ounce containers using the same food instrument.~~

~~(4)~~ (3) The following infant foods are never authorized for purchase as part of the Infant Fruits and Vegetables Category:

(A) Infant fruits and vegetables in pouches;

(B) Infant fruits and vegetables mixed with cereal, meat, pasta, or rice;

(C) Infant fruits and vegetables with added sugars, salt, spices, starch, fiber, or DHA;

(D) Infant fruits and vegetables with added sweeteners including artificial, reduced-calorie, or no-calorie sweeteners;

(E) Infant fruits and vegetables that do not list a fruit or vegetable as the first ingredient;

(F) Dried or powdered infant fruits and vegetables;

(G) Infant desserts, puddings, or smoothies;

(H) Infant juice;

(I) Infant dinners; and

(J) Graduates or toddler infant food.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods:* The minimum requirements and specifications for infant fruits and vegetables in all applicable food packages are as follows:

Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced. The fruit must be listed as the first ingredient.<sup>13</sup>

<sup>13</sup> Mixtures with cereal or infant food desserts (e.g., peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) and combinations of single ingredients of fruits and/or vegetables (e.g., apples and squash) are allowed.

Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced. The vegetable must be listed as the first ingredient.<sup>14</sup>

<sup>14</sup> Combinations of single ingredients (e.g., peas and carrots) and combinations of single ingredients of fruits and/or vegetables (e.g., apples and squash) are allowed. Mixed vegetables with white potato as an ingredient (e.g., mixed vegetables) are authorized. Infant foods containing white potatoes as the primary ingredient are not authorized.

*Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *82650 WIC Authorized Food List: Infant Fruits and Vegetables*

(a)(1)(A) The Department proposes to repeal the authorization of 3.5 ounce infant fruits and vegetables because the industry no longer produces authorized container types in this size. The industry continues to manufacture infant fruits and vegetables in 3.5 ounce pouches, but the Department does not authorize infant fruits and vegetables in pouches, as specified in subsection (a)(3)(A).

(a)(2)(A-Q) The Department proposes to amend the existing list of authorized infant fruits and vegetables brands by adding and deleting brands. The Department held an open submission period for infant fruits and vegetables in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(1) and (a)(3) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their brands for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted infant fruits and vegetables brands that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to brands from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the brands’ continued eligibility for authorization. The Department also proposes to remove discontinued brands from the list of authorized foods. Moreover, the proposed amendments in this section also include minor name changes to some authorized infant fruits and vegetable brands.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized infant fruits and vegetables brands as specified below.

#### **Added:**

- Happy Baby Organics
- Parent’s Choice
- Pic Select Fresh
- Tippy Toes Organic

#### **Deleted:**

- Full Circle
- Healthy Times
- Organico
- SistaGirl

#### **Names changed:**

- Early On Baby to Early On

- Earth's Best to Earth's Best Organic

(a)~~(3)~~ The Department proposes to repeal the prohibition against mixing and matching 3.5 ounce and 4 ounce containers, in light of the proposed elimination of 3.5 ounces as an authorized container size for infant fruits and vegetables.

(a)(3) The Department proposes to re-designate current subsection (a)(4) as (a)(3).

## 82700 WIC Authorized Food List: Infant Meats

### PROPOSED REGULATION

#### ***82700 WIC Authorized Food List: Infant Meats.***

- (a) Infant Meats Category
- (1) Any infant meat or poultry product made by the brands listed in (a)(2)(A)-(K) is authorized in the Infant Meats Category when it has all of the following characteristics:
    - (A) Meat or poultry is the single major ingredient;
    - (B) Is sold in two and a half (2.5) ounce containers other than pouches;
    - (C) Is sold individually or in multi-packs;
    - (D) Is organic or non-organic; and
    - (E) May contain added broth or gravy.
  - (2) The following brands are authorized in the Infant Meats Category:
    - (A) Beech-Nut;
    - (B) Early On-Baby;
    - (C) Earth's Best Organic
    - ~~(C) First Choice;~~
    - ~~(D) Full Circle;~~
    - ~~(E) (D) Gerber;~~
    - ~~(F) (E) Mom's Natural Choice;~~
    - ~~(G) (F) O Organics;~~
    - ~~(H) (G) Raley's Organic;~~
    - ~~(I) (H) Tippy Toes;~~
    - (I) Tippy Toes Organic
    - (J) Wild Harvest; and
    - (K) Yummy Naturals.
  - (3) The following infant foods are never authorized for purchase as part of the Infant Meats Category:
    - (A) Infant meats in pouches;
    - (B) Infant meats with added sugars, salt, spices, fiber, or DHA;
    - (C) Infant meats with artificial, reduced-calorie, or no-calorie sweeteners;
    - (D) Infant meats mixed with vegetables, fruits, cereal, pasta, or rice;
    - (E) Infant dinners; and

(F) Graduates or toddler infant food.

## **AUTHORITY**

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for infant meats in all applicable food packages are as follows:

Any variety of commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy. Added sugars or salt (i.e. sodium) are not allowed. Texture may range from pureed through diced.<sup>15</sup>

<sup>15</sup> No infant food combinations (e.g., meat and vegetables) or dinners (e.g., spaghetti and meatballs) are allowed.

### *Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

### *State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints,



and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *82700 WIC Authorized Food List: Infant Meats*

(a)(2)(B-I) The Department proposes to amend the existing list of authorized infant meats brands by adding and deleting brands. As stated above, the Department held an open submission period infant meats in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(1) and (a)(3) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their brands for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted infant meats brands that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods. Moreover, the proposed amendments in this section also include a product name change.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized infant meats brands as specified below.

#### **Added:**

- Earth’s Best Organic
- Tippy Toes Organic

#### **Deleted:**

- First Choice
- Full Circle

#### **Name Changed:**

- Early On Baby to Early On

## 82750 WIC Authorized Food List: Milk

### PROPOSED REGULATION

#### **82750 WIC Authorized Food List: Milk.**

- (a) Milk Category
- (1) If no other type of milk is included in a participant's electronic benefits or is specified on a food instrument, any brand of non-organic milk that has all of the following characteristics is authorized as part of a participant's food package in the Milk Category:
    - (A) Plain fluid cow's milk;
    - (B) One percent (1%) lowfat (light) or nonfat (fat free or skim);
    - (C) Pasteurized or ultra-pasteurized; and
    - (D) Sold in one (1) gallon containers.
  - (2) Plain fluid cow's milk in half gallon containers is authorized in the Milk Category as part of a participant's food package under the following circumstances: when a participant selects a homeless food package or when the maximum monthly allowance cannot be met by issuing one (1) gallon containers. Plain fluid cow's milk in half gallon containers is only authorized for purchase when it meets the requirements in section (a)(1)(A) and (C) and only when half gallon is included in a participant's electronic benefits or is printed on a participant's food instrument.
  - (3) Whole milk is authorized in the Milk Category as part of the standard food package issuance to one-year-old children (12 through 23 months). Whole milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C), and (D) and only when it is the type of milk included in a participant's electronic benefits or is printed on a participant's food instrument. Half gallon containers of whole milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
  - (4) Two percent (2%) milk is authorized in the Milk Category as part of the participant food package issued to one-year-old children (12 through 23 months) for whom overweight or obesity is a concern when prescribed by a competent professional authority, based on an individual nutritional assessment. Two percent (2%) milk is authorized for purchase when it meets the requirements in section (a)(1)(A), (C) and (D) and only when it is included in a participant's electronic benefits or is the type of milk printed on a participant's food instrument. Half gallon containers of two percent (2%) milk are authorized only when prescribed as part of a participant's food package pursuant to section (a)(2).
  - (5) Lactose-free milk in half gallon containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Lactose free milk in half gallon containers is authorized for purchase when it meets the requirements in section (a)(1)(A)-(C) and only when half gallon lactose-free milk is included in a participant's electronic benefits or is printed

on a participant's food instrument. Whole lactose-free milk in half gallon containers is authorized in the Milk Category as part of standard food package issuance to one-year-old children when half gallon whole lactose-free milk is included in a participant's electronic benefits or is printed on a participant's food instrument.

- (6) Evaporated milk in twelve (12) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Evaporated milk that is one percent (1%) lowfat or nonfat (fat free or skim) in twelve (12) ounce containers is authorized for purchase when it meets the requirements in sections (a)(1)(B)-(C) above and only when it is the type and fat-level of milk included in a participant's electronic benefits or is printed on a participant's food. Whole evaporated milk in twelve (12) ounce containers is authorized for purchase when it meets the requirements in section (a)(1)(C) above and only when whole evaporated milk is included in a participant's electronic benefits or is printed on a participant's food instrument.
- (7) Powdered dry milk in nine and six tenths (9.6) ounce and twenty-five and six tenths (25.6) ounce containers is authorized in the Milk Category as part of a participant's food package when requested by a participant. Pasteurized powdered dry milk that is nonfat (fat free or skim) in nine and six-tenths (9.6) ounce and twenty-five and six-tenths (25.6) ounce containers is authorized for purchase only when it is included in a participant's electronic benefits or is the type of milk printed on a participant's food instrument.
- (8) The following types of milk are never authorized for purchase in the Milk Category:
  - (A) Unpasteurized (raw) milk;
  - (B) Cultured milks, such as Acidophilus milk, buttermilk, or kefir milk;
  - ~~(C) Buttermilk;~~
  - ~~(D)~~ (C) Specialty milks, other than those listed in (a)(5)-(7), such as calcium-fortified milk, milk with added DHA, Ultra Heat Treated (UHT) shelf-stable milk, A2 milk, ultra-filtered milk, or protein-fortified milk;
  - ~~(E)~~ (D) Flavored milk, including but not limited to chocolate or strawberry;
  - ~~(F)~~ (E) Goat's milk;
  - ~~(G)~~ (F) Soy milk;
  - ~~(H)~~ (G) Non-dairy milk substitutes;
  - ~~(I)~~ Milk with added DHA;
  - ~~(J)~~ (H) Milk sold in pint sized containers;
  - ~~(K)~~ (I) Milk in glass bottles;
  - ~~(L)~~ (J) Sweetened condensed or filled milk; and

- ~~(M) Ultra heat treated (UHT) shelf stable milk; and~~  
~~(N) (K) Organic milk.~~

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for milk in all applicable food packages are as follows:

Must conform to FDA standard of identity for whole, reduced fat, lowfat, or nonfat milks (21 CFR 131.110). Must be pasteurized. May be flavored or unflavored.

May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dry.

Dry whole milk must conform to FDA standard of identity (21 CFR 131.147).

Nonfat dry milk must conform to FDA standard of identity (21 CFR 131.127).

Cultured milks must conform to FDA standard of identity for cultured milk, e.g. cultured buttermilk, kefir cultured milk, acidophilus cultured milk (21 CFR 131.112).

Acidified milk must conform to FDA standard of identity for acidified milk, e.g., acidified kefir milk, acidified acidophilus milk or acidified buttermilk (21 CFR 131.111).

All reduced fat, lowfat, and nonfat cow's milk types and varieties must contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup).

### *Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, WIC Policy Memorandum #2015-06 Promising Practices in WIC Food Cost Containment (August 10, 2015).

### *State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for

enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *82750 WIC Authorized Food List: Milk*

(a)(1-7) This proposed amendment specifies the manner in which participants and vendors can identify authorized milk in an EBT food instrument system. The Department proposes to amend the existing milk regulations in preparation for its transition to EBT.

(a)(8)(B) The Department proposes to prohibit cultured milks, because they are generally more expensive than regular cow's milk. When designing food lists, WIC State agencies are responsible for authorizing "supplemental foods that are acceptable for use in their State; will be available for purchase at WIC authorized vendors; and achieve cost savings whenever possible." (WIC Policy Memorandum #2015-6.) California Code of Regulations, title 22, section 40715, subdivision (c)(1) also requires the Department to consider the "cost of foods" when designating authorized foods.

When evaluating cost of foods, the Department considers the comparative cost of available packaging types. Since food items generally cost less per unit in larger package sizes, WIC Policy Memorandum #2015-06 lists limitations on authorized package sizes as a way to achieve savings through the authorization of supplemental foods. In light of this guidance, the Department has chosen to issue plain fluid milk to participants in the largest commonly available container sizes, in order to meet the maximum monthly allowance as required by 7 Code of Federal Regulations part 246.10(e)(10), tables 2 and 3 (2018). Cultured milk is typically sold in container sizes smaller than one gallon, and costs more per ounce than plain fluid milk sold in gallon containers.

The proposed prohibition of cultured milks incorporates the existing prohibitions of acidophilus milk and buttermilk, which are types of cultured milk. Acidophilus milk is included here with no change in subsection, and buttermilk has been moved from current subsection (a)(8)(C) to this subsection. Kefir milk is included in this subsection as an additional example of a type of cultured milk.

(a)(8)(~~C~~) In these proposed amendments, the prohibition of buttermilk is retained, but is now included in subsection (a)(8)(B).

(a)(8)~~(D)~~(C) The Department proposes to prohibit specialty milks other than those listed in (a)(5)-(7) because they are generally more expensive than regular cow's milk. When designing food lists, WIC State agencies are responsible for authorizing "supplemental foods that are acceptable for use in their State; will be available for purchase at WIC authorized vendors; and achieve cost savings whenever possible." (WIC Policy Memorandum #2015-6.) California Code of Regulations, title 22, section 40715, subdivision (c)(1) also requires the Department to consider the "cost of foods" when designating authorized foods.

The proposed prohibition on the authorization of specialty milks incorporates existing prohibited types of specialty milk, including calcium-fortified milk, milk with added DHA, and ultra-heat-treated (UHT) milk. Calcium-fortified milk is included here with no change in subsection, and milk with added DHA and UHT milk have been moved from current subsections (a)(8)(I) and (a)(8)(M).

The Department is also adding ultra-filtered milk, protein-fortified milk and A2 milk as examples of additional specialty milk types that are not authorized. Ultra-filtered milk and protein-fortified milk are included in this section due to both their high cost and because they do not meet the Food and Drug Administration's Standard of Identity for milk. Pursuant to 7 Code of Federal Regulations part 246.10(e)(12), table 4, all milks authorized by the Department must meet the Food and Drug Administration's Standard of Identity for milk (21 CFR 131.110). A2 milk is included in this section because it is typically sold in container sizes smaller than one gallon, and costs more per ounce than plain fluid milk sold in gallon containers.

(a)(8)(I) In these proposed amendments, the prohibition of milk with added DHA is retained, but is now included in subsection (a)(8)(C).

(a)(8)~~(M)~~ In these proposed amendments, the prohibition of ultra heat treated (UHT) shelf-stable milk is retained, but is now included in subsection (a)(8)(C).

## 82800 WIC Authorized Food List: Peanut Butter

### PROPOSED REGULATION

#### *82800 WIC Authorized Food List: Peanut Butter.*

- (a) Peanut Butter Category
  - (1) Any brand of peanut butter is authorized in the Peanut Butter Category when it has all of the following characteristics:
    - (A) Conforms to the F.D.A. standard of identity for peanut butter in 21 Code of Federal Regulations part 164.150;
    - (B) Is sold in sixteen (16) to eighteen (18) ounce containers; and
    - (C) Is of regular or low sodium content.
  - (2) Authorized peanut butters may be any texture, such as:
    - (A) Creamy;
    - (B) Smooth;
    - (C) Crunchy;
    - (D) Super crunchy;
    - (E) Chunky;
    - (F) Super chunky; and/or
    - (G) Old fashioned or natural.
  - (3) The following varieties of peanut butter are never authorized for purchase as part of the Peanut Butter Category:
    - (A) Honey nut roasted peanut butter
    - (B) "Grind your own" peanut butter;
    - (C) Peanut butter spread;
    - (D) Lowfat or reduced fat peanut butter;
    - (E) Peanut butter with added ingredients, such as jams, jellies, chocolate, marshmallows, or honey;
    - (F) Peanut butter with added supplements, such as omega-3 fatty acids or flax seed;
    - (G) Peanut butter with artificial, reduced-calorie, or no-calorie sweeteners; and
    - (H) Organic peanut butter.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities:* State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods:* The minimum requirements and specifications for peanut butter in all applicable food packages are as follows:

Peanut butter and reduced fat peanut butter (must conform to FDA Standard of Identity (21 CFR 164.150)); creamy or chunky, regular or reduced fat, salted or unsalted forms are allowed. Peanut butters with added marshmallows, honey, jelly, chocolate or similar ingredients are not authorized.

### *State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.



## STATEMENT OF REASONS

### *82800 WIC Authorized Food List: Peanut Butter*

(a)(3)(F) The Department proposes to amend the list of prohibited types of peanut butters with added supplements to include flax seed. Flax seed is added to peanut butter to supplement it with omega-3 fatty acids; therefore, this proposed amendment provides another example of prohibited omega-3 fatty acid supplements.

## 82850 WIC Authorized Food List: Soy

### PROPOSED REGULATION

#### *82850 WIC Authorized Food List: Soy.*

- (a) Soy Category
- (1) The following soy-based beverage products are authorized in the Soy Category:
- (A) 8th Continent Soymilk
1. Original flavor; and
  2. Sold in refrigerated half gallon containers.
- ~~(B)~~ Great Value Soymilk
1. Original flavor; and
  2. Sold in refrigerated half gallon containers.
- ~~(B)~~ (C) Pacific Ultra Soy
1. Original flavor; and
  2. Sold in shelf-stable quart-sized containers.
- ~~(C)~~ (D) Silk Soymilk
1. Original flavor; and
  2. Sold in refrigerated half gallons or refrigerated quart-sized containers.
- ~~(D)~~ (E) WESTSOY Organic Plus Soymilk
1. Plain flavor; and
  2. Sold in shelf-stable ~~half gallons~~ and quart-sized containers.
- (2) All authorized soy-based beverages are authorized both individually and in multi-packs.
- (3) The following types of soy-based beverages are never authorized for purchase as part of the Soy Category:
- (A) Flavored soy-based beverage, such as chocolate or vanilla; ~~and~~
- (B) Light, lowfat, fat free, and non-fat soy-based beverage; and
- (C) Unsweetened soy-based beverage.

### AUTHORITY

#### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of

paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for soy-based beverage in all applicable food packages are as follows:

Must be fortified to meet the following nutrient levels: 276 mg calcium per cup, 8 g protein per cup, 500 IU vitamin A per cup, 100 IU vitamin D per cup, 24 mg magnesium per cup, 222 mg phosphorus per cup, 349 mg potassium per cup, 0.44 mg riboflavin per cup, and 1.1 mcg vitamin B12 per cup, in accordance with fortification guidelines issued by FDA. May be flavored or unflavored.

*Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### 82850 WIC Authorized Food List: Soy

(a)(1)(B)-(E) The Department proposes to amend the existing list of authorized soy brands and products. The Department held an open submission period for soy in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(2)-(3) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted soy products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.”

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized soy products by adding Great Value Soymilk in original flavor that is sold in refrigerated half gallons to the list of authorized products. All currently authorized products except WESTSOY’s half gallon container size were submitted during the May 2018 open submission period; the Department has determined these products still meet federal and state authorization requirements and they will, therefore, continue to be authorized.

(a)(1)(C)-(E) In light of the proposed addition of Great Value Soymilk, the Department is re-designating former subsections (a)(1)(B)-(D) as (a)(1)(C)-(E).

(a)(1)(E)2. The Department is proposing to remove WESTSOY in half gallons due to its discontinuance by the manufacturer.

(a)(3)(C) The Department is proposing to prohibit unsweetened soy-based beverage. None of the currently authorized brands produce an unsweetened soy-beverage that complies with the fortification requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018). Should a manufacturer produce an unsweetened soy beverage that complies with both 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018) and the state requirements described in subsections (a)(2) and (a)(3) of this regulation, the Department will reconsider this prohibition.

## 82900 WIC Authorized Food List: Tofu

### PROPOSED REGULATION

#### ***82900 WIC Authorized Food List: Tofu.***

(a) Tofu Category

- (1) The following tofus, as identified below by brand/product name and texture, in sixteen (16) ounce packages are authorized in the Tofu Category:

(A) Azumaya

1. Extra Firm
2. Firm
3. Silken

(B) House Foods

1. Premium Extra Firm
2. Premium Firm
3. Premium Medium Firm

(C) Nasoya

1. Organic Silken

(D) O Organics

1. Organic Sprouted Super Firm

~~(E) Wo Chong~~

- ~~1. Firm~~
- ~~2. Silken~~
- ~~3. Soft~~

- (2) The following types of tofu are never authorized for purchase as part of the Tofu Category:

- (A) Tofu with added fats, sugars, sweeteners (artificial, reduced-calorie, or no-calorie), oils, sodium, flavoring, or seasoning;
- (B) Cubed, dried, baked, or fried tofu; and
- (C) Tofu that is sold in bulk and not pre-packaged.

### AUTHORITY

*Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities:* State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for tofu in all applicable food packages are as follows:

Calcium-set tofu prepared with calcium salts (e.g., calcium sulfate). May not contain added fats, sugars, oils, or sodium. Tofu must be calcium-set, i.e., contain calcium salts, but may also contain other coagulants, i.e., magnesium chloride.

*Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

United States Department of Agriculture, Food and Nutrition Service, *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014), (p.38).

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *829000 WIC Authorized Food List: Tofu*

(a)(1)(E)1-3. The Department proposes to amend the existing list of authorized tofu brands and products. The Department held an open submission period for tofu in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(1)-(2) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted tofu products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.”

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized tofu products by deleting Wo Chong tofus from the list of authorized products. All other currently authorized products were submitted during the May 2018 open submission period for continued authorization; the Department has determined they still meet federal and state authorization requirements and they will, therefore, continue to be authorized.

# 82950 WIC Authorized Food List: Whole Grains

## PROPOSED REGULATION

### *82950 WIC Authorized Food List: Whole Grains.*

- (a) Whole Grains Category
  - (1) Brown Rice Subcategory
    - (A) Any brand of brown rice is authorized in the Brown Rice Subcategory of the Whole Grains Category when it has all of the following characteristics:
      - 1. Is sold in ~~bulk or in~~ sixteen (16) ounce packages;
      - 2. Is of any variety of brown rice, such as basmati and jasmine;
      - 3. Is short, medium, or long grain; and
      - 4. Is regular, quick, or instant.
    - (B) The following types of rice are never authorized for purchase as part of the Brown Rice Subcategory:
      - 1. Ready-to-serve rice;
      - 2. Brown rice mixed with any other type of rice; and
      - 3. Organic brown rice.
  - (2) Bulgur Subcategory
    - (A) Any brand of bulgur is authorized in the Bulgur Subcategory of the Whole Grains Category when it has the following characteristics:
      - 1. Is sold in ~~bulk or in~~ sixteen (16) ounce packages; and
      - 2. Is organic or non-organic.
  - (3) Corn Tortillas Subcategory
    - (A) The following soft corn tortillas (white or yellow), identified by brand and product name, in sixteen (16) ounce packages are authorized in the Corn Tortillas Subcategory of the Whole Grains Category:
      - ~~1. Acapulco Tortilleria Mexicatessen — King Size White Corn Tortillas~~
      - ~~2. Carlita — Corn Tortillas Soft Taco Style~~
      - 1. Chavez Supermarket — Corn Tortillas
      - ~~3~~2. Chi-Chi's — White Corn Taco Style Tortillas
      - ~~4~~3. Don Pancho — White Corn Tortillas
      - ~~5. Early On — White Corn Tortillas~~
      - ~~6. Early On — Yellow Corn Tortillas~~



- ~~7. El Comal — Corn Tortillas~~
- ~~4. El Super — Tortillas De Maiz~~
- ~~5. Essential Everyday — White Corn Tortillas 5.5" Soft Taco Style~~
- ~~8. Fiesta — Corn Tortillas~~
- ~~9. Guerrero — Tortillas de Maiz Blanco~~
- ~~10. Herdez — White Corn Tortillas Soft Taco Size~~
- ~~7. IGA — White Corn Tortillas~~
- ~~8. Kroger — Yellow Corn Tortillas~~
- ~~4 9. La Banderita — Corn Tortillas~~
- ~~2 10. La Banderita — Grande Corn Tortillas~~
- ~~11. La Banderita — Yellow Corn Tortillas~~
- ~~3 12. La Burrita — Corn Tortillas~~
- ~~14. La Fe Tortilleria — Corn Tortillas King Size~~
- ~~15. La Mexicana — Corn Tortillas~~
- ~~16. La Perla Mexicana — King Size White Corn Tortillas~~
- ~~17. La Perla Mexicana — King Size Yellow Corn Tortillas~~
- ~~18. La Rosa — Corn Tortillas La Grande~~
- ~~19. La Rosa — Yellow Corn Tortillas La Grande~~
- ~~20. La Tapatia — Premium Corn Tortillas~~
- ~~21. La Tapatia — White Corn Tortillas/Tortillas Blancas~~
- ~~22. Marcela Valladolid — White Corn Tortillas~~
- ~~23. Mi Rancho — Mama's White Corn Tortillas~~
- ~~24 13. Mi-Rancho Tortillas — Soft White Corn Tortillas~~
- ~~25 14. Mission — Yellow Corn Tortillas Extra Thin~~
- ~~26 15. Northgate Gonzalez Market — White Corn Tortillas de Maiz~~
- ~~27 16. Northgate Gonzalez Market — Yellow Corn Tortillas de Maiz~~
- ~~28 17. Ozuna — Corn Tortillas~~
- ~~29. Romero's — Stone Ground Corn Tortillas Large King Size~~
- ~~30 18. Romero's — Whole Grain Corn Tortillas~~
- ~~31. Santa Fe Tortilla Company — White Corn Tortillas~~
- ~~32. Santa Fe Tortilla Company — Yellow Corn Tortillas~~

~~33. Sol De Oro — Premium Corn Tortillas~~

19. Tortilleria Santacruz — Corn Tortillas

~~34. Vallarta Supermarkets — Vallarta Tortilla de Maiz~~

~~35. Vallarta Supermarkets — Vallarta Tortilla de Maiz Amaril~~

- (B) The following type of Corn Tortillas is never authorized for purchase as part of the Corn Tortillas Subcategory:
1. Organic Corn Tortillas.
- (4) Oatmeal or Oats Subcategory
- (A) Any brand of oatmeal or oats is authorized in the Oatmeal or Oats Subcategory of the Whole Grains Category when it has all of the following characteristics:
1. Is sold ~~in bulk or~~ in sixteen (16) ounce packages;
  2. Is plain;
  3. Is of any variety of oatmeal or oats, including old fashioned or crystal wedding;
  4. Is rolled, cut, or steel cut; and
  5. Is regular-cooking, instant-cooking, or quick-cooking.
- (B) The following types of oatmeal or oats are never authorized for purchase as part of the Oatmeal or Oats Subcategory:
1. Individual and flavored oatmeal packets; and
  2. Organic oatmeal or oats.
- (5) Whole Grain Barley Subcategory
- (A) Any brand of whole grain barley is authorized in the Whole Grain Barley Subcategory of the Whole Grains Category when it has the following characteristics:
1. Is sold ~~in bulk or~~ in sixteen (16) ounce packages; and
  2. Is organic or non-organic.
- (B) The following type of barley is never authorized for purchase as part of the Whole Grain Barley Subcategory:
1. Pearled barley.
- (6) Whole Wheat Bread Subcategory
- (A) Any brand of whole wheat bread (loaves, buns, or rolls) is authorized in the Whole Wheat Bread Subcategory of the Whole Grains Category when it has all of the following characteristics:
1. Is sold in sixteen (16) ounce packages; and
  2. The package has “100% Whole Wheat” printed on the front label.

- (B) Whole wheat bread (loaves, buns, or rolls) made by an in-store bakery is allowed if it meets the requirements of subsection (A).
  - (C) The following type of whole wheat bread is never authorized for purchase as part of the Whole Wheat Bread Subcategory:
    - 1. Organic whole wheat bread.
- (7) Whole Wheat Pasta Subcategory
- (A) The following whole wheat pastas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Pasta Subcategory of the Whole Grains Category:
    - 1. Allegra — Whole Wheat Spaghetti
    - 2. Barilla — Whole Grain Angel Hair
    - 3. Barilla — Whole Grain Elbows
    - 4. Barilla — Whole Grain Linguine
    - 5. Barilla — Whole Grain Medium Shells
    - ~~6.~~ Barilla — Whole Grain Penne
    - 7. Barilla — Whole Grain Rotini
    - ~~8.~~ Barilla — Whole Grain Spaghetti
    - 9. Barilla — Whole Grain Thin Spaghetti
    - ~~4.~~ ~~Bella Terra Organic — Organic Whole Wheat Capellini~~
    - ~~5.~~ ~~Bella Terra Organic — Organic Whole Wheat Spaghetti~~
    - ~~6~~ 10. Essential Everyday — Whole Wheat Elbow Macaroni
    - ~~7~~ 11. Essential Everyday — Whole Wheat Penne Rigate
    - ~~8~~ 12. Essential Everyday — Whole Wheat Rotini
    - ~~9~~ 13. Essential Everyday — Whole Wheat Spaghetti
    - ~~10~~ 14. Essential Everyday — Whole Wheat Thin Spaghetti
    - ~~11~~ 15. Full Circle — Organic Whole Wheat Angel Hair
    - ~~12~~ 16. Full Circle — Organic Whole Wheat Spaghetti
    - 17. Great Value — Whole Wheat Elbows
    - 18. Great Value — Whole Wheat Linguine
    - 19. Great Value — Whole Wheat Penne
    - 20. Great Value — Whole Wheat Rotini
    - ~~13~~ 21. Great Value — Whole Wheat Spaghetti
    - 22. Great Value — Whole Wheat Thin Spaghetti

- ~~44~~ 23. Hodgson Mill — Whole Wheat Angel Hair
- ~~45~~ 24. Hodgson Mill — Whole Wheat Elbows
- ~~46~~ 25. Hodgson Mill — Whole Wheat Spaghetti
- ~~47~~ 26. Hodgson Mill — Whole Wheat Spirals
- ~~48~~ 27. Hodgson Mill — Whole Wheat Thin Spaghetti
- ~~49~~ 28. Kroger — 100% Whole Grain Penne Rigate
- ~~20~~ 29. Kroger — 100% Whole Grain Rotini
- ~~24~~ 30. Kroger — 100% Whole Grain Spaghetti
- ~~22~~ 31. Kroger — 100% Whole Grain Thin Spaghetti
- 32. O Organics — Organic Whole Wheat Elbow Macaroni
- 33. O Organics — Organic Whole Wheat Linguine
- ~~23~~ 34. O Organics — Organic Whole Wheat Penne Rigate
- 35. O Organics — Organic 100% Whole Wheat Rotini
- ~~24~~ 36. O Organics — Organic Whole Wheat Spaghetti
- 37. O Organics — Organic Whole Wheat Thin Spaghetti
- ~~25~~ 38. Racconto — Whole Wheat Capellini
- ~~26~~ 39. Racconto — Whole Wheat Elbows
- ~~27~~ 40. Racconto — Whole Wheat Farfalle
- ~~28~~ 41. Racconto — Whole Wheat Linguine
- ~~29~~ 42. Racconto — Whole Wheat Penne Rigate
- ~~30~~ 43. Racconto — Whole Wheat Rigatoni
- ~~34~~ 44. Racconto — Whole Wheat Rotini
- ~~32~~ 45. Racconto — Whole Wheat Spaghetti
- ~~33~~ 46. Ronzoni Healthy Harvest — 100% Whole Grain Linguine
- ~~34~~ 47. Ronzoni Healthy Harvest — 100% Whole Grain Penne Rigate
- ~~35~~ 48. Ronzoni Healthy Harvest — 100% Whole Grain Rotini
- ~~36~~ 49. Ronzoni Healthy Harvest — 100% Whole Grain Spaghetti
- ~~37~~ 50. Ronzoni Healthy Harvest — 100% Whole Grain Thin Spaghetti
- 51. Signature Select — Whole Wheat Elbow Macaroni
- 52. Signature Select — Whole Wheat Linguine

- ~~53.~~ Signature Select — Whole Wheat Penne Rigate
- ~~54.~~ Signature Select — Whole Wheat Rotini
- ~~55.~~ Signature Select — Whole Wheat Spaghetti
- ~~56.~~ Signature Select — Whole Wheat Thin Spaghetti
- ~~38~~ 57. Simple Truth Organic — Organic Whole Wheat Penne Rigate
- ~~39~~ 58. Simple Truth Organic — Organic Whole Wheat Rotini
- ~~40~~ 59. Simple Truth Organic — Organic Whole Wheat Spaghetti
- ~~44~~ 60. Simply Balanced — Organic Whole Wheat Farfalle
- ~~42.~~ ~~Simply Balanced — Organic Whole Wheat Fusilli~~
- ~~43~~ 61. Simply Balanced — Organic Whole Wheat Penne Rigate
- ~~44~~ 62. Simply Balanced — Organic Whole Wheat Spaghetti
- ~~63.~~ Springfield — Whole Wheat Penne Rigate
- ~~64.~~ Springfield — Whole Wheat Rotini
- ~~45~~ 65. Western Family — 100% Whole Wheat Penne Rigate
- ~~46~~ 66. Western Family — 100% Whole Wheat Spaghetti
- ~~67.~~ WinCo Foods — Whole Wheat Penne
- ~~68.~~ WinCo Foods — Whole Wheat Rotini
- ~~69.~~ WinCo Foods — Whole Wheat Spaghetti

(8) Whole Wheat Tortillas Subcategory

(A) The following whole wheat tortillas, identified by brand and product name, in sixteen (16) ounce packages are authorized in the Whole Wheat Tortillas Subcategory of the Whole Grains Category:

- ~~1.~~ ~~Acapulco Tortilleria Mexicatessen — Whole Wheat Flour Tortillas~~
- ~~2.~~ ~~Carlita — 100% Whole Wheat Flour Tortillas~~
- ~~3~~ 1. Chi-Chi's — Whole Wheat Tortillas Fajita Style
- ~~4~~ 2. Don Pancho — Soft Taco Style Whole Wheat Tortillas ~~Soft Taco & Wraps Style~~
- ~~5.~~ ~~Early On — Whole Wheat Tortillas~~
- ~~6.~~ ~~El Comal — 100% Whole Wheat Flour Tortillas~~
- ~~7.~~ ~~Esperanza's Tortilleria — Whole Wheat Flour Tortillas~~
- ~~3.~~ Essential Everyday — 100% Whole Wheat Flour Tortillas
- ~~8.~~ ~~Fiesta — Whole Wheat Tortillas~~

- ~~9. Food Club — Whole Wheat Tortillas Fajita Style~~
- ~~40 4. Frestillas — 100% Whole Wheat Tortillas~~
- 5. Great Value — Whole Wheat Flour Tortillas
- ~~44 6. Guerrero — Tortillas de Harina Integral~~
- ~~42 7. Herdez — Whole Wheat Tortillas Fajita Style/Trigo Integral Fajita Style~~
- 8. IGA — Whole Wheat Tortillas Taco Style
- ~~43 9. Kroger — Soft Taco Sized 100% Whole Wheat Tortillas Soft Taco Size~~
- ~~44 10. La Banderita — 100% Whole Wheat Flour Tortillas Fajita~~
- ~~45 11. La Banderita — 100% Whole Wheat Flour Tortillas Soft Taco~~
- ~~46. La Perla Mexicana — Whole Wheat Tortillas~~
- ~~47. La Reina — Whole Wheat Flour Tortillas~~
- ~~48. La Rosa — 100% Whole Wheat Flour Tortillas~~
- ~~49. La Victoria — Whole Wheat Tortillas Soft Taco~~
- 12. Market Pantry — 100% Whole Wheat Tortillas
- ~~20. Mi Casa — Wheat Tortillas~~
- ~~24 13. Mi-Rancho Tortillas — Whole Wheat Flour Tortillas~~
- 14. Mission — 100% Whole Wheat Flour Tortillas Fajita
- ~~22 15. Mission — 100% Whole Wheat Flour Tortillas Medium-Soft Taco~~
- ~~23 16. Ortega — Whole Wheat Tortillas~~
- ~~24 17. Ozuna — Whole Wheat Tortillas~~
- ~~25. Romero's — 100% Whole Wheat Grain Flour Tortillas~~
- ~~26 18. Romero's — 100% Whole Wheat Grain Flour Tortillas Regular/Soft Taco Size~~
- ~~27. Santa Fe Tortilla Company — Whole Wheat Tortillas~~
- 19. Signature Select — Whole Wheat Flour Tortillas Soft Taco Style
- ~~28 20. Tortilleria Santacruz — 100% Whole Wheat Flour Tortillas~~
- ~~29. Vallarta Supermarkets — 100% Whole Wheat Tortillas~~
- ~~30. Vallarta Supermarkets — Tortilla de Trigo/Whole Wheat Flour Tortillas~~

(B) The following type of whole wheat tortillas is never authorized for

purchase as part of the Whole Wheat Tortillas Subcategory:

1. Organic whole wheat tortillas.
- (9) The following types of whole grains are never authorized for purchase as part of the Whole Grains Category:
- (A) Whole grains that are not plain and that have added ingredients, such as fruits, nuts, or spices;
  - (B) Bread, tortillas, rice, oats, or pasta that is refrigerated or frozen;
  - (C) Refrigerated or frozen dough and mixes;
  - (D) Whole grains with artificial, reduced-calorie, or no-calorie sweeteners;  
~~and~~
  - (E) ~~Homemade whole grains;~~ and
  - (F) Whole grains that are sold in bulk and not pre-packaged.
- ~~(10) If buying whole grains in bulk, a participant shall only purchase one type of whole grain per food instrument.~~

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for whole grains in all applicable food packages are as follows:

*Whole wheat bread* must conform to FDA standard of identity (21 CFR 136.180). (Includes whole wheat buns and rolls.) “Whole wheat flour” and/or “bromated whole wheat flour” must be the only flours listed in the ingredient list.

OR

*Whole grain bread* must conform to FDA standard of identity (21 CFR 136.110) (includes whole grain buns and rolls).

AND

Whole grain must be the primary ingredient by weight in all whole grain bread products.

AND

Must meet FDA labeling requirements for making a health claim as a “whole grain food with moderate fat content”.<sup>3</sup>

Whole Grain Options . . .

Brown rice, bulgur, oats, and whole-grain barley without added sugars, fats, oils, or salt (i.e., sodium). May be instant-, quick-, or regular-cooking.

Soft corn or whole wheat tortillas. Soft corn tortillas made from ground masa flour (corn flour) using traditional processing methods are WIC-eligible, e.g., whole corn, corn (masa), whole ground corn, corn masa flour, masa harina, and white corn flour. For whole wheat tortillas, “whole wheat flour” must be the only flour listed in the ingredient list.

Whole wheat macaroni products. Must conform to FDA standard of identity (21 CFR 139.138) and have no added sugars, fats, oils, or salt (i.e., sodium). “Whole wheat flour” and/or “whole durum wheat flour” must be the only flours listed in the ingredient list. Other shapes and sizes that otherwise meet the FDA standard of identity for whole wheat macaroni (pasta) products (139.138), and have no added sugars, fats, oils, or salt (i.e., sodium), are also authorized (e.g., whole wheat rotini, and whole wheat penne).

<sup>3</sup> FDA *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at <http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm073634.htm>

*Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

United States Department of Agriculture, Food and Nutrition Service, *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014), (p.38).

*State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;



- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### 82950 WIC Authorized Food List: Whole Grains

(a)(1)(A)1. The Department is proposing to repeal the authorization of brown rice sold in bulk that is not pre-packaged. The Department proposes to add criteria prohibiting the sale of bulk foods, other than fresh produce, in preparation for its transition to Electronic Benefit Transfer (EBT). EBT food instrument systems require a product to be included in the Department's Authorized Product List (APL) in order to be purchased or sold through the WIC Program. As promulgated in Regulatory Bulletin 2018-01, the Department has chosen to include only IFPS PLU codes for produce in its APL because of their accepted uniform usage throughout the grocery industry.

Unlike the standardized produce PLUs, there are no standard PLUs for bulk foods. IFPS PLUs include generic codes for "retailer assignment," but grocery stores do not use these generic PLUs in a uniform manner. USDA's *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014) requires that a PLU shall occur in only one APL food category or subcategory. In order to comply with federal guidance and to prevent conflicts in the APL resulting from vendor-specific PLU product identifiers, the Department is proposing to remove all bulk foods other than fresh produce from the WIC Authorized Food List.

(a)(2)(A)1. The Department is proposing to repeal the authorization of bulgur sold in bulk that is not pre-packaged. The Department proposes to add criteria prohibiting the sale of bulk foods, other than fresh produce, in preparation for its transition to Electronic Benefit Transfer (EBT). EBT food instrument systems require a product to be included in the Department's Authorized Product List (APL) in order to be purchased or sold through the WIC Program. As promulgated in Regulatory Bulletin 2018-01, the Department has chosen to include only IFPS PLU codes for produce in its APL because of their accepted uniform usage throughout the grocery industry.

Unlike the standardized produce PLUs, there are no standard PLUs for bulk foods. IFPS PLUs include generic codes for "retailer assignment," but grocery stores do not use these generic PLUs in a uniform manner. USDA's *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014) requires that a PLU shall occur in only one APL food category or subcategory. In order to comply with federal guidance and to prevent conflicts in the APL resulting from vendor-specific PLU product identifiers, the Department is proposing to remove all bulk foods other than fresh produce from the WIC Authorized Food List

(a)(3)(A)1. ~~35-19~~. The Department proposes to amend the existing list of authorized corn tortillas by adding and deleting products. The Department held an open submission period for corn tortillas in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(3)(A)-(B) and (a)(9) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all

manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted corn tortilla products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods. Moreover, the proposed amendments in this section also include minor name changes to some authorized corn tortillas.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized corn tortillas as specified below.

**Added:**

- Chavez Supermarket — Corn Tortillas
- El Super — Tortillas De Maiz
- Essential Everyday — White Corn Tortillas 5.5" Soft Taco Style
- IGA — White Corn Tortillas
- Kroger — Yellow Corn Tortillas
- La Banderita — Yellow Corn Tortillas
- Tortilleria Santacruz — Corn Tortillas

**Deleted:**

- Acapulco Tortilleria Mexicatessen — King Size White Corn Tortillas
- Carlita — Corn Tortillas Soft Taco Style
- Early On — White Corn Tortillas
- Early On — Yellow Corn Tortillas
- El Comal — Corn Tortillas
- Fiesta — Corn Tortillas
- Herdez — White Corn Tortillas Soft Taco Size
- La Fe Tortilleria — Corn Tortillas King Size
- La Mexicana — Corn Tortillas
- La Perla Mexicana — King Size White Corn Tortillas
- La Perla Mexicana — King Size Yellow Corn Tortillas
- La Rosa — Corn Tortillas La Grande
- La Rosa — Yellow Corn Tortillas La Grande
- La Tapatia — Premium Corn Tortillas
- La Tapatia — White Corn Tortillas/Tortillas Blancas
- Marcela Valladolid — White Corn Tortillas
- Mi Rancho — Mama’s White Corn Tortillas
- Romero’s — Stone Ground Corn Tortillas Large King Size
- Santa Fe Tortilla Company — White Corn Tortillas
- Santa Fe Tortilla Company — Yellow Corn Tortillas

- Sol De Oro — Premium Corn Tortillas
- Vallarta Supermarkets — Vallarta Tortilla de Maiz
- Vallarta Supermarkets — Vallarta Tortilla de Maiz Amaril

**Names Changed:**

- Northgate Gonzalez Market — White Corn Tortillas de Maiz to Northgate Market — Yellow Corn Tortillas de Maiz
- Northgate Gonzalez Market — Yellow Corn Tortillas de Maiz to Northgate Market — Yellow Corn Tortillas de Maiz

(a)(4)(A)1. The Department is proposing to repeal the authorization of oatmeal or oats sold in bulk that are not pre-packaged. The Department proposes to add criteria prohibiting the sale of bulk foods, other than fresh produce, in preparation for its transition to Electronic Benefit Transfer (EBT). EBT food instrument systems require a product to be included in the Department’s Authorized Product List (APL) in order to be purchased or sold through the WIC Program. As promulgated in Regulatory Bulletin 2018-01, the Department has chosen to include only IFPS PLU codes for produce in its APL because of their accepted uniform usage throughout the grocery industry.

Unlike the standardized produce PLUs, there are no standard PLUs for bulk foods. IFPS PLUs include generic codes for “retailer assignment,” but grocery stores do not use these generic PLUs in a uniform manner. USDA’s *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014) requires that a PLU shall occur in only one APL food category or subcategory. In order to comply with federal guidance and to prevent conflicts in the APL resulting from vendor-specific PLU product identifiers, the Department is proposing to remove all bulk foods other than fresh produce from the WIC Authorized Food List

(a)(5)(A)1. The Department is proposing to repeal the authorization of whole grain barley sold in bulk that is not pre-packaged. The Department proposes to add criteria prohibiting the sale of bulk foods, other than fresh produce, in preparation for its transition to Electronic Benefit Transfer (EBT). EBT food instrument systems require a product to be included in the Department’s Authorized Product List (APL) in order to be purchased or sold through the WIC Program. As promulgated in Regulatory Bulletin 2018-01, the Department has chosen to include only IFPS PLU codes for produce in its APL because of their accepted uniform usage throughout the grocery industry.

Unlike the standardized produce PLUs, there are no standard PLUs for bulk foods. IFPS PLUs include generic codes for “retailer assignment,” but grocery stores do not use these generic PLUs in a uniform manner. USDA’s *Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)* (September 2014) requires that a PLU shall occur in only one APL food category or subcategory. In order to comply with federal guidance and to prevent conflicts in the APL resulting from vendor-specific PLU product identifiers, the Department is proposing to remove all bulk foods other than fresh produce from the WIC Authorized Food List.

(a)(7) The Department proposes to add “Subcategory” to the beginning of this subsection to make this subsection uniform with the other CDPH Food Subcategories in Article 5.

(a)(7)(A)1.-69. The Department proposes to amend the existing list of authorized whole wheat pasta, by adding and deleting products from the authorized list of products. The

Department held an open submission period for whole wheat pasta in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(7)(A) and (a)(9) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted whole wheat pasta products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods. Moreover, the proposed amendments in this section also include minor name changes to some authorized whole wheat pastas.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized whole wheat pastas as specified below.

**Added:**

- Barilla — Whole Grain Angel Hair
- Barilla — Whole Grain Elbows
- Barilla — Whole Grain Linguine
- Barilla — Whole Grain Medium Shells
- Barilla — Whole Grain Rotini
- Barilla — Whole Grain Thin Spaghetti
- Great Value — Whole Wheat Elbows
- Great Value — Whole Wheat Linguine
- Great Value — Whole Wheat Penne
- Great Value — Whole Wheat Rotini
- Great Value — Whole Wheat Thin Spaghetti
- O Organics — Organic Whole Wheat Elbow Macaroni
- O Organics — Organic Whole Wheat Linguine
- O Organics — Organic 100% Whole Wheat Rotini
- O Organics — Organic Whole Wheat Thin Spaghetti
- Signature Select — Whole Wheat Elbow Macaroni
- Signature Select — Whole Wheat Linguine
- Signature Select — Whole Wheat Penne Rigate
- Signature Select — Whole Wheat Rotini
- Signature Select — Whole Wheat Spaghetti
- Signature Select — Whole Wheat Thin Spaghetti
- Springfield — Whole Wheat Penne Rigate
- Springfield — Whole Wheat Rotini

- WinCo Foods — Whole Wheat Penne
- WinCo Foods — Whole Wheat Rotini
- WinCo Foods — Whole Wheat Spaghetti

**Deleted:**

- Bella Terra Organic — Organic Whole Wheat Capellini
- Bella Terra Organic — Organic Whole Wheat Spaghetti
- Simply Balanced — Organic Whole Wheat Fusilli

**Names Changed:**

- Simple Truth Organic — Whole Wheat Penne Rigate to Simple Truth Organic — Organic Whole Wheat Penne Rigate
- Simple Truth Organic — Whole Wheat Rotini to Simple Truth Organic — Organic Whole Wheat Rotini
- Simple Truth Organic — Whole Wheat Spaghetti to Simple Truth Organic — Organic Whole Wheat Spaghetti

(a)(8)(A)1.-~~30~~20. The Department proposes to amend the existing list of authorized whole wheat tortillas, by adding and deleting products from the authorized list of products. The Department held an open submission period for whole wheat tortillas in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(8)(A)-(B) and (a)(9) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted whole wheat tortilla products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that “WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements.” The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products’ continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods. Moreover, the proposed amendments in this section also include minor name changes to some authorized whole wheat tortillas.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized whole wheat tortillas as specified below.

**Added:**

- Essential Everyday — 100% Whole Wheat Flour Tortillas
- Great Value — Whole Wheat Flour Tortillas
- IGA — Whole Wheat Tortillas Taco Style
- Market Pantry — 100% Whole Wheat Tortillas
- Mission — 100% Whole Wheat Flour Tortillas Fajita
- Signature Select — Whole Wheat Flour Tortillas Soft Taco Style

**Deleted:**

- Acapulco Tortilleria Mexicatessen — Whole Wheat Flour Tortillas
- Carlita — 100% Whole Wheat Flour Tortillas
- Early On — Whole Wheat Tortillas
- El Comal — 100% Whole Wheat Flour Tortillas
- Esperanza's Tortilleria — Whole Wheat Flour Tortillas
- Fiesta — Whole Wheat Tortillas
- Food Club — Whole Wheat Tortillas Fajita Style
- La Perla Mexicana — Whole Wheat Tortillas
- La Reina — Whole Wheat Flour Tortillas
- La Rosa — 100% Whole Wheat Flour Tortillas
- La Victoria — Whole Wheat Tortillas Soft Taco
- Mi Casa — Wheat Tortillas
- Romero's — 100% Whole Wheat Grain Flour Tortillas
- Santa Fe Tortilla Company — Whole Wheat Tortillas
- Vallarta Supermarkets — 100% Whole Wheat Tortillas
- Vallarta Supermarkets — Tortilla de Trigo/Whole Wheat Flour Tortillas

**Names Changed**

- Don Pancho — Whole Wheat Tortillas Soft Taco & Wraps Style to Don Pancho — Soft Taco Style Whole Wheat Tortillas Soft Taco & Wraps Style
- Herdez — Whole Wheat Tortillas Fajita Style to Herdez — Whole Wheat Tortillas Fajita Style/Trigo Integral Fajita Style
- Kroger — Soft Taco Sized 100% Whole Wheat Tortillas to Kroger — 100% Whole Wheat Tortillas Soft Taco Size
- La Banderita — Whole Wheat Flour Tortillas Fajita to La Banderita — 100% Whole Wheat Flour Tortillas Fajita

(a)(9)(F)-(a)(4) The Department proposes to prohibit whole grains sold in bulk that are not pre-packaged as described in the Statement of Reasons for subsection (a)(1)(A)1., (a)(2)(A)1., (a)(4)(A)1., and (a)(5)(A)1., above.

## 83000 WIC Authorized Food List: Yogurt

### PROPOSED REGULATION

#### ***83000 WIC Authorized Food List: Yogurt.***

- (a) Yogurt Category
- (1) Whole cow's milk yogurt is authorized in the Yogurt Category as the standard yogurt for issuance to one-year-old (12 through 23 months) children. Whole cow's milk yogurt is authorized for purchase only when whole yogurt is included in a participant's electronic benefits or is printed on the participant's food instrument.
  - (2) Lowfat and nonfat cow's milk yogurt are authorized in the Yogurt Category as part of the food packages issued to the following types of participants and only when lowfat or nonfat yogurt is included in a participant's electronic benefits or is printed on the participant's food instrument:
    - (A) Children twenty-four (24) months of age or older;
    - (B) Pregnant and partially breastfeeding women;
    - (C) Postpartum women;
    - (D) Fully breastfeeding women; and
    - (E) Children aged one-year-old (12 through 23 months) for whom overweight and obesity is a concern and when prescribed by a competent professional authority based on an individual nutritional assessment.
  - (3) The following cow's milk yogurts, as identified by brand and product name, fat level, and flavor, in thirty-two (32) ounce containers are authorized in the Yogurt Category:
    - (A) Alta Dena
      1. Plain (nonfat, lowfat, or whole)
      2. Strawberry (lowfat)
      3. Vanilla (lowfat)
    - (B) Berkeley Farms
      1. Plain (nonfat, lowfat)
      2. Strawberry (lowfat)
      3. Vanilla (lowfat)
    - ~~(B) Coburn Farms~~
      - ~~1. Plain (lowfat)~~
      - ~~2. Vanilla (lowfat)~~
    - (C) Crystal

- 1. Plain (low fat)
- ~~(G)~~ (D) Dannon
  - 1. ~~All Natural~~ Plain (nonfat, lowfat, or whole)
  - 2. Strawberry (whole)
  - ~~2~~ 3. ~~All Natural~~ Vanilla (lowfat, whole)
  - 3. ~~Strawberry (Nonfat)~~
- (E) Early On
  - 1. Plain (fat free)
  - 2. Strawberry (lowfat)
- (F) Essential Everyday
  - 1. Blended Plain (fat free, lowfat, or whole)
  - 2. Blended Strawberry (lowfat)
  - 3. Blended Vanilla (lowfat)
- ~~(D)~~ ~~Food Club~~
  - 4. ~~Plain (fat free)~~
- ~~(E)~~ (G) Great Value
  - 1. Plain (nonfat)
  - 2. Strawberry (lowfat)
  - 3. Vanilla (lowfat)
- ~~(F)~~ (H) Kroger
  - 1. Blended Plain (lowfat)
  - 2. Plain (nonfat)
- ~~(G)~~ (I) LALA
  - 1. Plain (low\_fat)
  - 2. Vanilla (low fat)
- ~~(H)~~ (J) Lucerne
  - 1. Plain (fat free, whole)
  - 2. Strawberry (lowfat)
  - 3. ~~Vanilla (lowfat)~~
- ~~(I)~~ (K) Market Pantry
  - 1. Plain (nonfat)
- ~~(J)~~ (L) Mountain High



- ~~1.~~ ~~Original Plain (whole)~~
- ~~2~~ 1. Plain (fat free, lowfat, or whole)
- ~~3~~ 2. ~~Original~~ Strawberry (whole)
- ~~4.~~ ~~Original Vanilla (whole)~~
- ~~5~~ 3. Vanilla (fat free, lowfat, or whole)
- ~~(K)~~ (M) Springfield
  - 1. ~~Blended Strawberry~~ Plain (lowfat)
  - 2. ~~Premium Plain~~ Strawberry (lowfat)
- ~~(L)~~ (N) Stater Bros.
  - 1. Plain (fat free)
  - 4 2. Blended Strawberry (lowfat)
  - 2 3. Blended Vanilla (lowfat)
  - ~~1.~~ ~~Plain (fat free, low fat)~~
- (O) Sunnyside Farms
  - 1. Original Plain (lowfat)
  - 2. Original Strawberry (lowfat)
  - 3. Original Vanilla (lowfat)
- ~~(M)~~ Tillamook
  - ~~1.~~ ~~Plain & Simple (lowfat)~~
- ~~(N)~~ (P) Western Family
  - 1. Plain (~~non fat~~, low-fat)
  - ~~2.~~ ~~Strawberry (low fat)~~
- (Q) WinCo Foods
  - 1. Plain (nonfat, whole)
  - 2. Strawberry (lowfat)
  - 3. Vanilla (lowfat)
- ~~(O)~~ (R) Yoplait
  - 1. Plain (nonfat)
  - 2. Original Strawberry (low fat)
  - 3. Original Vanilla (low fat)

(4) The following yogurts are never authorized for purchase as part of the Yogurt Category:

- (A) Any type, brand, fat level, or flavor of yogurt not listed in (a)(3), including but not limited to Greek yogurt, lactose-free yogurt, soy yogurt, and goat's milk yogurt;
- (B) Yogurt with mix-in ingredients, such as granola, candy pieces, honey, or nuts;
- (C) Drinkable yogurts;
- (D) Yogurt with artificial, reduced-calorie, or no-calorie sweeteners; and
- (E) Organic yogurt.

## AUTHORITY

### *Federal:*

7 Code of Federal Regulations part 246.10(b)(1)(i) (2018): *State agency responsibilities*: State agencies may: Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States . . . These State agency criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal.

7 Code of Federal Regulations part 246.10(b)(2)(i) (2018): *State agency responsibilities*: State agencies must identify the brands of foods and package sizes that are acceptable for use in their States in accordance with the requirements of this section.

7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018): *Minimum requirements and specifications for supplemental foods*: The minimum requirements and specifications for yogurt in all applicable food packages are as follows:

Yogurt must be pasteurized and conform to FDA standard of identity for whole fat (21 CFR 131.200), lowfat (21 CFR 131.203), or nonfat (21 CFR 131.206); plain or flavored with ≤40 g of total sugars per 1 cup yogurt. Yogurts that are fortified with vitamin A and D and other nutrients may be allowed at the State agency's option. Yogurts sold with accompanying mix-in ingredients such as granola, candy pieces, honey, nuts and similar ingredients are not authorized. Drinkable yogurts are not authorized.

### *Federal Guidelines and Instructions:*

United States Department of Agriculture, Food and Nutrition Service, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Food Package Policy and Guidance* (March 2018), (p.12).

### *State:*

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

Health and Safety Code section 123322, subdivisions (a)(3) and (b): (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in compliance with the conditions of federal funding, the department shall establish

requirements for all of the following: . . . (3) The WIC Program authorized foods. (b) Notwithstanding any other provisions of law, including the requirement in Section 123315 for enacting regulations to implement that section and Section 123310, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

California Code of Regulations, title 22, section 40715, subdivision (c)(1)-(4): The specific foods authorized shall be determined by the department based upon federal minimum nutrient requirements specified for the particular food group, programmatic needs, financial constraints, and space limitations on the face of the food instruments . . . The following criteria shall be used by the Department to designate the specific foods authorized:

- (1) Cost of the foods;
- (2) Appropriateness of foods to the participant's category;
- (3) Statewide availability of the foods for a period of at least one year; and
- (4) Nutrient content of the food, its relationship to the nutritional needs of participants, and its consistency with the nutrition education goals of the Program.

## STATEMENT OF REASONS

### *83000 WIC Authorized Food List: Yogurt*

(a)(1-2). This proposed amendment specifies the manner in which participants and vendors can identify authorized yogurt in an EBT food instrument system. The Department proposes to amend the existing yogurt regulations in preparation for its transition to EBT.

(a)(3)(A-R) The Department proposes to amend the existing list of authorized yogurts, by adding and deleting products from the authorized list of products. The Department held an open submission period for yogurt in May 2018. This submission period was intended to: 1) confirm that currently authorized products continued to meet the authorization requirements listed in 7 Code of Federal Regulations part 246.10(e)(12), table 4 (2018), and subsections (a)(1)-(4) of this regulation; and 2) solicit additional products for authorization. As part of this process, the Department sent a letter to all manufacturers known to the Department detailing how to submit their products for review. The Department also posted the open submission letter on its website in order to ensure that information regarding the submission process was publicly available to interested manufacturers.

The Department proposes to authorize all submitted yogurt products that comply with federal and state authorization requirements. In its *Food Package Guidance: A Guide for FNS Regional Offices, and WIC State and local agencies*, page 12, USDA specifies that "WIC [State Agencies] are responsible for ensuring that the foods on State-approved WIC food lists meet minimum Federal WIC requirements." The Department proposes to remove food products from the list of authorized foods if no product information was received during the submission period, since the Department was unable to verify the products' continued eligibility for authorization. The Department also proposes to remove discontinued food products from the list of authorized foods. Moreover, the proposed amendments in this section also include minor name changes to some authorized yogurts.

Based on the results of the open submission period, the Department proposes to amend the existing list of authorized yogurts as specified below.

**Added:**

- Berkeley Farms
  - Plain (nonfat, lowfat)
  - Strawberry (lowfat)
  - Vanilla (lowfat)
- Crystal
  - Plain (low fat)
- Dannon
  - Strawberry (whole)
  - Vanilla (whole)
- Early On
  - Plain (fat free)
  - Strawberry (lowfat)
- Essential Everyday
  - Blended Plain (fat free, lowfat, or whole)
  - Blended Strawberry (lowfat)
  - Blended Vanilla (lowfat)
- LALA
  - Vanilla (low fat)
- Lucerne
  - Plain (whole)
- Mountain High
  - Plain (whole)
  - Vanilla (whole)
- Sunnyside Farms
  - Original Plain (lowfat)
  - Original Strawberry (lowfat)
  - Original Vanilla (lowfat)
- WinCo Foods
  - Plain (nonfat, whole)
  - Strawberry (lowfat)
  - Vanilla (lowfat)

**Deleted:**

- Coburn Farms
  - Plain (lowfat)
  - Vanilla (lowfat)
- Dannon
  - Strawberry (Nonfat)
- Food Club
  - Plain (fat free)

- Lucerne
  - Vanilla (lowfat)
- Mountain High
  - Original Plain (whole)
  - Original Vanilla (whole)
- Stater Bros.
  - Plain (fat free, low fat)
- Tillamook
  - Plain & Simple (lowfat)
- Western Family
  - Plain (non-fat)
  - Strawberry (low-fat)

**Names Changed:**

- Dannon
  - All Natural Plain to Plain
  - All Natural Vanilla to Vanilla
- Mountain High
  - Original Strawberry to Strawberry
- Springfield
  - Blended Strawberry to Strawberry
  - Premium Plain to Plain