



KAREN L. SMITH, MD, MPH
Director and State Public Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

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REGULATORY ALERT 2018-05

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 the WIC Bulletin Regulations, Article 3, to revise sections 60000, 60100, and 60200, and 60300, 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 between December 4, 2018, and December 10, 2018, to receive input on the proposed amendments to the WIC Reimbursement System for Vendors. If you are interested in participating in this stakeholder webinar, please send an e-mail by close of business on November 27, 2018, with the subject line reading "MADR Stakeholder RSVP" to WICRegulations@cdph.ca.gov, with the following information included in the body of the e-mail:

Name:

Company Name (if applicable): Address:

E-mail Address:

Stakeholder Group Represented: (Stakeholders can include but are not limited to currently authorized WIC vendors, owners or representatives of a non-WIC authorized store, manufacturers, WIC local agency representatives, WIC participants, advocates, and consumer groups.)

CDPH will contact you by November 28, 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.



CDPH Women, Infants and Children (WIC) Division
3901 Lennane Drive MS 8600 Sacramento, CA 95834
P.O. Box 997375 MS 8600 Sacramento, CA 95899-7375
(916) 928-8500 [Division Website](http://www.wicworks.ca.gov) (www.wicworks.ca.gov)



Comment Period

CDPH will accept written comments regarding the adoption of the proposed action. The comment period will be open until December 14, 2018. Send your comments electronically to the following e-mail address:

WICRegulations@cdph.ca.gov.

If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.

Proposed Regulation

Article 3. Reimbursement System for Vendors

60000 Definitions.

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

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

(2) Authorized Product List Category. An Authorized Product List (APL) Category is the Department's classification of authorized supplemental foods by category in the APL. Examples of APL Categories include the Breakfast Cereal, Eggs, and Legumes Categories.

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

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

~~(2)~~ (5) Competitive Average Redemption Value.

(A) For the paper food instrument system, the Competitive Average Redemption Value (CARV) is a twelve (12)-week average, calculated using paper food instrument redemption data from vendors assigned to Peer Group Category B

~~Register Count Subgroups 6-9 and 10+ as defined in WIC Bulletin Regulations Section 50200~~ Large Full Line Grocers.

~~(A) 1.~~ For Unit-Priced Food Instruments: The CARV shall be calculated as a dollar sum of all redemptions for ~~Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ vendors~~ by Large Full Line Grocers for the same supplemental food across all paper food instruments for the same supplemental food that include only that supplemental food, divided by the sum of the quantity of units contained on the paper food instruments redeemed by Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors Large Full Line Grocers, rounded up to the nearest one (1) cent.

~~(B) 2.~~ For Non-Unit Priced Food Instruments: The CARV shall be calculated for each ~~Food Item Number~~ as the a dollar sum of all redemptions for ~~Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors~~ by Large Full Line Grocers, divided by the number of paper food instruments redeemed by Peer Group Category B Register Count Subgroups' 6-9+ register and 10+ register vendors Large Full Line Grocers, rounded up to the nearest one (1) cent.

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

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

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

~~(3) (6)~~ Department. The Department is ~~defined as~~ the California Department of Public Health and the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).

~~(4) (7)~~ Food Instruments, Non-Unit Priced. Non-Unit Priced Food Instruments are paper food instruments, as defined in 7 CFR Code of Federal Regulations part 246.2 and adopted by WIC Regulatory Bulletin 2012-01, that contain either a single supplemental food or a combination of various supplemental foods ~~as defined in both~~ the "What to buy" section and identified by the Food Item Number found on

the face of the paper food instrument, but do not specify a specific quantity or package size in the “What to buy” section. A food instrument containing a single supplemental food which does not specify both a specific quantity and package size prescribed in the “What to buy” section on the face of the food instrument such as 16-18 oz. of peanut butter is a non-unit priced food instrument. An example of a Non-Unit Priced Food Instrument is a paper food instrument for sixteen (16) to eighteen (18) ounces of peanut butter.

~~(5)~~ (8) Food Instruments, Unit Priced. Unit-Priced Food Instruments are paper food instruments, as defined in 7 CFR Code of Federal Regulations part 246.2 and adopted by WIC Regulatory Bulletin 2012-01, that contain either one or multiple more quantities of a single supplemental food with a specific package size such as a 12.5 oz. can of infant formula and are differentiated for quantity in both the “What to buy” section and the Food Item Number found on the face of the paper food instrument. An example of a Unit-Priced Food Instrument is a paper food instrument for two (2) twelve and a half (12.5) ounce cans of infant formula.

~~(6)~~ (9) Food Item Number. A Food Item Number is a four (4)-digit number found on the face of a paper food instrument or cash-value voucher (CVV) that corresponds to an individual supplemental food or group of supplemental foods by quantity or dollar amount.

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

~~(7)~~ (11) Maximum Allowable Department Reimbursement. The Maximum Allowable Department Reimbursement (MADR) rate for food instruments and CVVs is defined as the maximum reimbursement paid to WIC authorized vendors in exchange for providing WIC supplemental foods to program participants according to the food item number. MADR rates are determined based on the type of food instrument, e.g., paper food instruments or EBT food instruments. MADR rates for paper food instruments are calculated based on redemption by Food Item Number. MADR rates for EBT food instruments are calculated based on redemption by an authorized food product’s APL Category, APL Subcategory, and/or UPC.

~~(8)~~ (12) Peer Groups. Peer Groups are the A classification of authorized vendors into groups, based on common characteristics or criteria that affect food prices, for the purposes of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels. Regulations defining California WIC vendor Peer Groups, Categories and Register Count Subgroups are located in WIC Bulletin Regulations §section 50000 et seq.

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

~~(9)~~ (14) Statewide Average.

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

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

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

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

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

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

~~(10)~~ (15) Tolerance Factor. A Tolerance Factor is a percentage adjustment the Department applies to the CARV as part of a MADR rate calculation to account for

differences in vendor prices due to store size and the variety of brands and package sizes stocked by the store ~~as part of the MADR calculation.~~

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

(a) The MADR rate for ~~Cash-Value Vouchers (CVVs)~~ shall be the amount printed on each CVV. Vendors shall be reimbursed for CVVs as follows:

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

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

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

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

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

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

(A) If the Actual Selling Price of the quantity of fruits and vegetables chosen by a participant exceeds the MADR rate for the CVB and the participant wishes to purchase the full quantity selected, the vendor shall accept and collect payment from the participant for the amount by which the Actual Selling Price exceeds the MADR rate for the CVB.

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

(a) For all authorized food products other than fruits and vegetables, The Department shall reimburse vendors the lesser of the vendor's posted price, the ~~a~~Actual s~~S~~elling p~~P~~rice, or the MADR rate for:

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

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

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

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

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

~~(4) (3) Vendors may not seek or accept payment for any difference between~~ If the vendor's posted price or the a~~A~~ctual s~~S~~elling p~~P~~rice of the supplemental foods purchased and the MADR rate for a food instrument when the vendor's posted price or actual selling price of the supplemental foods exceeds the MADR rate, the vendor shall not seek or accept payment from a participant for any difference between the vendor's posted price or Actual Selling Price and the MADR rate.

(c) In the paper food instrument system, ~~T~~he MADR rate for a food instrument shall be assigned based on the MADR rate in effect at the time the food instrument is initially submitted by the vendor to the Department through the Vendor WIC Information eXchange (VWIX) and shall be calculated according to the vendor's assigned Peer Group Category and Subgroup as follows:

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

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

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

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

1. Single Item Food Instruments contain a single supplemental food in the “What to buy” section on the face of the food instrument.
2. Combination Food Instruments contain two (2) or more different supplemental foods ~~as found in the “What to buy” section of~~ on the face of the food instrument.

(B) Each Peer Group Category B Register Count Subgroup’s MADR rate for ~~a~~ Single Item Food Instruments shall be calculated using the Register Count Subgroup’s Tolerance Factor for Single Item Food Instruments as follows:

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

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

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

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

(d) In the EBT food instrument system, the MADR rate for an authorized food product shall be assigned based on the MADR rate in effect at the time of the transaction and shall be calculated according to the vendor’s assigned Peer Group Category and Subgroup as follows:

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

(2) The MADR rate for vendors assigned to Peer Group Categories B and C shall be calculated by adding the applicable tolerance factor to the CARV.

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

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

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

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

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

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

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

60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate.

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

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

(2) For Peer Group Category B, the MADR rate shall be calculated for all Food item Numbers for Peer Group Category B if for which there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 40+ Large Full Line Grocers with redemptions for that Food item Number during the twelve (12)-week redemption period.

(3) For Peer Group Category C, the MADR rate shall be calculated for all Food item Numbers for Peer Group Category C if for which there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ Large Full Line Grocers with redemptions for that Food item Number during the twelve (12)-week redemption period.

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

(1) For Peer Group Category A:

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

(B) When there are fewer than thirty (30) unique vendors in Peer Group Categories B and C with redemptions for an authorized food product during the

immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate calculation will default to the APL Subcategory level.

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

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

(2) For Peer Group Categories B and C:

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

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

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

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

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

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

(2) Tier Two:

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

1. Breakfast Cereal
2. Cheese
3. Dry Beans, Peas, or Lentils (Mature Seed)
4. Eggs
5. Juice
6. Milk, Low Fat (1% fat)
7. Milk, Nonfat (Fat free or Skim)
8. Milk, Whole
9. Peanut Butter
10. Soft Corn Tortillas
11. 100% Whole Wheat Bread

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

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

(3) Tier Three:

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

1. Infant Cereal
2. Infant Fruits and Vegetables
3. Infant Meats
4. Yogurt, Low Fat
5. Yogurt, Nonfat
6. Yogurt, Whole

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

(4) Tier Four:

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

1. Canned Beans

2. Evaporated Milk, Lower Fat (Skim and 1%)

3. Evaporated Milk, Whole

4. Fish

5. Lactose-free Milk, Lower Fat (Skim and 1%)

6. Lactose-free Milk, Whole

7. Milk, Reduced Fat (2%)

8. Powdered Dry Milk, Nonfat

9. Soy-Based Beverage

10. Tofu

(B) For all Tier Four Foods, the Initial EBT MADR Rates will be calculated by Benefit Unit using a substitute CARV and a Tolerance Factor of forty-nine percent (49%). The substitute CARV for each Tier Four Food will be calculated for all Peer Group Categories and Register Count Subgroups as the highest shelf price collected by the Department for that Tier Four Food from a survey of Large Full Line Grocers, divided by the number of Benefit Units for the item. When collecting shelf price data for this purpose, the Department will include data from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup, and from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2).

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

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

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

~~(1) Upon implementation of this section, if a food item number does not have at least thirty (30) unique vendors in the Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions during the immediately preceding 12-week period used for calculations the Department will make a one-time calculation to determine the MADR for food item numbers calculated as follows:~~

~~(A) The average of the MADRs for each food item number for the three 10+ register store peer groups under the peer group and MADR systems in effect prior to the implementation of this regulation shall be set as the new MADR for the 10+ register Count Subgroup for that food item number.~~

~~(B) A substitute CARV shall be derived from the new MADR calculated in (b)(1)(A) above using the calculation rules in WIC Bulletin Regulations section 60200(c). The substitute CARV shall be used as the basis for calculating all other peer group substitute MADRs.~~

~~(2) (1) When a Food Item Number does not have at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that Food Item Number during the twelve (12)-week redemption period, the Department may manually adjust the MADR rate for Peer Group Category A to comply with federal requirements of cost neutrality by comparing the simple averages of the prices at which the Food Item Number was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A.~~

~~(3) (2) When a Food Item Number does not have at least thirty (30) unique vendors in the 6-9 and 10+ Register Count Subgroups Large Full Line Grocers with redemptions during the immediately preceding twelve (12)-week period used for calculations, the previous period's MADR rate for Peer Group Category B and C vendors will remain in effect. The Department may calculate a substitute CARV for Food Item Numbers that do not have thirty (30) unique vendor redemptions of that Food Item Number in any of the preceding six (6) four (4)-week MADR calculation periods.~~

~~(A) When the Department calculates a substitute CARV for Food Item Numbers pursuant to subsection (b)(d)(2) above, the Department shall use data from the Peer Group Category B, 6-9 and 10+ Register Count Subgroups Large Full Line Grocers collected during the most recent semi-annual collection of shelf prices for determination of cost competitiveness to calculate the substitute CARV for Food Item Numbers. The substitute CARV will be determined by averaging the sum of the average prices of the foods included on the food instrument for all vendors in a peer group based on the most recent semi-annual collection of shelf prices.~~

(B) Where no submitted shelf price data is available from the semi-annual collection of shelf prices, the Department shall collect shelf price data from ~~Peer Group Category B, 6-9 and 10+ Register Count Subgroups~~ Large Full Line Grocers for calculation of a substitute CARV. When the Department collects data for this purpose, it will be from a minimum of eight (8) rural and eight (8) urban vendors ~~as those terms are as defined in California Code of Regulations, title 22, section 40740, subdivision (h)(2),~~ in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2). Using this data, the substitute CARV will be calculated as a dollar sum of all of the collected shelf prices for a food type divided by the total number of shelf prices collected.

(4) (3) The Department may manually adjust the MADR rate to temporarily accommodate extreme fluctuations in wholesale food prices as reported by price and inflation information from other California State agencies and departments or nationally recognized sources of commodity food pricing information.

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

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

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

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

the prices redeemed by Peer Group Category B and C vendors in the APL Subcategory for the next MADR cycle.

(2) For newly authorized APL Subcategories where no transaction data is available, the Department shall collect shelf price data from Large Full Line Grocers for calculation of a substitute CARV and substitute Statewide Average by Benefit Unit. When the Department collects data for this purpose, it will be from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight (8) rural vendors and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2). Using this data, the substitute CARV and substitute Statewide Average will be calculated as a dollar sum of all of the collected shelf prices for the newly authorized APL Subcategory divided by the sum of the Benefit Units for the items collected.

(3) The Department may manually adjust the MADR rate to temporarily accommodate extreme fluctuations in wholesale food prices as reported by price and inflation information from other California State agencies and departments or nationally recognized sources of commodity food pricing information.

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

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

Department shall use the low shelf prices submitted by those vendors to establish the MFRVs for eligible ~~f~~Food ~~i~~tem ~~n~~Numbers at the peer group level as follows:

(A) If the ~~f~~Food ~~i~~tem ~~n~~Number meets the criteria in subsection (e)(f) above and all food types and container sizes that comprise the ~~f~~Food ~~i~~tem ~~n~~Number are included in the Market Basket, the Department will determine the MFRV for the ~~f~~Food ~~i~~tem ~~n~~Number by summing the lowest shelf prices submitted by a vendor identified through the process in subsection (e)(f)(1) for each of the food types included on the ~~f~~Food ~~i~~tem ~~n~~Number. Any redemption amount below the MFRV shall be deemed a ~~p~~Partially-~~r~~Redeemed FI for purposes of calculating the Statewide Average.

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

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

Total Minimum Full Redemption Value \$8.50

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

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

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

1 gallon milk, lower fat	\$2.50
1 dozen eggs	\$1.50
1 (16 oz.) cheese	\$2.50
1 (16 oz.) dry beans, peas, or lentils	\$0.50
<hr/>	
Subtotal	\$7.00
1 quart milk, lower fat (no shelf price collected)	\$0.00
Total Minimum Full Redemption Value	\$7.00

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

Nature of the Regulation

CDPH is proposing amendments to the WIC Reimbursement System for Vendors in anticipation of the Department's conversion to an electronic benefit transfer food instrument system. These proposed regulatory amendments would (1) update and add definitions to reflect WIC EBT transactions; (2) establish reimbursement rules for cash value benefits; (3) establish reimbursement rules for WIC EBT transactions for authorized food products other than fruits and vegetables; (4) establish calculation rules for WIC EBT MADR rates; (5) establish initial MADR rates for the pilot and implementation of EBT in 2019; (6) 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 to 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 WIC Program through local agencies. The WIC Program was established as a result of a Congressional finding that substantial numbers of pregnant, postpartum and breastfeeding women, infants, and young children up to the age of five (5) from families with eligible income are at special risk with respect to their physical and mental health by reason of inadequate nutrition, 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 USDA, Food and Nutrition Service, pursuant to 7 Code of Federal Regulations,

part 246.

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

State:

The California WIC Program was established under the authority of Health and Safety Code section 123275 et seq. The regulations for CDPH WIC'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.

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

Regulatory Alert 2018-05: Statement of Reasons for Amendments to Sections 60000, 60100, 60200, and 60300

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

November 20, 2018

Health and Safety Code section 123322 authorizes the California Department of Public Health to establish regulations regarding the reimbursement system for the California Special Supplemental Nutrition Program for Women, Infants, and Children using a regulatory bulletin process. The Department is utilizing this process to amend these regulations. This document is intended to provide reasons why the Department is proposing to amend sections 60000, 60100, 60200, and 60300, as specified in Regulatory Alert 2018-05.

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60000 Definitions.

PROPOSED REGULATION

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

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

(2) Authorized Product List Category. An Authorized Product List (APL) Category is the Department's classification of authorized supplemental foods by category in the APL. Examples of APL Categories include the Breakfast Cereal, Eggs, and Legumes Categories.

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

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

~~(2)~~ (5) Competitive Average Redemption Value.

(A) For the paper food instrument system, the Competitive Average Redemption Value (CARV) is a twelve (12)-week average, calculated using paper food instrument redemption data from vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+ as defined in WIC Bulletin Regulations Section 50200 Large Full Line Grocers.

~~(A) 1.~~ For Unit-Priced Food Instruments: The CARV shall be calculated as a dollar sum of all redemptions for Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ vendors by Large Full Line Grocers for the same supplemental food across all paper food instruments for the same supplemental food that include only that supplemental food, divided by the sum of the quantity of units contained on the paper food instruments redeemed by Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors Large Full Line Grocers, rounded up to the nearest one (1) cent.

~~(B) 2.~~ For Non-Unit Priced Food Instruments: The CARV shall be calculated for each ~~f~~Food ~~i~~tem ~~n~~Number as the ~~a~~ dollar sum of all redemptions for ~~Peer Group Category B Register Count Subgroups' 6-9 register vendors and 10+ register vendors~~ by Large Full Line Grocers, divided by the number of paper food instruments redeemed by Peer Group Category B Register Count Subgroups' 6-9+ register and 10+ register vendors Large Full Line Grocers, rounded up to the nearest one (1) cent.

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

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

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

~~(3) (6)~~ *Department.* The Department is ~~defined as~~ the California Department of Public Health and the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).

~~(4) (7)~~ *Food Instruments, Non-Unit Priced.* Non-Unit Priced Food Instruments are paper Ffood i instruments, as defined in 7 CFR Code of Federal Regulations part 246.2 and adopted by WIC Regulatory Bulletin 2012-01, that contain either a single supplemental food or a combination of various supplemental foods as defined in both the "What to buy" section and identified by the fFood i item nNumber found on the face of the paper food instrument, but do not specify a specific quantity or package size in the "What to buy" section. A food instrument containing a single supplemental food which does not specify both a specific quantity and package size prescribed in the "What to buy" section on the face of the food instrument such as 16-18 oz. of peanut butter is a non-unit priced food instrument An example of a Non-Unit Priced Food Instrument is a paper food instrument for sixteen (16) to eighteen (18) ounces of peanut butter.

~~(5) (8)~~ *Food Instruments, Unit Priced.* Unit-Priced Food Instruments are paper Ffood i instruments, as defined in 7 CFR Code of Federal Regulations part 246.2 and adopted by WIC Regulatory Bulletin 2012-01, that contain ~~either one or multiple~~ more quantities of a single supplemental food with a specific package size

~~such as a 12.5 oz. can of infant formula and are differentiated for quantity in both the “What to buy” section and the Food Item Number found on the face of the paper food instrument. An example of a Unit-Priced Food Instrument is a paper food instrument for two (2) twelve and a half (12.5) ounce cans of infant formula.~~

~~(6) (9) Food Item Number. A Food Item Number is a four (4)-digit number found on the face of a paper food instrument or cash-value voucher (CVV) that corresponds to an individual supplemental food or group of supplemental foods by quantity or dollar amount.~~

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

~~(7) (11) Maximum Allowable Department Reimbursement. The Maximum Allowable Department Reimbursement (MADR) rate for food instruments and CVVs is defined as the maximum reimbursement paid to WIC authorized vendors in exchange for providing WIC supplemental foods to program participants according to the food item number. MADR rates are determined based on the type of food instrument, e.g., paper food instruments or EBT food instruments. MADR rates for paper food instruments are calculated based on redemption by Food Item Number. MADR rates for EBT food instruments are calculated based on redemption by an authorized food product’s APL Category, APL Subcategory, and/or UPC.~~

~~(8) (12) Peer Groups. Peer Groups are the A classification of authorized vendors into groups, based on common characteristics or criteria that affect food prices, for the purposes of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels. Regulations defining California WIC vendor Peer Groups, Categories and Register Count Subgroups are located in WIC Bulletin Regulations Section 50000 et seq.~~

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

~~(9) (14) Statewide Average.~~

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

~~(A) 1. For Unit-Priced Food Instruments: The Statewide Average shall be calculated as a dollar sum of all redemptions by Peer Group Category B and C vendors for the same supplemental food across all paper food~~

~~instruments for the same supplemental food that include only that supplemental food, divided by the sum of the Quantity of Units contained on the paper food instruments redeemed by Peer Group Category B and C vendors, rounded up to the nearest one (1) cent. This calculation shall exclude paper food instruments that are identified as partially-redeemed pursuant to section 60300, subsection (e)(f).~~

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

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

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

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

~~(10) (15) Tolerance Factor. A Tolerance Factor is a percentage adjustment the Department applies to the CARV as part of a MADR rate calculation to account for differences in vendor prices due to store size and the variety of brands and package sizes stocked by the store as part of the MADR calculation.~~

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2018): Above-50-percent vendors means vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS.

7 Code of Federal Regulations part 246.2 (2018): *Cash-value voucher* means a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables. Cash-value voucher is also known as cash-value benefit (CVB) in an EBT environment.

7 Code of Federal Regulations part 246.2 (2018): *Food instrument* means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

7 Code of Federal Regulations part 246.12(a) (2018): *General.* . . . By October 1, 2020, each State agency shall implement EBT statewide, unless granted an exemption under paragraph (w)(2) of this section.

7 Code of Federal Regulations part 246.12(a)(1) (2018): *Management.* The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

7 Code of Federal Regulations part 246.12(g)(4) (2018): *Vendor selection criteria: competitive price.* The State agency must establish a vendor peer group system and distinct competitive price criteria and allowable reimbursement levels for each peer group.

7 Code of Federal Regulations part 246.12(g)(4)(i)(D) (2018): (i) *Vendors that meet the above-50-percent criterion.* Vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS, are defined as above-50-percent vendors The State agency that chooses to authorize any above-50-percent vendors: . . .

(D) Must ensure that the prices of above-50-percent vendors do not inflate the . . . allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments at above-50-percent vendors rather than at other vendors that do not meet the above-50-percent criterion. To comply with this requirement, the State agency must compare the average cost of each type of food instrument redeemed by above-50-percent vendors against the average cost of the same type of food instrument redeemed by regular vendors. The average cost per food instrument may be weighted to reflect the relative proportion of food instruments redeemed by each category of vendors in the peer group system If average payments per food instrument for above-50-percent vendors exceed average payments per food instrument to regular vendors, then the State agency must take necessary action to ensure compliance, such as adjusting payment levels. Where EBT systems are in use, it may be more appropriate to compare prices of individual WIC food

items to ensure that average payments to above-50-percent vendors do not exceed average payments for the same food item to comparable vendors.

7 Code of Federal Regulations part 246.12(h)(3)(viii) (2018): Food instrument and cash-value voucher redemption. The vendor must submit food instruments and cash-value vouchers for redemption in accordance with the redemption procedures described in the vendor agreement. The vendor may redeem a food instrument or cash-value voucher only within the specified time period. As part of the redemption procedures, the State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor. As part of the redemption procedures, the State agency must establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group . . . In setting allowable reimbursement levels, the State agency . . . may include a factor to reflect fluctuations in wholesale prices. In establishing allowable reimbursement levels for above-50-percent vendors the State agency must ensure that reimbursements do not result in higher food costs than if participants transacted their food instruments at vendors that are not above-50-percent vendors, or in higher average payments per food instrument to above-50-percent vendors than average payments to comparable vendors. The State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the allowable reimbursement level applicable to the vendor.

State:

Health and Safety Code section 123290, subdivision (e): The department, under any program established pursuant to this article, shall . . . [d]evelop and maintain a system for the delivery of supplemental foods to recipients through the distribution of supplemental foods . . . and nutrition coupons when other methods of delivery are impractical.

Health and Safety Code section 123310: The department, under any program established pursuant to this article, shall authorize retail food vendors, by written agreement, to accept nutrition coupons and reimbursement according to the system developed by the department.

Health and Safety Code section 123315, subdivisions (a)(7)-(8): (a) The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following: . . .

(7) Accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument.

(8) Comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60000(a)(1) As part of the transition to an electronic benefit transfer (EBT) food instrument system, the Department is proposing the changes described in this paragraph in order to distinguish between the Actual Selling Price for paper food instrument transactions versus EBT transactions. First, the Department is proposing to add the word “paper” before “food instrument” in order to clarify that in this subsection, the words “food instrument” are referring to paper food instruments specifically. Second, the Department is proposing to add the phrase “or transmitted for reimbursement through an EBT capable Point of Sale System,” as well as commas before and after this phrase. The Department is proposing these changes to ensure that the definition of Actual Selling Price is applicable to EBT transactions, and not just paper food instrument transactions, ahead of the Department’s transition to EBT. In an EBT food instrument system, the California WIC card will replace paper food instruments so that when WIC participants use their California WIC card to obtain WIC supplemental foods, the Actual Selling Price will be the amount the vendor transmits for reimbursement at the time of sale.

For clarity and ease of reading, the Department is proposing to (1) add the words “the vendor” after “The Actual Selling Price is the amount” and remove the words “by a vendor” before “at the time of sale”; (2) replace the comma after the words “time of sale” with a period and remove the word “including” that followed the comma; (3) add a new sentence that starts with the words “The Actual Selling Price must take into account”; and (4) change the word “advertisement” to “advertised.” These proposed changes will not alter the substance of the regulation text.

(a)(2) As part of the transition to an EBT food instrument system, the Department is proposing to add a new definition: “Authorized Product List (APL) Category.” The APL is an electronic file of Universal Product Codes (UPCs) and Price Look-Up codes for foods authorized by the Department.¹ APL Categories are the broadest groupings of different varieties of supplemental foods that the Department uses in the APL. The Department is proposing to define the term APL Category to distinguish it from the separate and distinct categories used in regulations and other materials published by the Department and the United States Department of Agriculture (USDA). These materials include the categories of supplemental foods set forth in (1) 7 Code of Federal Regulations part 246.10; (2) the National Universal Product Code Database; (3) the National Food Category and Subcategory Table, which is created and published by the USDA; and (4) the California Department of Public Health Food Categories set forth in WIC Bulletin Regulations section 82000.

¹ The APL for the California WIC Program will be made available online.

(a)(3) As part of the transition to an EBT food instrument system, the Department is proposing to add a new definition: “Authorized Product List (APL) Subcategory.” APL Subcategories are groupings of similar supplemental foods that fall within the same APL Category. The Department is proposing to define the term APL Subcategory to distinguish it from subcategories used in regulations and other materials published by the Department and the USDA. These materials include the subcategories that are included in (1) the National Universal Product Code Database; (2) the National Food Category and Subcategory Table, created and published by the USDA; and (3) the California Department of Public Health Subcategories set forth in WIC Bulletin Regulations section 82000.

(a)(4) As part of the transition to an EBT food instrument system, the Department is proposing to add a new definition: “Benefit Unit.” The Department is proposing to define Benefit Unit as “the standard unit of measurement for an APL Subcategory.” For EBT transactions calculated at the APL Subcategory level, the Department is proposing to calculate the CARV and Statewide Average by Benefit Unit. Benefit Units will differ based on a food’s APL Subcategory. The Department is proposing to use Benefit Units to calculate MADR rates in order to accurately compare pricing for similar products with different package sizes. By dividing the prices of similar products by a common denominator, the resulting MADR rate calculations can be appropriately applied across an APL Subcategory. This definition is also being proposed in order to distinguish Benefit Units from “Quantity of Units,” as set forth in proposed subsection (a)(13), which are used to calculate the CARV and Statewide Average for Unit-Priced Food Instruments, a type of paper food instrument.

(a)(5) The Department is proposing to redesignate current subsection (a)(2) as subsection (a)(5) and move the definition in current subsection (a)(2) to proposed subsection (a)(5)(A).

(a)(5)(A) As part of the transition to an EBT food instrument system, the Department is proposing the changes described below in order to distinguish between the calculation methodology for the “Competitive Average Redemption Value (CARV)” that currently applies to paper food instrument transactions versus the proposed calculation methodology that will apply to EBT transactions. The Department is proposing to add a new subsection (a)(5)(A) under proposed subsection (a)(5) and begin proposed subsection (a)(5)(A) with the phrase “For paper food instrument transactions,” followed by a comma. The Department is also proposing to add the word “paper” before “food instrument redemption data” in order to clarify that in this subsection, the words “food instrument redemption data” are referring to redemption data for paper food instrument transactions specifically.

The Department is proposing to replace the phrase “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+ as defined in WIC Bulletin

Regulations Section 50200” with “Large Full Line Grocers.” This proposed change, which reflects the definition of “Large Full Line Grocers” set forth in proposed subsection (a)(10), replaces a lengthy description of the subgroups of vendors at issue with a shorter, more manageable description. Because proposed subsection (a)(10) defines the term “Large Full Line Grocers” as “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+ as defined in WIC Bulletin Regulations Section 50200,” this proposed change will not alter the substance of the regulation text. For clarity and ease of reading, the Department is proposing to add the word “calculated” after “(12)-week average” and before “using paper food instrument redemption data.”

The Department is proposing to make the “T” in the phrase “The Competitive Average Value Redemption (CARV)” lowercase to reflect the proposed addition of the phrase “For the paper food instrument system,” at the beginning of this subsection. The Department is also proposing to spell out the word “twelve” as well as place parentheses around the number “12” for consistency with other regulation text. These proposed changes will not alter the substance of the regulation text.

(a)(5)(A)1. In light of the proposed redesignation of subsection (a)(2) to subsection (a)(5), the Department is proposing to redesignate current subsection (a)(2)(A) as a subsection (a)(5)(A)1.

The Department is proposing to add the word “paper” before “food instruments” in order to clarify that in this subsection, the words “food instruments” are referring to paper food instruments specifically.

For clarity and ease of reading, the Department is proposing to (1) replace both uses of the phrase “Peer Group Category B Register Count Subgroups’ 6-9 register vendors and 10+ register vendors” in this subsection with the term “Large Full Line Grocers,” as defined in proposed subsection (a)(10); (2) move the phrase “for the same supplemental food” *before* “across all paper food instruments”; (3) add the words “that include only that supplemental food” after “across all paper food instruments”; (4) add the words “sum of the” before “Quantity of Units”; and (5) add the words “contained on the paper food instruments” after “Quantity of Units.” For consistency with other regulation text, the Department is proposing to (1) change the word “for,” which appears after “dollar sum of all redemptions,” to “by”; and (2) add “(1)” after “nearest one.” These proposed changes will not alter the substance of the regulation text.

(a)(5)(A)2. In light of the proposed redesignation of subsection (a)(2) to subsection (a)(5), the Department is proposing to redesignate current subsection (a)(2)(B) as subsection (a)(5)(A)2.

The Department is proposing to add the word “paper” before “food instruments” in order to clarify that in this subsection, the words “food instruments” are referring to paper food

instruments specifically. For clarity and ease of reading, the Department is proposing to replace both uses of the phrase “Peer Group Category B Register Count Subgroups’ 6-9 register vendors and 10+ register vendors” in this subsection with the term “Large Full Line Grocers,” as defined in proposed subsection (a)(10).

For consistency with other regulation text, the Department is proposing to (1) change the word “for,” which appears after “dollar sum of all redemptions,” to “by”; (2) change the word “the” that appears before “dollar sum of all redemptions” to “a”; and (3) add “(1)” after “nearest one.” These proposed changes will not alter the substance of the regulation text.

(a)(5)(B) As part of the transition to an EBT food instrument system, the Department is proposing to add new subsection (a)(5)(B) in order to define the CARV applicable to the EBT food instrument system and distinguish it from the calculation methodology for the CARV applicable to the paper food instrument system.

The Department is proposing to continue using Large Full Line Grocer data as the benchmark for MADR rate calculations for Peer Group Category B and C vendors. This will help continue to ensure cost containment as an EBT food instrument system is implemented. The Department is proposing to calculate the CARV using the dollar sum of all EBT *transactions* (the Actual Selling Prices transmitted by vendors for reimbursement), as opposed to the dollar sum of all EBT *redemptions* (the actual amounts paid to vendors). This will ensure that the CARV and, by extension, the MADR rate, accurately reflects the prices charged by Large Full Line Grocers. Department research indicates that the prices charged by Large Full Line Grocers tend to be independent of and unrelated to reimbursement rates paid by the WIC Program. As a result, if the CARV increases or decreases based on fluctuations in the prices charged by Large Full Line Grocers, these fluctuations are likely to reflect actual market conditions and should be taken into account when calculating the CARV. In calculating a CARV in the EBT food instrument system, the Department is proposing to use the calculation timeframes proposed in section 60300, subsection (b).

(a)(5)(B)1. The Department is proposing to add new subsection (a)(5)(B)1. in order to describe the methodology for calculating the CARV for the EBT food instrument system when the calculations are made at the UPC level.

The Department is proposing that for EBT transactions in which the MADR is calculated at the UPC level, the CARV would be calculated as a dollar sum of all EBT *transactions* by Large Full Line Grocers for the same UPC, divided by the quantity of UPCs redeemed. For example, if the dollar sum of all EBT transactions for the same UPC was \$1,000 and the quantity of UPCs redeemed by Large Full Line Grocers was 250, the CARV for that UPC would be \$4.

The Department is proposing to calculate MADR rates at the UPC level whenever the minimum level of transaction data, as set forth in proposed section 60300, subsection (b), is available to calculate a reliable average for use as the CARV.

In anticipation of its transition to an EBT food instrument system, the Department researched EBT reimbursement methodologies used in other states. Most states contacted are using the UPC level to establish MADR rates, with the exception of some smaller state agencies that may not have the volume of redemptions necessary to allow a UPC-level calculation. The Department has also received feedback from stakeholders that a UPC-level calculation is preferred wherever possible.

The Department is proposing to calculate the CARV at the UPC level because UPC level CARVs will better reflect the average pricing for a specific product and specific package size and require less variance from the UPC average for an appropriate MADR rate calculation. These CARVs will help the Department maintain cost containment while providing vendors with product specific MADR rates for authorized foods. If insufficient data is available to calculate a reliable average for a UPC, the Department is proposing to calculate the CARV at the APL Subcategory level.

(a)(5)(B)2. The Department is proposing to add new subsection (a)(5)(B)2. in order to describe the methodology for calculating the CARV in an EBT food instrument system when calculations are made at the APL Subcategory level.

The Department is proposing that for the EBT food instrument system, an APL Subcategory level CARV would be calculated as a dollar sum of all EBT *transactions* by Large Full Line Grocers across all UPCs within the same APL Subcategory, divided by the quantity of Benefit Units redeemed. For example, if the dollar sum of all EBT transactions by Large Full Line Grocers across all UPCs for the Whole Grain Breakfast Cereal APL Subcategory was \$1,000 and the quantity of Benefit Units redeemed by Large Full Line Grocers was 3,500 ounces (the Benefit Unit for each Breakfast Cereal APL Subcategory is an ounce), the CARV for that APL Subcategory would be 29 cents per Benefit Unit (ounce) after rounding up to the nearest one cent.

The Department is proposing to calculate MADR rates at the APL Subcategory level when insufficient data is available to calculate a reliable CARV for a UPC. When sufficient data is not available for a UPC, using average transaction data from the APL Subcategory to which a UPC belongs represents the next closest approximation of average cost for the authorized food product. Calculating a CARV at the APL Subcategory level when there are too few EBT transactions for a reliable CARV based on UPC level data ensures that a small number of individual vendor redemptions for a UPC will not inappropriately skew the CARV.

In order to accurately compare pricing for similar products with different package sizes within an APL Subcategory, the Department is proposing that when a MADR rate is calculated at the APL Subcategory level, the CARV would be calculated by Benefit Unit.

(a)(6) The Department is proposing to redesignate current subsection (a)(3) as subsection (a)(6).

For consistency with other regulation text, the Department is proposing to remove the words “defined as” after “The Department is.”

(a)(7) The Department is proposing to redesignate current subsection (a)(4) as subsection (a)(7).

The Department is proposing to add the word “paper” before both uses of the words “food instrument” in order to specify that in this subsection, the words “food instrument” refer to paper food instruments.

For clarity and ease of reading, the Department is proposing to (1) change the citation format of the reference to the federal regulation; (2) remove the words “as defined” after “various supplemental foods”; (3) add the word “both” before “the ‘What to buy’ section”; (4) move the explanation that a Non-United Priced Food Instrument does not specify a specific quantity or package size in the “What to buy” section to the first sentence of the definition; and (5) add a rephrased sentence providing an example of a Non-Unit Priced Food Instrument. These proposed changes will not alter the substance of the regulation text.

(a)(8) The Department is proposing to redesignate current subsection (a)(5) as subsection (a)(8).

The Department is proposing to add the word “paper” before both uses of the words “food instrument” in order to specify that, in this subsection, the words “food instrument” refer to paper food instruments.

For clarity and ease of reading, the Department is proposing to remove the words “such as a 12.5 oz. can of infant formula” after “quantities of a single supplemental food with a specific package size” and add a rephrased sentence providing an example of a Unit-Priced Food Instrument. These proposed changes will not alter the substance of the regulation text.

The Department is also proposing minor edits to this subsection, including (1) changing the citation format of the reference to the federal regulation; (2) adding the word “and” after “246.2”; and (3) changing the phrase “either one or multiple quantities” to “one or more quantities.” These proposed changes will not alter the substance of the regulation text.

(a)(9) The Department is proposing to redesignate current subsection (a)(6) as subsection (a)(9). The Department is proposing to add the word “paper” before “food instrument” in order to specify that, in this subsection, the words “food instrument” refer to paper food instruments.

For consistency with other regulation text, the Department is proposing to (1) add the words “Food Item Number is a” after the capital “A” at the beginning of the definition; and (2) add “(4)” after “four.” These proposed changes will not alter the substance of the regulation text.

(a)(10) For clarity and ease of reading throughout this section as well as section 60300, the Department is proposing to add a definition for “Large Full Line Grocers.” Currently, the phrase “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+, as defined in section 50200” or variations thereof appears several times throughout this section and section 60300. The proposed definition of “Large Full Line Grocers” is intended to replace these lengthy descriptions in the current regulation text with a shorter, more manageable description. The Department is proposing to characterize the two Peer Group Category B Register Count Subgroups with the highest number of registers (6-9 register and 10+ registers) as “large” based on research indicating that register count is a reasonable and verifiable means for determining a vendor’s store size.

(a)(11) The Department is proposing to redesignate current subsection (a)(7) as subsection (a)(11). As part of the transition to an EBT food instrument system, the Department is proposing changes to the definition of the term “Maximum Allowable Department Reimbursement (MADR)” to better reflect what the term MADR means in both the EBT and paper food instrument systems.

For purposes of providing a description of MADR that applies to both the EBT and paper food instruments system, the Department is proposing to (1) remove the words “for food instruments and CVVs” after “(MADR) rate”; (2) remove the phrase “according to the food item number” entirely; and (3) add a period after the words “program participants.” Because the calculation of MADR rates will depend on the type of food instrument being transacted, the Department is proposing to clarify the differences between how the MADR will be calculated depending on whether the participant is using paper food instruments or a California WIC card. These amendments do not alter how MADR will be calculated for the paper food instrument transactions. For transactions with the California WIC card, the Department is proposing to include language which clarifies that the factors set forth in the proposed amendments to sections 60100, 60200, and 60300 will be taken into account when calculating a MADR for an authorized food product.

For consistency with other regulation text, the Department is proposing to remove the words “as defined” before “the maximum reimbursement paid.” This proposed change will not alter the substance of the regulation text.

(a)(12) The Department is proposing to redesignate current subsection (a)(8) as subsection (a)(12).

For consistency with other regulation text, the Department is proposing to remove the capital “A” at the beginning of the definition and add the words “Peer Groups are the” before “classification of authorized vendors.” For clarity and ease of reading, the Department is also proposing to (1) add a comma after the words “classification of authorized vendors into groups”; (2) change the phrase “for the purpose of” to “for purposes of”; (3) remove the words “California WIC vendor” after “Regulations defining”; (4) change the plural “Peer Groups” to the singular “Peer Group” in the second sentence of the definition; and (5) remove the comma after “Peer Group” in the second sentence of the definition. For consistency with other regulation text, the Department is also proposing to remove the words “WIC Bulletin Regulations” after “located in” and change the capitalization of the first letter of the word “section” from uppercase to lowercase. These proposed changes will not alter the substance of the regulation text.

(a)(13) The Department is proposing to add a definition for “Quantity of Units.” The Department has consistently treated the term “Quantity of Units,” as used in current subsections (a)(2)(A) and (a)(9)(A), as the number of supplemental food items contained on a Unit-Priced Food Instrument. This definition is being proposed in order to distinguish Quantity of Units from “Benefit Unit,” as set forth in proposed subsection (a)(4). The proposed term Benefit Unit applies only to the EBT food instrument system.

(a)(14) The Department is proposing to redesignate current subsection (a)(9) as subsection (a)(14).

(a)(14)(A) As part of the transition to an EBT food instrument system, the Department is proposing to redesignate current subsection (a)(9) as proposed subsection (a)(14)(A) and specify that the calculation methodologies in this subsection and proposed subsections (a)(14)(A)1. and (a)(14)(A)2. apply only to paper food instruments. The Department is also proposing to make the “T” in the phrase “The Statewide Average” lowercase to reflect the proposed addition of the phrase “For paper food instrument transactions.”

For consistency with other regulation text, the Department is also proposing to spell out the word “twelve” as well as place parentheses around the number “12.” These proposed changes will not alter the substance of the regulation text.

To reflect the proposed redesignation of another subsection, the Department is proposing to change the phrase “60300(c)” to “section 60300, subsection (f).”

(a)(14)(A)1. The Department is proposing to redesignate current subsection (a)(9)(A) as subsection (a)(14)(A)1. in order to define the Statewide Average for Unit-Priced Food Instruments. The Department is also proposing to add the word “paper” before both uses of the words “food instrument” in order to clarify that in this subsection, the words “food instruments” refer to paper food instruments.

For clarity and ease of reading, the Department is proposing to (1) remove the phrase “for the same supplemental food” from its current position *after* “across all paper food instruments” and add it to appear *before* “across all paper food instruments”; (2) add the words “that include only that supplemental food” after “across all paper food instruments”; (3) add the words “sum of the” before “Quantity of Units”; and (4) add the words “contained on the paper food instruments” after “Quantity of Units.”

For consistency with other regulation text, the Department is proposing to add the phrase “by Peer Group Category B and C vendors” after “dollar sum of all redemptions.” This phrase was previously omitted in error and the addition of this language is consistent with the Department’s longstanding calculation methodology for Unit-Priced Food Instruments as well as the parallel provision in current subsection (a)(9)(B). for Non-Unit Priced Food Instruments. Also for consistency, the Department is proposing to add “(1)” after “nearest one.” These proposed changes will not alter the substance of the regulation text.

To reflect the proposed redesignation of another subsection, the Department is proposing to change the phrase “60300(c)” to “section 60300, subsection (f).” (a)(14)(A)2. The Department is proposing to redesignate current subsection (a)(9)(B) as subsection (a)(14)(A)2. in order to define the Statewide Average for Non-Unit Priced Food Instruments. The Department is also proposing to add the word “paper” before both uses of the words “food instrument” in order to clarify that in this subsection, the words “food instruments” refer only to paper food instruments.

For consistency with other regulation text, the Department is proposing to (1) change the phrase “the sum of all redemptions” to “a dollar sum of all redemptions”; change the word “of” that appears after “sum of all redemptions” to “by”; (3) change the phrase “Peer Group Category B and C” to “Peer Group Category B and C vendors,” followed by a comma; and (4) add “(1)” after the word “one” and before “cent.” These proposed changes will not alter the substance of the regulation text.

To reflect the proposed redesignation of another subsection, the Department is proposing to change the phrase “60300(c)” to “section 60300, subsection (f).”

(a)(14)(B) As part of the transition to an EBT food instrument system, the Department is proposing to add new section (a)(14)(B) in order to define the term Statewide Average for the EBT food instrument system and to distinguish the proposed Statewide Average

calculation methodology applicable to EBT redemptions from the current Statewide Average calculation methodology for paper food instrument redemptions.

(a)(14)(B)1. The Department is proposing to add new subsection (a)(14)(B)1. in order to describe the proposed methodology for calculating the Statewide Average for the EBT food instrument system when the calculations are made at the UPC level.

The Department is proposing in an EBT food instrument system, when the MADR rate is calculated at the UPC level, the Statewide Average will be calculated as a dollar sum of all EBT redemptions by Peer Group Category B and C vendors for the same UPC, divided by the quantity of UPCs redeemed by those vendors. This figure would then be rounded up to the nearest one cent. For example, if the dollar sum of all EBT redemptions for the same UPC was \$1,500 and the quantity of UPCs redeemed by Peer Group Category B and C Vendors was 300, the Statewide Average for that UPC would be \$5.

The Department is proposing to calculate the Statewide Average using the dollar sum of all EBT *redemptions*, as opposed to the dollar sum of all EBT *transactions*. This will help ensure payments to above-50-percent vendors do not exceed average payments to all other vendors, as required by federal regulation. (7 C.F.R. § 246.12(g)(4)(i)(D).) The Department is proposing to calculate MADR rates at the UPC level whenever the minimum level of transaction data from Peer Groups B and C is available to calculate a reliable average for use as the Statewide Average.

In anticipation of the transition to an EBT food instrument system, the Department researched EBT payment methodologies used in other states. Most states contacted are using the UPC level to establish MADR rates, with the exception of some smaller state agencies that may not have the volume of redemptions necessary to allow a UPC-level calculation.

The Department is proposing to calculate the Statewide Average at the UPC level when sufficient data is available because UPC level Statewide Averages will better reflect the average pricing for a specific product and specific package size and require less variance from the UPC average for an appropriate MADR rate calculation. These Statewide Averages will help the Department maintain cost containment while providing vendors with product specific MADR rates for authorized foods. If insufficient data is available to calculate a reliable average for a UPC, the Department is proposing to calculate the Statewide Average at the APL Subcategory level.

(a)(14)(B)2. The Department is proposing to add subsection (a)(14)(B)2. in order to describe the proposed methodology for calculating the Statewide Average for the EBT food instrument system when the calculations are made at the APL Subcategory level. The Department is proposing that for the EBT food instrument system, an APL Subcategory level Statewide Average would be calculated as the dollar sum of all EBT

redemptions by Peer Group Category B and C vendors across all UPCs within the same APL Subcategory, divided by the quantity of Benefit Units redeemed by those vendors. For example, if the dollar sum of all EBT redemptions by Peer Group Category B and C vendors across all UPCs for the Whole Grain Breakfast Cereal APL Subcategory was \$1000 and the quantity of Benefit Units redeemed by Peer Group Category B and C vendors was 3,100 ounces (the applicable Benefit Unit for each of the Breakfast Cereal APL Subcategories), the Statewide Average for that APL Subcategory would be 32 cents per Benefit Unit (ounce).

The Department is proposing to calculate the Statewide Average at the APL Subcategory level when the minimum level of redemption data is not available to calculate a reliable average at the UPC level. When sufficient data is not available, using average redemption data from the APL Subcategory level to which the UPC belongs represents the next closest approximation of average cost for the authorized food product.

Some authorized food products are only sold by Peer Group Category A vendors, making it impossible to calculate a Statewide Average using redemption data from Peer Group Category B and C vendors at the UPC level. Calculating a Statewide Average at the APL Subcategory level when there are few or no Peer Group Category B and C EBT redemptions for a UPC will provide the Department the data set necessary to calculate a reliable average. Using an APL Subcategory level calculation will help ensure the Statewide Average does not result in higher total food costs if program participants transact their food instruments at Peer Group Category A vendors rather than at Peer Group Category B or C vendors.

In order to accurately compare pricing for similar products with different package sizes within an APL Subcategory, the Department is proposing that when MADR rate is calculated at the APL Subcategory level, the Statewide Average would be calculated by Benefit Unit.

(a)(15) The Department is proposing to redesignate current subsection (a)(10) as subsection (a)(15).

For clarity and ease of reading, the Department is proposing to (1) add the words “the Department” after “percentage adjustment”; (2) change the word “applied” “applies”; and (3) move the phrase “as part of the MADR calculation” after “applies to the CARV” so that the relevant phrase will be “A Tolerance Factor is a percentage adjustment the Department applies to the CARV as part of the MADR calculation...” For consistency with other regulation text, the Department is proposing to add the words “Tolerance Factor is a” after the capital “A” at the beginning of the definition and before “percentage adjustment.” These proposed changes will not alter the substance of the regulation text.

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

PROPOSED REGULATION

(a) The MADR rate for ~~Cash-Value Vouchers (CVVs)~~ shall be the amount printed on each CVV. Vendors shall be reimbursed for CVVs as follows:

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

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

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

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

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

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

(A) If the Actual Selling Price of the quantity of fruits and vegetables chosen by a participant exceeds the MADR rate for the CVB and the participant wishes to purchase the full quantity selected, the vendor shall accept and collect payment from the participant for the amount by which the Actual Selling Price exceeds the MADR rate for the CVB.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2018): *Cash-value voucher* means a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables. Cash-value voucher is also known as cash-value benefit (CVB) in an EBT environment.

7 Code of Federal Regulations part 246.2 (2018): *Electronic Benefit Transfer (EBT)* means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

7 Code of Federal Regulations part 246.12(a) (2018): *General.* . . . By October 1, 2020, each State agency shall implement EBT statewide, unless granted an exemption under paragraph (w)(2) of this section.

7 Code of Federal Regulations part 246.12(f)(4) (2018): *Split tender transactions.* The State agency must implement procedures that allow the participant, authorized representative or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of the cash-value vouchers.

7 Code of Federal Regulations part 246.12(h)(3)(v) (2018): *Purchase price on food instruments and cash-value vouchers.* The vendor must ensure that the purchase price is entered on food instruments and cash-value vouchers in accordance with the procedures described in the vendor agreement. . . . The purchase price must include only the authorized supplemental food items actually provided and must be entered on the food instrument or cash-value voucher before it is signed.

7 Code of Federal Regulations part 246.12(h)(3)(x) (2018): *No charge for authorized supplemental foods or restitution from participants.* The vendor may not charge participants, parents or caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments or cash-value vouchers. In addition, the vendor may not seek restitution from these individuals for food instruments or cash-value vouchers not paid or partially paid by the State agency.

7 Code of Federal Regulations part 246.12(h)(3)(xi) (2018): *Split tender for cash-value vouchers.* The vendor must allow the participant, authorized representative or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of the cash-value vouchers (also known as a split tender transaction).

State:

Health & Safety Code section 123315 subdivision (a)(7)-(8): The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following: . . .

(7) Accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument.

(8) Comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60100(a)(1) For clarity, the Department is proposing to add “of fruits and vegetables” after “the cost of the quantity.” Pursuant to 7 Code of Federal Regulations part 246.10, cash-value vouchers (CVVs) are used by WIC participants to obtain only authorized fruits and vegetables.

(a)(2) For clarity, the Department is proposing to add “for the CVV” after “exceeds the MADR rate.” For ease of reading, the Department is proposing to eliminate “fruit and vegetable” before “CVV.”

(a)(2)(A) For clarity, the Department is proposing to add “the quantity of” in front of “fruits and vegetables chosen by a participant.” For ease of reading, the Department is proposing to eliminate “fruit and vegetable” before “CVV.”

(b) A CVV can be referred to as a cash-value benefit (CVB) in an EBT food instrument system. (7 C.F.R. § 246.2.) Unlike paper CVVs which participants must use in a single transaction, CVBs will provide participants with a fixed dollar amount that may be used in multiple transactions during the benefit period until the total amount of funds issued have been used. In light of the changes to the redemption of the fruit and vegetable benefits in an EBT food instrument system, the Department is proposing to make the MADR rate for a CVB the amount of the CVB balance in a participant’s electronic benefits at the time of the transaction. The amount of the CVB balance in a participant’s electronic benefits is the amount of the CVB issued to the participant each month, minus the amount of any prior fruit and vegetable redemptions during the month of issuance.

(b)(1) The Department is proposing to reimburse vendors the Actual Selling Price for the fruits and vegetables if the cost of the quantity of fruits and vegetables purchased by the participant is less than the MADR rate for the CVB. Pursuant to 7 Code of Federal Regulation part 246.12(h)(3)(v), the purchase price a vendor enters for reimbursement must include only the price of authorized supplemental food items actually provided to the participant. A vendor who charges the Department for amounts in excess of the

Actual Selling Price of the authorized fruits and vegetables provided to the participant has overcharged the WIC Program, as defined in California Code of Regulations, title 22, section 40740, subdivision (e)(3)(A).

(b)(2) The Department is proposing to reimburse vendors the MADR rate if the Actual Selling Price of the quantity of fruits and vegetables purchased by the participant equals or exceeds the MADR. 7 Code of Federal Regulations part 246.10 sets out the maximum cash value benefits a participant may be issued each month; the Department may not reimburse vendors for participant purchases in excess of a participant's available CVB balance.

(b)(2)(A) 7 Code of Federal Regulations part 246.12(f)(4) requires the Department to implement procedures that allow the participants to pay the difference when their CVB balance is insufficient to cover the cost of the fruit and vegetables selected. In accordance with this federal requirement mandate, the Department is proposing that vendors must permit participants to pay the difference between the Actual Selling Price of authorized fruits and vegetables selected and their CVB balance when the cost of the fruits and vegetables selected exceeds their CVB balance. As required by 7 Code of Federal Regulation part 246.12(h)(3)(x) and (xi), vendors may not permit participants to pay the difference between the purchase price and the Department's MADR rate when transacting any other type of food instrument or electronic benefit.

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

PROPOSED REGULATION

(a) For all authorized food products other than fruits and vegetables, The Department shall reimburse vendors the lesser of the vendor's posted price, the ~~a~~Actual s~~S~~elling p~~P~~rice, or the MADR rate for:

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

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

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

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

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

~~(1) (3) Vendors may not seek or accept payment for any difference between~~ If the vendor's posted price or the a~~A~~ctual s~~S~~elling p~~P~~rice of the supplemental foods purchased and the MADR rate for a food instrument when the vendor's posted price or actual selling price of the supplemental foods exceeds the MADR rate, the vendor shall not seek or accept payment from a participant for any difference between the vendor's posted price or Actual Selling Price and the MADR rate.

(c) In the paper food instrument system, ~~T~~he MADR rate for a food instrument shall be assigned based on the MADR rate in effect at the time the food instrument is initially submitted by the vendor to the Department through the Vendor WIC Information eXchange (VWIX) and shall be calculated according to the vendor's assigned Peer Group Category and Subgroup as follows:

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

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

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

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

1. Single Item Food Instruments contain a single supplemental food in the “What to buy” section on the face of the food instrument.
2. Combination Food Instruments contain two (2) or more different supplemental foods as found in the “What to buy” section of on the face of the food instrument.

(B) Each Peer Group Category B Register Count Subgroup’s MADR rate for a Single Item Food Instruments shall be calculated using the Register Count Subgroup’s Tolerance Factor for Single Item Food Instruments as follows:

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

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

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

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

(d) In the EBT food instrument system, the MADR rate for an authorized food product shall be assigned based on the MADR rate in effect at the time of the transaction and shall be

calculated according to the vendor's assigned Peer Group Category and Subgroup as follows:

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

(2) The MADR rate for vendors assigned to Peer Group Categories B and C shall be calculated by adding the applicable tolerance factor to the CARV.

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

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

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

1. Peer Group Category B, 1-2 Register Count Subgroup: 49% of CARV

2. Peer Group Category B, 3-5 Register Count Subgroup: 43% of CARV

3. Peer Group Category B, 6-9 Register Count Subgroup: 37% of CARV

4. Peer Group Category B, 10+ Register Count Subgroup: 31% of CARV

5. Peer Group Category C: 25% of CARV

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

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

1. Peer Group Category B, 1-2 Register Count Subgroup: 55% of CARV

2. Peer Group Category B, 3-5 Register Count Subgroup: 49% of CARV

3. Peer Group Category B, 6-9 Register Count Subgroup: 43% of CARV

4. Peer Group Category B, 10+ Register Count Subgroup: 37% of CARV

5. Peer Group Category C: 31% of CARV

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2018): *Electronic Benefit Transfer (EBT)* means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

7 Code of Federal Regulations part 246.2 (2018): *Food instrument* means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

7 Code of Federal Regulations part 246.12(a) (2018): *General*. . . . By October 1, 2020, each State agency shall implement EBT statewide, unless granted an exemption under paragraph (w)(2) of this section.

7 Code of Federal Regulations part 246.12(g)(4) (2018): *Vendor selection criteria: competitive price*. The State agency must establish a vendor peer group system and distinct competitive price criteria and allowable reimbursement levels for each peer group.

7 Code of Federal Regulations part 246.12(g)(4)(i)(D) (2018): (i) *Vendors that meet the above-50-percent criterion*. Vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS, are defined as above-50-percent vendors The State agency that chooses to authorize any above-50-percent vendors: . . .

(D) Must ensure that the prices of above-50-percent vendors do not inflate the . . . allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments at above-50-percent vendors rather than at other vendors that do not meet the above-50-percent criterion. To comply with this requirement, the State agency must compare the average cost of each type of food instrument redeemed by above-50-percent vendors against the average cost of the same type of food instrument redeemed by regular vendors. The average cost per food instrument may be weighted to reflect the relative proportion of food instruments redeemed by each category of vendors in the peer group system If average payments per food instrument for above-50-percent vendors exceed average payments per food instrument to regular vendors, then the State agency must take necessary action to ensure compliance, such as adjusting payment levels. Where EBT systems are in use, it may be more appropriate to compare prices of individual WIC food items to ensure that average payments to above-50-percent vendors do not exceed average payments for the same food item to comparable vendors.

7 Code of Federal Regulations part 246.12(h)(3)(v) (2018): Purchase price on food instruments and cash-value vouchers. The vendor must ensure that the purchase price is entered on food instruments and cash-value vouchers in accordance with the procedures described in the vendor agreement The purchase price must include only the authorized supplemental food items actually provided and must be entered on the food instrument or cash-value voucher before it is signed.

7 Code of Federal Regulations part 246.12(h)(3)(viii) (2018): Food instrument redemption. The vendor must submit food instruments and cash-value vouchers for redemption in accordance with the redemption procedures described in the vendor agreement. The vendor may redeem a food instrument or cash-value voucher only within the specified time period. As part of the redemption procedures, the State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor. As part of the redemption procedures, the State agency must establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group and competitive price criteria. In setting allowable reimbursement levels, the State agency . . . may include a factor to reflect fluctuations in wholesale prices. In establishing allowable reimbursement levels for above-50-percent vendors the State agency must ensure that reimbursements do not result in higher food costs than if participants transacted their food instruments at vendors that are not above-50-percent vendors, or in higher average payments per food instrument to above-50-percent vendors than average payments to comparable vendors. The State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the allowable reimbursement level applicable to the vendor.

7 Code of Federal Regulations part 246.12(h)(3)(x) (2018): No charge for authorized supplemental foods or restitution from participants. The vendor may not charge participants, parents or caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments or cash-value vouchers. In addition, the vendor may not seek restitution from these individuals for food instruments or cash-value vouchers not paid or partially paid by the State agency.

State:

Health and Safety Code section 123290, subdivision (e): The department, under any program established pursuant to this article, shall . . . [d]evelop and maintain a system for the delivery of supplemental foods to recipients through the distribution of supplemental foods designated [as meeting the minimum nutritional requirements for recipients] and nutrition coupons when other methods of delivery are impractical.

Health and Safety Code section 123310: The department, under any program established pursuant to this article, shall authorize retail food vendors, by written agreement, to accept nutrition coupons and reimbursement according to the system developed by the department.

Health and Safety Code section 123315, subdivision (a)(7)-(8): (a) The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following: . . .

(7) Accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument.

(8) Comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60200(a) The Department is proposing to divide subsection (a) into two parts in order to delineate the rules relating to payments made to vendors in the paper food instrument system and the corresponding rules in the EBT food instrument system. The Department is also proposing to add the phrase “For all authorized food products other than fruits and vegetables,” followed by a comma, before the words “the Department shall reimburse” to make clear that this section’s payment rules apply to reimbursement for authorized food products other than fruits and vegetables. The reimbursement rules for fruits and vegetables are covered under section 60100. For consistency with other regulation text, the Department is proposing to add the word “rate” after the words “or the MADR.”

(a)(1) The Department is proposing to move the paper food instrument reimbursement rule from current subsection (a) to proposed subsection (a)(1).

(a)(2) The Department is proposing to add subsection (a)(2) to set forth how vendors would be reimbursed for authorized food products other than fruits and vegetables in EBT transactions. In the EBT food instrument system, the Department will no longer issue combination food instruments. Instead, participants will be issued authorized foods in a quantity, aggregated by household, which is redeemable individually by authorized food product. In light of the new method of issuance, the Department has proposed to establish EBT MADR rates by authorized food product. Therefore, in an EBT food instrument system, the Department will only reimburse vendors the MADR rate for each authorized food product that was purchased by the participant and included in the participant’s electronic benefits.

(b) The Department is proposing to separate current subsection (b) into three subsections to address how the Department will process vendors' requests for reimbursement that are in excess of the MADR in the paper food instrument system and in the EBT food instrument system.

(b)(1) The Department is proposing to move the rules regarding how vendor requests for payment in excess of the MADR are processed in the paper food instrument system from current subsection (b) to proposed subsection (b)(1). The Department is proposing to specify that this subsection applies to the paper food instrument system in order to distinguish this provision from the proposed rules that would apply to the EBT food instrument system.

(b)(2) The Department is proposing to add subsection (b)(2) to specify how the Department will process vendors' requests for reimbursement in excess of the MADR rate in the EBT food instrument system. Under the proposed rule, when a vendor submits a request for reimbursement above the MADR rate, the Department intends to reimburse vendors the MADR rate for an authorized food product that is in effect at the time of the EBT transaction. While federal banking law restricts the Department from making partial payments on paper food instruments submitted for reimbursement in excess of the MADR rate, EBT food instruments are not subject to the same restrictions. By paying the current MADR rate in effect whenever a vendor requests reimbursement in excess of the MADR rate, the Department will streamline the vendor reimbursement process, thereby expediting payment to vendors. This proposed change allows for pre-payment edits that help contain program food costs and lowers the risk of vendor payment rejections or reconciliation issues for the program compared to paper food instrument processing.

(b)(3) The Department is proposing to re-designate current subsection (b)(1) as subsection (b)(3). The Department is proposing to replace the current regulation language, which is specific to paper food instruments, with more general language applicable to both paper and EBT food instruments. The effect of the regulation would not be altered by the proposed amendments. As required by federal regulation, the proposed amendments continue to prohibit vendors from seeking restitution from participants for food instruments or cash-value vouchers not paid or partially paid by the State agency. (7 C.F.R. § 246.12(h)(3)(x).)

(c) The Department is proposing language to clarify that the MADR rates set forth in subsection (c) apply only to the paper food instrument system.

(c)(2) The Department is proposing a minor typographical change to remove the unnecessary language "(MADR)" after the words "the MADR."

(c)(2)(A)2. For consistency with other regulation text, the Department is proposing to add "(2)" after the word "two." For consistency with proposed subsection (c)(2)(A)1.,

which immediately precedes this subsection, the Department is proposing to change the phrase “as found in the ‘What to buy’ section of the food instrument” to “in the ‘What to buy’ section on the face of the food instrument.”

(d) The Department is proposing to add subsection (d) in order to specify MADR rates in the EBT food instrument system. As required by 7 Code of Federal Regulations part 246.12(g)(4), the Department is proposing to set MADR rates for each Peer Group Category and Subgroup. The Department intends to assign MADR rates for authorized food products based on the MADR rate in effect at the time of the transaction. With the paper food instrument system, the Department chose to reimburse vendors based on the date the food instrument was submitted to VWIX because the Department was unable to verify the date on which a food instrument was used by a participant. In an EBT food instrument system, the Department is proposing to reimburse vendors based on the MADR rate in effect on the date of the transaction because the Department will be able to verify the date on which the participant used their electronic benefit.

(d)(1) The Department is proposing to set the EBT MADR rate for Peer Group Category A as the Statewide Average. Under proposed section 60000, subsections (a)(14)(B)1. and (a)(14)(B)2., the Department would calculate the Statewide Average based on an authorized food product’s UPC or APL Subcategory. Federal regulation requires that reimbursements to above-50-percent (Peer Group Category A) vendors do not result in higher total food costs if participants transact their food instruments at above-50-percent vendors instead of at other vendors that do not meet the above-50-percent criterion. (7 C.F.R. § 246.12(g)(4)(i)(D).) Setting the MADR rate for Peer Group Category A at the Statewide Average will help ensure that the Department’s reimbursements are cost neutral on a continuous basis, thus limiting the risk that when reimbursements are compared on a quarterly basis, reimbursements to Peer Group Category A might substantially exceed cost neutrality.

(d)(2) The Department is proposing that the EBT MADR rates for vendors assigned to Peer Group Categories B and C will be calculated by adding a Tolerance Factor to the CARV. As required by 7 Code of Federal Regulations part 246.12(g)(4), the Department is proposing to set MADR rates for each Peer Group Category and Subgroup. The Department is proposing to use the CARV as a benchmark for Peer Group Category B and C vendors, while using Tolerance Factors specific to each Peer Group Category and Subgroup to achieve appropriate Peer Group Category and Subgroup MADR rate variation.

In 2014, in order to address rising food costs, the Department developed a cost containment system unique to California that uses the average redemption from the most competitive vendors (Large Full Line Grocers, as defined in the proposed amendments to section 60000) as the benchmark for establishing the MADR rates for Peer Group Categories B and C. The Large Full Line Grocers were determined to be marking up WIC-authorized supplemental foods and non-WIC-authorized foods

similarly, indicating that food item sales data from these stores represent true market prices. This benchmark is referred to as the CARV and in California WIC's paper food instrument system has been used as the basis for both the Peer Group Category B and Peer Group Category C MADR rates.

The competitiveness of Large Full Line Grocers was confirmed again, this time in an EBT food instrument system, as part of an independent study of WIC EBT pricing released by the U.S. Department of Agriculture's Economic Research Service in July 2018. (Econ. Research Serv., U.S. Dept. of Agr., Price Variability Across Food Product and Vendor Type in Food Benefit Redemptions Under the Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) (July 2018).)

While EBT will make more detailed product pricing information available for calculating MADR rates, variation in pricing still exists between different Peer Group Categories and Subgroups. This necessitates variation in the level of reimbursement for each Peer Group Category and Subgroup. The Department is proposing to add Tolerance Factors to the CARV when calculating MADR rates in the EBT food instrument system in order to address differences in vendor costs and pricing models.

(d)(2)(A) In the proposed amendments to section 60000, the Department intends to establish a CARV by food item based on the EBT transaction data from Large Full Line Grocers. For purposes of the EBT food instrument system, the Department believes that using separate CARVs for calculations made at the UPC level versus calculations made at the APL Subcategory level will better reflect the average market price of a food. As a result, the Department is proposing that in the EBT food instrument system, the individual Tolerance Factors added to the CARV for vendors in Peer Group Categories B and C shall be determined based on whether the MADR rate is a UPC level calculation or APL Subcategory level calculation. Separate Tolerance Factors for UPC level and APL Subcategory level MADR rate calculations will allow the MADR rates to account for the average market price of a food type under circumstances where APL Subcategory level calculations are necessary.

(d)(2)(B) The Department is proposing to use UPC level Tolerance Factors to account for the variety of pricing at the UPC level within a Peer Group Category or Subgroup. As such, an authorized food product's MADR rate would be calculated by UPC using the following Tolerance Factors:

Table 1 Proposed Tolerance Factors Determined by UPC Level Calculation	
Peer Group	Tolerance Factor
Peer Group Category B, 1-2 Register Count Subgroup	49% of CARV
Peer Group Category B, 3-5 Register Count Subgroup	43% of CARV
Peer Group Category B, 6-9 Register Count Subgroup	37% of CARV
Peer Group Category B, 10+ Register Count Subgroup	31% of CARV
Peer Group Category C	25% of CARV

UPC-specific pricing data was collected by the Department for 13 different food items in the APL Categories and Subcategories of Whole Grains, Breakfast Cereals, Low Fat Yogurt, Infant Fruits and Vegetables, Juice, Legumes, Low Fat Milk, and Cheese. Prices were collected from a random sample of 60 Large Full Line Grocers. A 31 percent variance from the mean was observed from the data set collected, indicating that the current Tolerance Factor of 31 percent is an appropriate tolerance from the CARV for the 10+ Register Count Subgroup at the UPC level.

To ensure that the UPC level Tolerance Factors used in the EBT food instrument system continue to reflect the economies of scale and other differences between the various business models among the Peer Groups and Subgroups, the Department is proposing to continue using the 6 percent differential in Tolerance Factors between Category B Register Count Subgroups that is currently used in the Department's reimbursement methodology for the paper food instrument system. When adopted in 2014, this differential was based upon the observed difference between the redemption averages of 6-9 and 10+ register vendors.

The Department is also proposing to apply a Tolerance Factor for Peer Group Category C. The Department has observed a 70 percent reduction in the number of Peer Group Category C vendors since the adoption of WIC Bulletin Regulations 60000 *et seq.* in 2014. In contrast, during the same time period, the Department has observed a 5 percent increase in the number of vendors in Peer Group Categories A and B combined. As of June 2018, Peer Group Category C vendors were redeeming paper food instruments at values closer to the MADR rate more frequently than any other peer group, suggesting that the reimbursement rates for this peer group make doing business with WIC difficult for their economy of scale. Considering that pricing at the program's most competitive vendors indicates that a tolerance added to the CARV is necessary for appropriate reimbursement, it stands to reason that the commonly smaller store business model of a Peer Group Category C store would require some tolerance added to the CARV.

The Department's proposed Tolerance Factor of 25 percent for Peer Group Category C is one 6 percent increment below the proposed UPC level Tolerance Factor for the Peer Group Category B, 10+ Register Count Subgroup. Applying a 25 percent Tolerance Factor for the UPC level MADR rate calculations for Peer Group Category C vendors

will provide a MADR rate that reflects the expected variance in price at the UPC level in an EBT food instrument system, while limiting the potential impact on cost containment.

In order to implement an EBT food instrument system within the deadlines set forth in federal regulation, the Department is proposing these Tolerance Factors despite the limited pricing data for individual authorized food products across all peer groups. Implementation of the EBT food instrument system will generate a robust set of pricing data for all peer groups and authorized food products. The Department will re-evaluate the effectiveness of this MADR rate calculation methodology upon full implementation of the new EBT food instrument system when adequate statewide EBT transaction data is available for all vendors.

(d)(2)(C). In the proposed amendments to section 60000, the Department is proposing to calculate the APL Subcategory level CARV based on Benefit Unit in order to more accurately estimate the average pricing of products across different package sizes. Therefore, when calculating the MADR rate at the APL Subcategory, the sum of the CARV and Tolerance Factor must be multiplied by the number of Benefit Units redeemed for the authorized food product in order to arrive at the APL Subcategory level MADR rate for an authorized food product. The Department is proposing higher Tolerance Factors for MADR calculations at the APL Subcategory level than those proposed for calculations at the UPC level in order to accommodate the larger variance of pricing for brands and package sizes of foods within an APL Subcategory.

For APL Subcategory level calculations, the Department is proposing the following Tolerance Factors:

Table 2	
Proposed Tolerance Factors Determined by APL Subcategory Level Calculation	
Peer Group	Tolerance Factor
Peer Group Category B, 1-2 Register Count Subgroup	55% of CARV
Peer Group Category B, 3-5 Register Count Subgroup	49% of CARV
Peer Group Category B, 6-9 Register Count Subgroup	43% of CARV
Peer Group Category B, 10+ Register Count Subgroup	37% of CARV
Peer Group Category C	31% of CARV

The Department assessed shelf price variance by peer group for a selection of frequently issued and redeemed food items by reviewing high and low shelf price data submitted by vendors in response to the February 2018 Mandatory Vendor Shelf Price Submission, pursuant to section 70600, in order to understand the possible tolerance necessary for APL Subcategory level calculations. Analysis of variance of high prices and low prices to averages by peer group indicated that Tolerance Factors at least 6 percent higher than the proposed UPC level Tolerance Factors would likely be necessary to make appropriate APL Subcategory level calculations. Because the actual Tolerance Factors appropriate to the APL Subcategory level calculations cannot be

precisely measured absent more robust EBT transactional data, the Department is proposing to limit the incremental increase of Tolerance Factors for the APL Subcategory level calculations, as compared to the UPC level calculations, to an additional 6 percent for each peer group. This 6 percent differential is intended to accommodate the potential variance in pricing for UPCs within the APL Subcategory average, which is due to increased heterogeneity of products and variety of pricing at the APL Subcategory level, while also ensuring program food costs are contained as EBT is implemented statewide.

The current paper food instrument system and proposed UPC level Tolerance Factors for EBT transactions use a 6 percent incremental increase between each peer group, which represents the difference in pricing behavior between the 6-9 and 10+ register vendors. To ensure that the APL Subcategory level Tolerance Factors continue to reflect the economies of scale and other differences between the various business models between the Peer Groups, the Department is proposing to continue the use of the 6 percent differential in Tolerance Factors between each of the Category B Register Count Subgroups, as is used in the current paper food instrument reimbursement methodology. When adopted in 2014, this differential was based upon the observed difference between the redemption averages of 6-9 and 10+ register vendors.

For APL Subcategory level calculations, the Department is also proposing to apply a Tolerance Factor for Peer Group Category C. The Department has observed a 70 percent reduction in the number of Peer Group Category C vendors since the adoption of WIC Bulletin Regulations 60000 *et seq.* in 2014. In contrast, during the same time period, the Department has observed a 5 percent increase in the number of vendors in Peer Group Categories A and B combined. As of June 2018, Peer Group Category C vendors were redeeming paper food instruments at values closer to the MADR rate more frequently than any other peer group, suggesting that the reimbursement rates for this peer group make doing business with WIC difficult for their economy of scale. Considering that pricing at the program's most competitive vendors indicates that a tolerance added to the CARV is necessary for appropriate reimbursement, it stands to reason that the commonly smaller store business model of a Peer Group Category C store would require some tolerance added to the CARV.

The Department's proposed Tolerance Factor of 31 percent for Peer Group Category C is one 6 percent increment below the proposed APL Subcategory level Tolerance Factor for the Peer Group Category B, 10+ Register Count Subgroup. Applying a 31 percent Tolerance Factor in MADR rate calculations for Peer Group Category C vendors will provide a MADR rate that reflects the expected variance in an EBT food instrument system, while limiting the potential impact on cost containment.

In order to implement an EBT food instrument system within the deadlines set forth in federal regulation, the Department is proposing these Tolerance Factors despite the limited vendor pricing data for foods across each APL Subcategory or comparable

paper food instrument redemptions. Implementation of the EBT food instrument system will generate a robust set of pricing data for all peer groups and authorized food products. Since using only the high and low shelf price data to measure variance within a peer group and APL Subcategory does not take into account the purchasing habits of participants, the Department will re-evaluate the effectiveness of this MADR rate calculation methodology upon full implementation of the new EBT food instrument system when adequate statewide EBT transaction data is available for all vendors.

60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate

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

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

(2) For Peer Group Category B, the MADR rate shall be calculated for all Food item Numbers for Peer Group Category B if for which there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ Large Full Line Grocers with redemptions for that Food item Number during the twelve (12)-week redemption period.

(3) For Peer Group Category C, the MADR rate shall be calculated for all Food item Numbers for Peer Group Category C if for which there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ Large Full Line Grocers with redemptions for that Food item Number during the twelve (12)-week redemption period.

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

(1) For Peer Group Category A:

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

(B) When there are fewer than thirty (30) unique vendors in Peer Group Categories B and C with redemptions for an authorized food product during the

immediately preceding thirty-one (31)-day redemption period used for calculations, the MADR rate calculation will default to the APL Subcategory level.

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

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

(2) For Peer Group Categories B and C:

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

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

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

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

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

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

(2) Tier Two:

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

1. Breakfast Cereal
2. Cheese
3. Dry Beans, Peas, or Lentils (Mature Seed)
4. Eggs
5. Juice
6. Milk, Low Fat (1% fat)
7. Milk, Nonfat (Fat free or Skim)
8. Milk, Whole
9. Peanut Butter
10. Soft Corn Tortillas
11. 100% Whole Wheat Bread

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

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

(3) Tier Three:

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

1. Infant Cereal
2. Infant Fruits and Vegetables
3. Infant Meats
4. Yogurt, Low Fat
5. Yogurt, Nonfat
6. Yogurt, Whole

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

(4) Tier Four:

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

1. Canned Beans

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

(B) For all Tier Four Foods, the Initial EBT MADR Rates will be calculated by Benefit Unit using a substitute CARV and a Tolerance Factor of forty-nine percent (49%). The substitute CARV for each Tier Four Food will be calculated for all Peer Group Categories and Register Count Subgroups as the highest shelf price collected by the Department for that Tier Four Food from a survey of Large Full Line Grocers, divided by the number of Benefit Units for the item. When collecting shelf price data for this purpose, the Department will include data from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup, and from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2).

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

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

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

~~(1) Upon implementation of this section, if a food item number does not have at least thirty (30) unique vendors in the Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions during the immediately preceding 12-week period used for calculations the Department will make a one-time calculation to determine the MADR for food item numbers calculated as follows:~~

~~(A) The average of the MADRs for each food item number for the three 10+ register store peer groups under the peer group and MADR systems in effect prior to the implementation of this regulation shall be set as the new MADR for the 10+ register Count Subgroup for that food item number.~~

~~(B) A substitute CARV shall be derived from the new MADR calculated in (b)(1)(A) above using the calculation rules in WIC Bulletin Regulations section 60200(c). The substitute CARV shall be used as the basis for calculating all other peer group substitute MADRs.~~

~~(2) (1) When a fFood iItem nNumber does not have at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that fFood iItem nNumber during the twelve (12)-week redemption period, the Department may manually adjust the MADR rate for Peer Group Category A to comply with federal requirements of cost neutrality by comparing the simple averages of the prices at which the fFood iItem nNumber was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A.~~

~~(3) (2) When a fFood iItem nNumber does not have at least thirty (30) unique vendors in the 6-9 and 10+ Register Count Subgroups Large Full Line Grocers with redemptions during the immediately preceding twelve (12)-week period used for calculations, the previous period's MADR rate for Peer Group Category B and C vendors will remain in effect. The Department may calculate a substitute CARV for fFood iItem nNumbers that do not have thirty (30) unique vendor redemptions of that fFood iItem nNumber in any of the preceding six (6) four (4)-week MADR calculation periods.~~

~~(A) When the Department calculates a substitute CARV for fFood iItem nNumbers pursuant to subsection ~~(b)~~(d)(2) above, the Department shall use data from the Peer Group Category B, 6-9 and 10+ Register Count Subgroups Large Full Line Grocers collected during the most recent semi-annual collection of shelf prices for determination of cost competitiveness to calculate the substitute CARV for fFood iItem nNumbers. The substitute CARV will be determined by averaging the sum of the average prices of the foods included on the food instrument for all vendors in a peer group based on the most recent semi-annual collection of shelf prices.~~

(B) Where no submitted shelf price data is available from the semi-annual collection of shelf prices, the Department shall collect shelf price data from ~~Peer Group Category B, 6-9 and 10+ Register Count Subgroups~~ Large Full Line Grocers for calculation of a substitute CARV. When the Department collects data for this purpose, it will be from a minimum of eight (8) rural and eight (8) urban vendors ~~as those terms are as defined in California Code of Regulations, title 22, section 40740, subdivision (h)(2),~~ in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2). Using this data, the substitute CARV will be calculated as a dollar sum of all of the collected shelf prices for a food type divided by the total number of shelf prices collected.

~~(4)~~ (3) The Department may manually adjust the MADR rate to temporarily accommodate extreme fluctuations in wholesale food prices as reported by price and inflation information from other California State agencies and departments or nationally recognized sources of commodity food pricing information.

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

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

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

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

the prices redeemed by Peer Group Category B and C vendors in the APL Subcategory for the next MADR cycle.

(2) For newly authorized APL Subcategories where no transaction data is available, the Department shall collect shelf price data from Large Full Line Grocers for calculation of a substitute CARV and substitute Statewide Average by Benefit Unit. When the Department collects data for this purpose, it will be from a minimum of eight (8) rural and eight (8) urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight (8) rural vendors and eight (8) urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of thirty-two (32) vendors. For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2). Using this data, the substitute CARV and substitute Statewide Average will be calculated as a dollar sum of all of the collected shelf prices for the newly authorized APL Subcategory divided by the sum of the Benefit Units for the items collected.

(3) The Department may manually adjust the MADR rate to temporarily accommodate extreme fluctuations in wholesale food prices as reported by price and inflation information from other California State agencies and departments or nationally recognized sources of commodity food pricing information.

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

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

Department shall use the low shelf prices submitted by those vendors to establish the MFRVs for eligible fFood item nNumbers at the peer group level as follows:

(A) If the fFood item nNumber meets the criteria in subsection (e)(f) above and all food types and container sizes that comprise the fFood item nNumber are included in the Market Basket, the Department will determine the MFRV for the fFood item nNumber by summing the lowest shelf prices submitted by a vendor identified through the process in subsection (e)(f)(1) for each of the food types included on the fFood item nNumber. Any redemption amount below the MFRV shall be deemed a pPartially-rRedeemed FI for purposes of calculating the Statewide Average.

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

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

Total Minimum Full Redemption Value \$8.50

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

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

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

1 gallon milk, lower fat	\$2.50
1 dozen eggs	\$1.50
1 (16 oz.) cheese	\$2.50
1 (16 oz.) dry beans, peas, or lentils	\$0.50
<hr/>	
Subtotal	\$7.00
1 quart milk, lower fat (no shelf price collected)	\$0.00
Total Minimum Full Redemption Value	\$7.00

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

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2018): *Electronic Benefit Transfer (EBT)* means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

7 Code of Federal Regulations part 246.2 (2018): *Partially-redeemed food instrument* means a paper food instrument which is redeemed for less than all of the supplemental foods authorized for that food instrument.

7 Code of Federal Regulations part 246.12(a) (2018): *General.* . . . By October 1, 2020, each State agency shall implement EBT statewide, unless granted an exemption under paragraph (w)(2) of this section.

7 Code of Federal Regulations part 246.12(a)(1) (2018): *Management.* The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

7 Code of Federal Regulations part 246.12(g)(4)(i)(D) (2018): (i) *Vendors that meet the above-50-percent criterion.* Vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS, are defined as above-50-percent vendors. . . The State agency that chooses to authorize any above-50-percent vendors:

(D) Must ensure that the prices of above-50-percent vendors do not inflate the...allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments at above-50-percent vendors rather than at other vendors that do not meet the above-50-

percent criterion. To comply with this requirement, the State agency must compare the average cost of each type of food instrument redeemed by above-50-percent vendors against the average cost of the same type of food instrument redeemed by regular vendors. The average cost per food instrument may be weighted to reflect the relative proportion of food instruments redeemed by each category of vendors in the peer group system If average payments per food instrument for above-50-percent vendors exceed average payments per food instrument to regular vendors, then the State agency must take necessary action to ensure compliance, such as adjusting payment levels. Where EBT systems are in use, it may be more appropriate to compare prices of individual WIC food items to ensure that average payments to above-50-percent vendors do not exceed average payments for the same food item to comparable vendors.

7 Code of Federal Regulations part 246.12(h)(3)(viii) (2018): Food instrument and cash-value voucher redemption. The vendor must submit food instruments and cash-value vouchers for redemption in accordance with the redemption procedures described in the vendor agreement. The vendor may redeem a food instrument or cash-value voucher only within the specified time period. As part of the redemption procedures, the State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor. As part of the redemption procedures, the State agency must establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group and competitive price criteria. In setting allowable reimbursement levels, the State agency . . . may include a factor to reflect fluctuations in wholesale prices. In establishing allowable reimbursement levels for above-50-percent vendors the State agency must ensure that reimbursements do not result in higher food costs than if participants transacted their food instruments at vendors that are not above-50-percent vendors, or in higher average payments per food instrument to above-50-percent vendors than average payments to comparable vendors. The State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the allowable reimbursement level applicable to the vendor. A vendor's failure to remain price competitive is cause for termination of the vendor agreement, even if actual payments to the vendor are within the maximum reimbursement amount.

Federal Guidelines and Instructions:

United States Department of Agriculture, *Interim Guidance of WIC Vendor Cost Containment* (June 2006) p.46.

State:

Health & Safety Code section 123290(e): The department, under any program established pursuant to this article, shall Develop and maintain a system for the

delivery of supplemental foods to recipients through the distribution of supplemental foods designated in subdivision (d) and nutrition coupons when other methods of delivery are impractical.

Health & Safety Code section 123310: The department, under any program established pursuant to this article, shall authorize retail food vendors, by written agreement, to accept nutrition coupons and reimbursement according to the system developed by the department.

Health & Safety Code section 123315 subdivision (a)(7)-(8): The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following: . . .

(7) Accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument.

(8) Comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

STATEMENT OF REASONS

60300(a) The Department is proposing to add “For the paper food instrument system,” before the words “the MADR rates shall be calculated every four (4) weeks on Thursday.” This proposed change would clarify that subsection (a) and the subsections contained in subsection (a) only pertain to rules applicable to the paper food instrument system. With the proposed redesignation of current subsection (b) to subsection (d), the Department is proposing to amend the reference to subsection (b) to refer to subsection (d). For consistency with other regulation text, the Department is proposing to add a hyphen (“-”) between “(10)” and “day.”

(a)(1) For clarity and ease of reading, the Department is proposing to move the phrase “for Peer Group Category A,” which appears after “Food Item Numbers,” to the beginning of the subsection and to replace “if” with “for which.” For consistency with other regulations, the Department is also proposing to add the word “twelve” before “12” and add parentheses around “12.” These proposed changes will not alter the substance of the regulation text.

(a)(2) For clarity and ease of reading, the Department is proposing to move the phrase “for Peer Group Category B,” which appears after “Food Item Numbers” to the beginning of the subsection and to replace “if” with “for which.” In order to simplify the text, the Department is also proposing to replace the phrase “Peer Group Category B, 6-9 and 10+ Register Count Subgroups” with “Large Full Line Grocers,” which is defined as “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and

10+” in the proposed amendments to section 60000. These proposed changes will not alter the substance of the regulation text.

For consistency with subsection (a)(1), the Department is proposing to add “during the twelve (12)-week redemption period” at the end of subsection (a)(2). Since the 12-week redemption period is already specified in the current text of subsection (a), this proposed change will not alter the substance of the regulation text.

(a)(3) For clarity and ease of reading, the Department is proposing to move the phrase “for Peer Group Category C,” which appears after “for all Food Item Numbers,” to the beginning of the subsection and to replace “if” with “for which.” In order to simplify the text, the Department is also proposing to replace the phrase “Peer Group Category B, 6-9 and 10+ Register Count Subgroups” with “Large Full Line Grocers,” which is defined as “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+” in the proposed amendments to section 60000. These proposed changes will not alter the substance of the regulation text.

For consistency with subsection (a)(1) and the proposed amendments to subsection (a)(2), the Department is proposing to add “during the twelve (12)-week redemption period” at the end of subsection (a)(3). Since the 12-week redemption period is already specified in the current text of subsection (a), this proposed change will not alter the substance of the regulation.

(b) The Department is proposing to add new subsection (b), which will include the rules for the EBT MADR rate calculation schedule. The Department is proposing to redesignate current subsection (b) as subsection (d).

For the EBT food instrument system, the Department is proposing to calculate the MADR rates for authorized food products other than fruits and vegetables every seven days on Monday using the prior 31 days of data. The calculation time base would begin on a Friday and end on the Sunday prior to the calculation date. These calculation rules would apply to both the CARV and the Statewide Average calculations.

Calculating the MADR rates on a weekly basis with only the most recent 31 days of redemption data balances the need for the MADR rates to respond to market trends, minimizes the need for manual adjustments, and helps maintain cost containment. Review of other WIC State Agencies’ procedures for updating MADR rates indicates that a weekly calculation update frequency based on approximately 31 days of data is the practice in several other states that use an EBT food instrument system.

The Department is proposing to use 31 days of data for calculation of the CARV and Statewide Average for the EBT food instrument system because 31 days is the length of time that participant benefits are valid. Choosing a calculation time base which mirrors participant benefit validity will ensure that each calculation time base will always include

a snapshot of monthly, statewide participant shopping habits. In the paper food instrument system, the existence of combination food instruments makes a 12-week calculation time base necessary to ensure that adequate data is available to calculate a mean. Due to the nature of electronic benefit issuance, the number of transactions per participant per month in an EBT food instrument system will be greater than the number of transactions per participant in a paper food instrument system. Additionally, because the number of APL Subcategories is significantly less than the number of current paper food instrument types, the Department believes there will be sufficient data from EBT transactions in a 31-day period to calculate a reliable average.

The Department has proposed a weekly calculation frequency for EBT MADR rates. When the paper food instrument regulations were adopted in 2014, the Department's data indicated that wholesale and retail prices did not significantly fluctuate in periods shorter than four weeks. Subsequent monitoring of the MADRs has indicated this is not true for all food items. In the past two years, the Department has observed several instances in which commodity food prices have increased or decreased sharply within a matter of a week or two, a pace the existing MADR rate calculation period was unable to accommodate. These sharp fluctuations in commodity food prices required manual adjustment of the MADR rates until the MADR rate calculation included sufficient redemption data to accommodate the new increased or decreased prices.

Increasing the frequency of MADR rate calculations in the EBT food instrument system would accommodate these fluctuations, lessening the need to rely on manual adjustments.

The Department is proposing a three-day review period for MADR calculations. This review period will provide the Department a fixed set aside time for review of calculated MADR rates and manual adjustment should there be any issues with the calculations. Three days review time would provide the shortest turnaround without negating the increased responsiveness of MADR rate calculations achieved by the increased frequency of calculations.

(b)(1) The Department is proposing to add a new subsection (b)(1) to specify how MADR rates will be calculated for Peer Group Category A in the EBT food instrument system.

(b)(1)(A) The Department is proposing to calculate a MADR rate for Peer Group Category A (the Statewide Average) for each authorized food product's UPC when there are at least 30 unique vendors in Peer Group Categories B and C with EBT redemptions for that UPC in the immediately preceding 31-day calculation period.

As with the calculation of paper food instruments, the Department has chosen 30 vendors with redemptions as the minimum threshold for calculating a MADR rate. In its *Interim Guidance of WIC Vendor Cost Containment*, USDA recommended a minimum

of 30 vendors be placed in a peer group in order to increase the likelihood that the prices of vendors will approximate a normal distribution. (USDA, *Interim Guidance on WIC Vendor Cost Containment* (June 2006) p.46.) Because the calculation of the Statewide Average is the mean of a dataset, the Department proposes to apply this 30-vendor threshold to EBT calculations of the Statewide Average in order to ensure that the mean is not unduly influenced by the prices of one or two vendors.

(b)(1)(B) The Department is proposing to calculate the MADR rate for Peer Group Category A by a food product's APL Subcategory if an authorized food product does not have at least 30 unique vendors in Peer Group Categories B and C with redemptions to calculate a MADR rate by UPC. When fewer than 30 vendors Peer Group Categories B and C have redemptions for a UPC in the immediately preceding MADR calculation period, there is a risk that the mean could be "skewed by the high or low prices of one or two vendors." (USDA, *Interim Guidance on WIC Vendor Cost Containment* (June 2006) p.46.) In order to ensure that an appropriate mean is used for the MADR rate calculations for all UPCs even when 30 unique vendor redemptions are not available, expanding the dataset to the APL Subcategory average is the best substitute for redemptions for a specific UPC since the APL Subcategory contains the UPCs for the foods most similar to that UPC. Since not all vendors carry all UPCs, the APL Subcategory average is the best indicator of pricing across many national, regional, and store brands for foods with the same or similar nutritional benefits.

(b)(1)(C) When there are fewer than 30 unique vendors in Peer Group Categories B and C with redemptions in an APL Subcategory during the immediately preceding 31-day calculation period, the Department is proposing to extend the MADR calculation period for Peer Group Category A to the immediately preceding 90-day period. When fewer than 30 vendors in Peer Group Categories B and C have redeemed authorized food products in an APL Subcategory in the immediately preceding 31-day MADR calculation period, there is a risk that the mean could be "skewed by the high or low prices of one or two vendors." (USDA, *Interim Guidance on WIC Vendor Cost Containment* (June 2006) p.46.) In order to ensure all APL Subcategories would be able to calculate an average with at least 30 unique vendor redemptions during each calculation cycle, the Department assessed paper food instrument redemptions grouped by APL Subcategory for redemption counts. Redemptions were assessed at 31 days, then 60 days, then 90 days. Paper food instrument redemptions in a 60-day period were marginally capable of meeting the 30-unique-vendor threshold. However, due to the potential presence of partial redemptions with the current combination paper food instruments, the Department is not certain that a 60-day period will allow for 30 unique vendor redemptions in an APL Subcategory. Paper food instrument redemptions in a 90-day period are more than capable of meeting the 30-unique-vendor threshold. Therefore, the Department is proposing to extend the APL Subcategory level calculation period from 31 to 90 days when 30 unique vendor redemptions are not observed in the initial 31-day period. The Department has observed that it is significantly more likely that

all APL Subcategories will have the minimum redemptions in the extended, 90-day calculation period.

If there are fewer than 30 unique vendors in Peer Group Categories B and C with redemptions in an APL Subcategory in the immediately preceding 90-day calculation period, but there is at least one redemption, the Department is proposing to calculate the Statewide Average at the APL Subcategory level based on the available redemption data. Because there are only a few seldom-redeemed foods, such as powdered dry milk or evaporated milk, that may trigger this calculation methodology, a MADR rate calculation based fewer than 30 unique vendor redemptions is reasonable in these unusual circumstances. In light of the infrequent nature of these foods' redemptions, a MADR rate for these products based on a smaller-than-normal data set poses no risk to cost neutrality, very little risk to cost containment, and very little risk that the resulting MADR rate will lead to inappropriately low reimbursement.

(b)(1)(D) The Department is proposing to continue a previous period's MADR rate when there are no redemptions in an APL Subcategory by Peer Group Category B and C vendors in the immediately preceding 90-day period. The Department is proposing to use the prior MADR rate because, under these circumstances, there is no other available data from which to calculate an appropriate MADR rate. The Department has determined that the most recent calculations of the Statewide Average for an APL Subcategory is the best indicator of the average redemptions for that APL Subcategory when there are no redemptions in the prior 90-day period. Continuing to pay the previous period's calculated MADR rate in this situation poses little risk of inappropriately low reimbursement for Peer Group Category A vendors, and very little risk that cost neutrality or cost containment would be compromised.

(b)(2) The Department is proposing to add a new subsection (b)(2) to specify how MADR rates will be calculated for Peer Group Categories B and C in the EBT food instrument system.

(b)(2)(A) The Department is proposing to calculate a MADR rate for Peer Group Categories B and C for each authorized food product's UPC when there are at least 30 unique Large Full Line Grocers with EBT redemptions for that UPC in the immediately preceding 31-day calculation period.

As with the calculation of paper food instruments, the Department has chosen 30 Large Full Line Grocers with redemptions as the minimum threshold for calculating a MADR for Peer Group Categories B and C. In its *Interim Guidance of WIC Vendor Cost Containment*, USDA recommended a minimum of 30 vendors be placed in a peer group in order to increase the likelihood that the prices of vendors will approximate a normal distribution. (USDA, *Interim Guidance on WIC Vendor Cost Containment* (June 2006) p.46.) The calculation of the Peer Group Category B and C MADR rates involve the calculation of a CARV, which is the mean of a dataset. Because the CARV is a mean,

the Department proposes to apply this 30-vendor threshold to EBT calculations of the CARV in order to ensure that the mean is not unduly influenced by the prices of one or two vendors.

(b)(2)(B) The Department is proposing to calculate the MADR rate for Peer Group Categories B and C by the food product's APL Subcategory if an authorized food product does not have at least 30 unique Large Full Line Grocers with redemptions to calculate a CARV at the UPC level. When fewer than 30 Large Full Line Grocers have redemptions for a UPC in the immediately preceding MADR calculation period, there is a risk that the mean could be "skewed by the high or low prices of one or two vendors." (USDA, *Interim Guidance on WIC Vendor Cost Containment* (June 2006) p.46.) In order to ensure that an appropriate mean is used for the CARV calculations for all UPCs even when 30 unique vendor redemptions are not available, expanding the dataset to the APL Subcategory average is the best substitute for redemptions for a specific UPC since the APL Subcategory contains the UPCs for the foods most similar to that UPC. Since not all vendors carry all UPCs, the APL Subcategory average is the best indicator of pricing across many national, regional, and store brands for foods with the same or similar nutritional benefits.

(b)(2)(C) When there are fewer than 30 unique Large Full Line Grocers with redemptions in an APL Subcategory during the immediately preceding 31-day calculation period, the Department is proposing to extend the MADR calculation period for Peer Group Categories B and C to the immediately preceding 90-day period. When fewer than 30 Large Full Line Grocers have redeemed authorized food products in an APL Subcategory in the immediately preceding 31-day MADR calculation period, there is a risk that the CARV could be "skewed by the high or low prices of one or two vendors." (USDA, *Interim Guidance on WIC Vendor Cost Containment* (June 2006) p.46.) In order to ensure all APL Subcategories would be able to calculate an average with at least 30 unique vendor redemptions during each calculation cycle, the Department assessed paper food instrument redemptions grouped by APL Subcategory food for redemption counts. Redemptions were assessed at 31 days, then 60 days, then 90 days. Paper food instrument redemptions in a 60-day period were marginally capable of meeting the 30 unique vendor threshold. However, due to the potential presence of partial redemptions with the current combination paper food instruments, the Department is not certain that a 60-day period will allow for 30 unique vendor redemptions in an APL Subcategory. Paper food instrument redemptions in a 90-day period are more than capable of meeting the 30 unique vendor threshold. Therefore, the Department is proposing to extend the APL Subcategory level calculation period from 31 to 90 days when 30 unique vendor redemptions are not observed in the initial 31-day period. The Department has observed that it is significantly more likely that all APL Subcategories will have the minimum redemptions in the extended, 90-day calculation period.

If there are fewer than 30 unique Large Full Line Grocers with redemptions in an APL Subcategory in the immediately preceding 90-day calculation period, but there is at least one redemption, the Department is proposing to calculate a MADR rate using a CARV calculated at the APL Subcategory level based on available redemption data. Because there are only a few seldom-redeemed foods, such as powdered dry milk or evaporated milk, that may trigger this calculation methodology, a CARV calculation based on fewer than 30 redemptions is reasonable in these unusual circumstances. The pricing of Large Full Line Grocers whose redemptions are used to calculate the CARV has been shown to be independent of and unrelated to reimbursement rates paid by the WIC Program. As a result, a CARV for these products based on a smaller than normal data set would pose little risk of inappropriately high or low MADR rates.

(b)(2)(D) The Department is proposing to continue a previous period's MADR rate when there are no redemptions in an APL Subcategory by Large Full Line Grocers in the immediately preceding 90-day period. The Department is proposing to use the prior MADR rate in this case because, under these circumstances, there would be no other available data from which to calculate an appropriate MADR rate.

In the paper food instrument system, the Department continues to use the prior MADR rate when the minimum redemptions for a Food Item Number necessary to calculate a MADR rate have not been met. When the prior MADR rate is used consecutively for six MADR rate periods without a new calculation, the Department conducts a manual shelf price survey to create a substitute CARV for a manual adjustment to the Food Item Number's MADR rate pursuant to current subsection (b)(3)(B). When observing the average change in the MADR rates calculated using special shelf price survey data, the Department only observed a 4 percent average increase in the manually adjusted MADR rates over an 18-month period. Given the burden of these surveys on both vendors and the Department, and the relative price stability of these less commonly redeemed foods, the Department believes that extending the previous period's MADR rate when no redemptions occur will pose little risk of inappropriately high or low MADR rates.

(c) The Department is proposing that MADR rates for the implementation of EBT (Initial EBT MADR Rates) would be calculated using a four-tiered structure based on the amount of cost information the Department has for each food product, APL Category, or APL Subcategory. The Department must establish Initial EBT MADR Rates for all peer groups at the APL Subcategory level for the Department's EBT pilot in Napa and Solano Counties (pilot) because the Department's paper food instruments do not provide pricing data with the specificity necessary to set MADR rates for all authorized food products at the APL Subcategory or UPC level. In developing the methodology to set Initial EBT MADR Rates, the Department sought to ensure (1) the rates would allow for successful implementation of EBT throughout California (statewide roll out) without inappropriately reimbursing vendors; and (2) the rates would not undermine the Department's need to maintain cost containment.

(c)(1) The Department is proposing to categorize infant formula as Tier One Foods. By contrast with the foods in the other three proposed tiers, the Department has UPC-level cost data for authorized infant formulas. The Department intends to set the MADR rate for Tier One Foods for each Peer Group Category or applicable Register Count Subgroup at the MADR rates in place for paper food instruments on May 6, 2019. The Initial EBT MADR Rates for infant formula for each peer group would be the per-unit MADR rate for each formula brand, can size, and type. This methodology ensures that the most current MADR rates for infant formula are applied to EBT transactions during the pilot.

(c)(2)(A) The Department is proposing to designate the APL Categories and APL Subcategories for which shelf price data is collected as part of the mandatory semi-annual shelf price submission, as set forth in section 70600, as Tier Two Foods. Unlike Tier One Foods, the Department does not have UPC level cost data available for these Market Basket foods. However, the Department does have vendor-reported pricing data that the Department is proposing to use to establish the Initial EBT MADR Rates.

(c)(2)(B) The Department is proposing to set the Initial EBT MADR Rates for Tier Two Foods at the same rate for all Peer Group Categories and Register Count Subgroups. Initial EBT MADR Rates for Tier Two Foods will be calculated by Benefit Unit using the highest shelf price collected for a Market Basket food in each APL Category as part of the August 2018 Mandatory Vendor Shelf Price Submission.

The Department is proposing to use data from the August 2018 Mandatory Vendor Shelf Price Submission because it is the most recent complete mandatory semi-annual shelf price submission available prior to the issuance of this Regulatory Alert. In addition, the August 2018 Mandatory Vendor Shelf Price Submission will be the most recent shelf price submission that has been verified by the Department prior to the pilot start date. While there will be another mandatory semi-annual shelf price submission in February 2019, the data from that submission will not be validated and available for use in time for the pilot.

The Department intends to use only prices from vendors who are authorized as of January 1, 2019. This threshold date will ensure the Initial EBT MADR Rates for Tier Two Foods include prices from vendors who are likely to remain authorized at the time of the pilot, while allowing the Department sufficient time to calculate the Initial EBT MADR Rates.

Using the highest non-sale price reported by a vendor for the applicable APL Category should ensure that the Initial EBT MADR rates for foods in the Market Basket allow full reimbursement at the beginning of the pilot and the beginning of statewide roll out. Since vendors submit their highest and lowest shelf prices for only those WIC-authorized Market Basket items carried by the vendor, the mandatory shelf price

submission would include the highest shelf prices for all APL Categories and APL Subcategories included in subsection (c)(2)'s list of Tier Two Foods.

(c)(2)(B)1. When the Department has shelf price data for two or more Market Basket foods in an APL Category, the Department is proposing to use the single highest shelf price collected for each food to set the MADR rate for each food's APL Subcategory. However, if shelf price data is not collected for an APL Subcategory, the Department is proposing that the highest shelf price collected for a food in the APL Category would be the MADR rate for that APL Subcategory. For example, the Department collects prices for two foods in the Bread/Whole Grains APL Category: Soft Corn Tortillas and Whole Wheat Bread. Under this methodology, if the highest reported vendor price in the Bread/Whole Grains APL Category were for Whole Wheat Bread, the highest Whole Wheat Bread price would be the Initial EBT MADR Rate for all APL Subcategories in the Bread/Whole Grains APL Category except the Soft Corn Tortilla APL Subcategory. The highest reported vendor price for Soft Corn Tortillas would be the Initial EBT MADR Rate for the Soft Corn Tortilla APL Subcategory. This methodology will ensure that when shelf prices for more than one food in an APL Category are collected, the Initial EBT MADR Rate for the lower priced Tier Two Food's APL Subcategory will allow for full reimbursement, while minimizing the potential impact of the Initial EBT MADR Rates on cost containment.

The Department is proposing that this subsection's exception to the rule described in subsection (c)(2)(B) would not apply to the Low Fat and Nonfat Milk APL Subcategories. The mandatory semi-annual shelf price submission for Market Basket foods does not request that vendors provide separate shelf price data for 1 percent and nonfat milk. As a result, the Department cannot use the shelf price data from the semi-annual shelf price submission to create separate Initial EBT MADR Rates for the Low Fat and Nonfat Milk APL Subcategories. Pursuant to the general rule proposed in subsection (c)(2)(B), the Department would set the Initial EBT MADR Rates for Tier Two Foods in the Low Fat and Nonfat Milk APL Subcategories at the highest reported shelf price for either nonfat or low fat (1 percent) milk.

(c)(2)(B)2. The Department is not proposing to apply the methodology for Tier Two Foods to all APL Subcategories. While some of the proposed Tier Four Foods described in subsection (c)(4) are in the same APL Categories as Tier Two Foods, the prices for the Tier Four Foods tend to deviate substantially from the prices of the Market Basket items used to calculate the Initial EBT MADR Rates for the foods' APL Categories. Therefore, as explained in more detail in proposed subsection (c)(4), the Department is proposing to use other data to calculate the Initial EBT MADR Rates for the proposed Tier Four Foods.

(c)(3)(A) The Department is proposing to designate as Tier Three Foods those APL Categories and APL Subcategories for which non-infant formula, non-Market Basket supplemental foods are contained on single item paper food instruments and satisfy the

minimum threshold of 30 unique vendor redemptions necessary to calculate a CARV and Statewide Average for paper food instruments.

(c)(3)(B) The proposed methodology for Tier Three Foods would calculate Initial EBT MADR Rates by using a substitute CARV with a Tolerance Factor of 49 percent. The Initial EBT MADR Rates for Tier Three Foods would apply to all Peer Group Categories and Register Count Subgroups.

The Department is proposing to set the substitute CARV for Tier Three Foods at the highest per-unit MADR rate in effect for each foods' single item paper food instrument on May 6, 2019.

The Department is proposing to apply a Tolerance Factor of 49 percent for Tier Three Foods. The majority of Tier Three Foods are issued on food instruments in large amounts. The high count of units on each of these food instruments increases the possibility that partial redemptions will artificially deflate the dollar amount of the average redemption value. Additionally, the majority of Tier Three Foods allow for purchase of either organic or conventional products, which have a high variance in price. A high volume of partially-redeemed food instruments from Large Full Line Grocers or a high volume of redemptions for conventional products may result in the calculated MADR rates for paper food instruments being too low to sufficiently reimburse vendors when converted to per-item pricing in EBT transactions. When added to the existing highest MADR rate for a specific food's single item paper food instrument, the proposed 49 percent Tolerance Factor should ensure appropriate reimbursement during the implementation of EBT. The Department believes that this MADR rate will be generous enough to allow vendors to focus on the more complicated aspects of EBT implementation rather than on how much they will be reimbursed for Tier Three Foods, while minimizing the potential impact of the Initial EBT MADR Rates on cost containment. This Tolerance Factor makes it likely that vendors will have a MADR rate that allows for full reimbursement of authorized food products included on the proposed list of Tier Three Foods until the Department has sufficient EBT transaction data to calculate EBT MADR rates in the manner specified in subsection (b).

(c)(4)(A) The proposed methodology for Tier Four Foods would be used to calculate the Initial EBT MADR Rates for the following APL Categories and Subcategories: (1) Canned Beans; (2) Evaporated Milk, Lower Fat (Skim and 1%); (3) Evaporated Milk, Whole; (4) Fish; (5) Lactose free Milk, Lower Fat (Skim and 1%); (6) Lactose free Milk, Whole; (7) Milk, Reduced Fat (2%); (8) Powdered Dry Milk, Nonfat; (9) Soy-Based Beverage; and (10) Tofu.

The Department has chosen to categorize foods in these APL Categories and Subcategories as Tier Four Foods for several reasons. First, unlike Tier Three Foods, these foods are not contained on single item paper food instruments. Second, unlike Tier Two Foods, these foods are not part of the Market Basket and their prices tend to

deviate substantially from the prices of the Market Basket items used to calculate the Tier Two Initial EBT MADR Rates for the foods' APL Categories. For example, the price per reconstituted fluid ounce of powdered dry nonfat milk is significantly less than the price per fluid ounce of a gallon of nonfat fluid milk. Likewise, the price per reconstituted fluid ounce of evaporated whole milk is significantly higher than the price per fluid ounce of a gallon of whole fluid milk. Due to the price discrepancies between these foods and the Market Basket foods used to calculate the Initial EBT MADR Rates for the proposed Tier Two Foods, it is appropriate to use a different methodology to calculate Initial EBT MADR Rates for Tier Four Foods.

(c)(4)(B) The Department is proposing to use data collected as a part of the special shelf price survey for setting manual MADR rates pursuant to current subsection (b)(3)(B), to ensure more appropriate APL Subcategory-specific Initial EBT MADR Rates for Tier Four Foods. Using data from the same types of vendors the Department currently uses to calculate a substitute CARV under current subsection (b)(3)(B), will ensure that a sufficient and representative sample of data is collected in order to prevent the influence of outliers. This is consistent with the Department's regulations requiring a minimum of 30 vendors in a redemption set.

The Department is proposing to establish Initial EBT MADR Rates for Tier Four Foods using a substitute CARV and Tolerance Factor of 49 percent. The substitute CARV would be calculated as the highest shelf price for each food type collected by the Department from a special shelf price survey of Large Full Line Grocers, as defined in the proposed amendments to section 60000, divided by the number of Benefit Units for the food. Setting the substitute CARVs for each Tier Four Food as the highest shelf price collected for each food should help ensure sufficient reimbursement once a Tolerance Factor is applied.

In an analysis of prior special shelf price surveys, allowing a 49 percent Tolerance Factor with a substitute CARV set at the *average* (as opposed to *highest*) shelf price would not consistently ensure a sufficiently high MADR rate for all surveyed vendors' prices. Specifically, the Soy-Based Beverage and Tofu APL Subcategories would not have been fully reimbursed using this methodology. Therefore, the Department is proposing to use the highest shelf price collected for each food type in the special shelf price survey as the substitute CARV.

For all peer groups, a 49 percent Tolerance Factor would be added to the applicable substitute CARV to calculate the Initial EBT MADR rates for all Tier Four Foods. In consideration of the lack of pricing data from the smaller Peer Group Category B stores and the larger margin required by these stores based on their economy of scale, the Department is proposing to establish more tolerant Initial EBT MADR Rates for the foods identified as Tier Four Foods, which tend to be issued less frequently. To offset the increased cost of doing business, smaller stores that choose to stock these lesser-redeemed foods would be more likely to set a higher shelf price to compensate for the

low volume of sales. Given that the substitute CARVs will be calculated based on the highest shelf prices collected rather than the average of shelf prices collected, the Department is proposing a 49 percent Tolerance Factor, which is the highest proposed tolerance for UPC level calculations. When applied to the highest surveyed price for a Tier Four food, this Tolerance Factor should be adequately tolerant for all peer groups. This Initial EBT MADR rate should allow vendors to focus on the more complicated aspects of EBT implementation rather than on how much they will be reimbursed for WIC foods. Additionally, the low frequency of issuance for these products, combined with the relatively short period the Initial EBT MADR Rates would be in effect, means there is very little risk that more tolerant Initial EBT MADR Rates for Tier Four Foods will compromise cost containment.

(c)(5) The Department is proposing that the Initial EBT MADR Rates would be in effect only until sufficient redemptions have occurred to calculate a MADR rate using the methodologies in proposed subsection (b). The Department believes that after the first 31 days of redemptions using the Initial EBT MADR Rates the majority of APL Subcategories will have the 30 unique vendor redemptions necessary to calculate a CARV or Statewide Average for EBT transactions. If an APL Subcategory does not have 30 redemptions after the first 31 days, then the Initial EBT MADR Rate will remain in effect until sufficient redemption data is available.

(c)(6) After completion of the pilot, the Department is proposing to reset the Initial EBT MADR Rates calculated during the pilot to the Initial EBT MADR Rates in proposed subsection (c) for statewide roll out. The Department is proposing to reset the MADR rates for the post-pilot statewide roll out because the distribution of vendors in peer groups in the pilot counties does not match the statewide distribution. The pilot counties contain a greater proportion of Peer Group Category B 10+ Register Count Subgroup vendors and fewer 1-2 Register Count Subgroup vendors than is typical across the state. Because of this distribution, the Department believes that resetting MADR rates for the statewide roll out using the methodologies for calculating Initial EBT MADR Rates set forth in proposed subsections (c)(1)-(4) will provide vendors with a greater tolerance than MADR rates created with EBT transaction data collected during the pilot. Implementation of EBT will be a significant and complex transition for the Department, local agencies, and WIC authorized vendors. Ensuring appropriate reimbursement during statewide roll out is essential in order to ease the transition for vendors from the paper food instrument system to the EBT food instrument system. The Initial EBT MADR Rates' greater tolerance should allow vendors transitioning to the EBT food instrument system to focus on the new technical requirements rather than concerns about reimbursement.

(d) The Department is proposing to redesignate current subsection (b) as subsection (d). The Department is also proposing to add the phrase "For the paper food instrument system," followed by a comma, before the words "the Department may manually adjust the MADR rates or the calculation methods, as specified below." This proposed change

makes clear that proposed subsection (d)'s rules for manual adjustment only apply to the paper food instrument system.

(d)(4)(A)-(B) The Department is proposing to repeal current subsections (b)(1)(A)-(B). These subsections specified rules for calculating initial MADR rates when the Department first implemented sections 60000 *et seq.* in 2014. Current subsections (b)(1), (b)(1)(A), and (b)(1)(B) are no longer applicable.

(d)(1) The Department is proposing to redesignate current subsection (b)(2) as subsection (d)(1). For consistency with other regulation text, the Department is proposing to add the word “twelve” before “12” and add parentheses around “12.” For clarity and consistency with other regulation text, the Department is proposing to add the word “rate” after the phrase “the Department may manually adjust the MADR.” These proposed changes will not affect the substance of the regulation text.

(d)(2) The Department is proposing to redesignate current subsection (b)(3) as subsection (d)(2). In order to simplify the text, the Department is also proposing to replace the phrase “Peer Group Category B, 6-9 and 10+ Register Count Subgroups” with “Large Full Line Grocers,” which is defined as “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+” in the proposed changes to section 60000. For consistency with other regulation text, the Department is also proposing to add the word “twelve” before “12” and add parentheses around “12.” These proposed changes will not alter the substance of the text of the regulation.

(d)(2)(A) The Department is proposing to redesignate current subsection (b)(3)(A) as subsection (d)(2)(A). In order to simplify the text, the Department is also proposing to replace the phrase “Peer Group Category B, 6-9 and 10+ Register Count Subgroups” with “Large Full Line Grocers,” which is defined as “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+” in the proposed changes to section 60000. With the proposed redesignation of current subsection (b)(3)² to subsection (d)(2)(A), the Department is proposing to amend the reference to subsection (b)(3) to refer to subsection (d)(2). These proposed changes will not affect the substance of the text of the regulation.

(d)(2)(B) The Department is proposing to redesignate current subsection (b)(2)(B) as subsection (d)(2)(B). In order to simplify the text, the Department is also proposing to replace the phrase “Peer Group Category B, 6-9 and 10+ Register Count Subgroups” with “Large Full Line Grocers,” which is defined as “vendors assigned to Peer Group Category B Register Count Subgroups 6-9 and 10+” in the proposed changes to section 60000. For consistency with other regulation text, which include explicit references to

² The Department notes that current subsection (b)(3), which covers the calculation of a substitute CARV for Food Item Numbers that do not meet a minimum redemption threshold, is incorrectly identified as “subsection (b)(2)” in current subsection (b)(3)(A). The Department uses the correct identifier—subsection (b)(3)—in this statement of reasons.

the regulation that defines the terms “rural” and “urban,” the Department is proposing to add the sentence “For purposes of this subsection, rural and urban shall be defined as set forth in California Code of Regulations, title 22, section 40740, subdivision (h)(2)” after the sentence ending with “for a minimum total of thirty-two (32) vendors.” These proposed changes will not affect the substance of the text of the regulation.

(d)(3) The Department is proposing to redesignate current subsection (b)(4) as subsection (d)(3).

(e) The Department is proposing to add subsection (e) to provide information about the instances in which Department may manually adjust the MADR rate in the EBT food instrument system. Federal regulations specify instances in which state agencies may adjust MADR rates. (7 C.F.R. § 246.12(g)(4)(i)(D), (h)(3)(viii).)

(e)(1) The Department is proposing to add subsection (e)(1) to specify how the Department will adjust the Statewide Average for compliance with the federal cost neutrality requirements. (7 C.F.R. § 246.12(g)(4)(i)(D).)

(e)(1)(A) When manual adjustments to the Statewide Average are necessary to ensure cost neutrality for UPC level MADR rates, the Department is proposing to compare the simple averages of the prices at which the UPC was redeemed by Peer Group Categories B and C vendors with the prices at which the UPC was redeemed by vendors in Peer Group Category A. In response to stakeholder feedback, the Department is proposing to calculate quarterly cost neutrality at the UPC level when data is available.

In order to comply with 7 Code of Federal Regulations part 246.12(g)(4)(i)(D), when the average of the Peer Group Category A vendors’ redemptions exceeds the average of the Peer Group Category B and C vendors’ redemptions, the Department is proposing to manually adjust the Statewide Average for the next MADR cycle. This one-time manual adjustment will set the Statewide Average for the UPC at the simple average of the Peer Group Category B and C vendors’ redemptions for that UPC in the previous quarter.

(e)(1)(B) If manual adjustments to the Statewide Average are necessary to ensure cost neutrality of the Statewide Average and there are no redemptions of a UPC by Peer Group Category B and C vendors, the Department is proposing to compare to the simple average of the prices at which that UPC was redeemed by Peer Group Category A vendors to the simple average of prices at which all UPCs in that UPC’s APL Subcategory were redeemed by Peer Group Categories B and C vendors.

In order to comply with 7 Code of Federal Regulations part 246.12(g)(4)(i)(D), when the average of the Peer Group Category A vendors’ redemptions for a UPC exceeds the average of the Peer Group Category B and C vendors’ redemptions for the APL

Subcategory to which that UPC belongs, the Department is proposing to manually adjust the Statewide Average for the next MADR cycle. This one-time manual adjustment will set the Statewide Average for the UPC at the simple average of the Peer Group Category B and C vendors' redemptions for all UPCs in that APL Subcategory in the previous quarter.

(e)(2) When a new APL Subcategory is authorized and no transaction data is available, the Department is proposing to collect shelf price data from Large Full Line Grocers, as defined in the proposed changes to section 60000, in order to calculate a substitute CARV and substitute Statewide Average by Benefit Unit.

The Department proposes to collect data from a minimum of eight rural and eight urban vendors in the Peer Group Category B, 6-9 Register Count Subgroup and from a minimum of eight rural and eight urban vendors in the Peer Group Category B, 10+ Register Count Subgroup, for a minimum total of 32 vendors.

The proposed sampling of at least 32 Large Full Line Grocers will ensure that a sufficient and representative sample of data is collected for the APL Subcategory's substitute CARV while preventing the influence of outliers. Use of this data set of Large Full Line Grocers is consistent with the Department's regulations requiring a minimum of 30 vendors in a redemption set and consistent with the current paper food instrument process for manual calculation of a substitute CARV, as set forth in current subsection (b)(3).

Using this data set of Large Full Line Grocers' redemptions to calculate a substitute Statewide Average for new APL Subcategories is a reasonable substitution for a sampling of statewide pricing data from Peer Group Category B and C stores because Large Full Line Grocers' redemptions comprise over 75 percent of the total redemptions used to calculate the Statewide Average.

(e)(3) When setting allowable reimbursement rates, federal regulation permits State Agencies to include a factor to reflect fluctuations in wholesale pricing. (7 C.F.R. § 246.12(h)(3)(viii).) The Department is proposing to allow for the manual adjustment of the EBT MADR rates when necessary to temporarily accommodate extreme fluctuations in wholesale food prices as reported in price and inflation information made public by other California State agencies and departments or nationally recognized sources of commodity food pricing information. This proposal mirrors current subsection (b)(4), which allows the Department to manually adjust the MADR rate to accommodate extreme fluctuations in wholesale food prices in the paper food instrument system. Sudden increases in wholesale food prices include but are not limited to, those that occur as a result of a natural disaster, extreme weather conditions, or war. In order to ensure that any manual adjustments made pursuant to this section are necessary and will not undermine the Department's cost containment efforts, the Department is requiring market fluctuations to be verified by nationally recognized sources of

commodity food pricing information or information from other California State agencies. The Department has selected these sources since they provide food pricing information that is commonly relied upon as neutral and objective.

(f) The Department is proposing to redesignate current subsection (c) as subsection (f).

For clarity and ease of reading in this subsection, the Department is proposing to add “Partially-Redeemed” in the parentheses after the phrase “partially-redeemed food instruments” and change the word “following” to “after” where it appears before the phrase “the Department’s request.” For consistency with other regulation text, the Department is proposing to add the words “seventy-five percent” before “75%” and add parentheses around “75%”; to remove “WIC Bulletin Regulations” before the words “section 70600”; add a comma and the word “subsection” between “70600” and “c”; add the word “as” before the phrase “required pursuant to”; and to remove the word “title” before “7 Code of Federal Regulations part 246.12(g)(4)(i)(D).” These proposed changes will not alter the substance of the regulation text.

(f)(1) The Department is proposing to redesignate current subsection (c)(1) as subsection (f)(1).

With the proposed redesignation of current subsection (c) to subsection (f), the Department is proposing to amend this subsection’s reference to subsection (c) to refer to subsection (f). For clarity and ease of reading, the Department is also proposing to add the word “in” before the phrase “Peer Group Category C.” These proposed changes will not alter the substance of the regulation text.

(f)(1)(A) The Department is proposing to redesignate current subsection (c)(1)(A) as new subsection (f)(1)(A).

With the proposed redesignation of current subsection (c) to subsection (f), the Department is proposing to amend this subsection’s references to subsection (c) to refer to subsection (f). For clarity, the Department is also proposing to remove the word “possible” where it appears before the phrase “for this Food Item Number would be.” These proposed changes will not alter the substance of the regulation text.

(f)(1)(B) The Department is proposing to redesignate current subsection (c)(1)(B) as new subsection (f)(1)(B).

With the proposed redesignation of current subsection (c) to subsection (f), the Department is proposing to amend this subsection’s references to subsections (c) and (c)(1) to refer to subsection (f) and (f)(1). For consistency with other regulation text, the Department is proposing to add the words “one hundred percent” before “100%” and add parentheses around “100%.” For ease of reading, the Department is proposing to

replace the word “and” after “dry beans” with the phrase “as well as.” These proposed changes will not alter the substance of the regulation text.