



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



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February 4, 2020

REGULATORY ALERT 2020-01

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

The California Department of Public Health (CDPH) is informing 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, Articles 2 and 4, to revise sections 50200, 70000, 70300, and 71400, and adopt sections 70001, 70725, and 71050, pursuant to Health and Safety Code section 123322. These proposed amendments reflect the California WIC Program's transition from a paper food instrument system to an Electronic Benefit Transfer (EBT) food instrument system.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, CDPH will meet with stakeholders by webinar on February 28, 2020, to receive input on the proposed EBT-related amendments to the WIC Peer Group Criteria and Vendor Authorization Criteria. If you are interested in participating in this stakeholder webinar, please send an email by close of business on February 10, 2020, with the subject line reading "Regulatory Alert 2020-01 Stakeholder RSVP," to WICRegulations@cdph.ca.gov, with the following information included in the body of the email:

Name:

Company Name (if applicable):

Address:

Email 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 Women, Infants and Children (WIC) Division
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(916) 928-8500 [Division Website](http://www.wicworks.ca.gov) (www.wicworks.ca.gov)



CDPH will contact you by February 14, 2020, with details on how and when to attend a webinar workgroup meeting. Stakeholders participating in a meeting will be assigned to the first available meeting.

Comment Period

CDPH will accept written comments regarding the adoption of the proposed action. The comment period will be open until March 6, 2020. Send your comments electronically to the following e-mail address: WICRegulations@cdph.ca.gov.

PLEASE NOTE: All information submitted with your written comments on these proposed regulations becomes public information. Please do not include any information in your comments that you do not want to become public, including personal contact information or other private information.

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 2. Peer Group Criteria

50200 Full-Line Grocery Peer Group/Category B.

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

(1) For the purposes of this section, the Department shall use the following definitions to determine variety and quantity of food items stocked:

(A) A variety includes different types of food items in the food group. For purposes of this section, food groups include cereals, breads/tortillas, fresh dairy products, fresh fruits and vegetables, and fresh meats/poultry/seafood. For example, a variety of dairy products includes eggs, cheese, milk, yogurt, and butter. A variety of cereal includes but is not limited to shredded wheat, toasted o's, corn flakes, rice flakes, puffed rice, oatmeal, and cream of wheat. A variety of breads includes but is not limited to rye, whole wheat, white, and multi-grain. A variety of breads also includes different forms of bread, regardless of the grain; for example, a variety of bread includes rolls, a whole loaf, a pre-sliced loaf, and buns. A variety of fresh meats includes but is not limited to different cuts of the same type of fresh meat. For example, a variety of fresh meats includes boneless chicken breasts, chicken legs, whole chicken and ground chicken.

(B) The variety requirement cannot be met by stocking different brands or flavors of the same food item. For example, a variety of fresh dairy products does not include five (5) different brands of yogurt. A variety of fresh dairy products also does not include five (5) different flavors of yogurt. A variety of cereal does not include different brands of the same type of cereal or different flavors of the same brand. For example, a variety of cereal does not include different brands of puffed rice or different flavors of toasted o's. Rolled oats, steel cut oats and instant oatmeal shall not count as more than one (1) variety.

(C) For food items packaged for sale as one item, a unit shall mean one package.

(D) For food items sold in bulk quantities, a unit shall be determined by the method in which the food item is sold. For example if produce or meat is sold by weight, a unit shall be one pound. For example for bananas, apples, oranges and other fruits sold by the pound, one pound shall be one unit.

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

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

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

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

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

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

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

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

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

(A) 1-2 registers

(B) 3-5 registers

(C) 6-9 registers

(D) 10+ registers

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

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

2. All registers in specialty locations or sections shall be counted if those registers transact any “foods sales,” as defined in 7 Code of Federal Regulations part C.F.R. §246.2. Examples of specialty locations or sections include but are not limited to jewelry, clothing, and electronics.

3. Specialty locations shall not be included in the register count if the location does not have a register.

4. Automated Teller Machines (ATMs) or in-store banks with registers shall not be included in the register count.

5. A checkout location equipped with both a register and a separate EBT Capable Terminal shall be counted as one (1) register.

Article 4. Vendor Authorization Criteria.

70000 Vendor Authorization Criteria.

(a) When authorizing a vendor the Department shall assign a peer group to new vendor applicants for purposes of authorization. For determining ongoing compliance with authorization criteria the Department shall apply the criteria based on the vendor’s currently assigned peer group. ~~For purposes of this article, the Department is defined as, the California Department of Public Health and the California WIC Program. “WIC” is defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.~~

(b) In order to be authorized for participation in the program all vendors must enter into a vendor agreement with the Department.

(c) The Department shall apply the vendor authorization criteria in this article to all vendors throughout the authorization period and to vendor applicants. Vendor applicants will be denied authorization for failure to meet the vendor authorization criteria. If a vendor fails to meet the authorization criteria at any time during the authorization period, the Department shall terminate the vendor's participation in WIC.

70001 Definitions.

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

(1) *Authorized Product List.* The Authorized Product List or APL is an electronic file of all Universal Product Codes (UPCs) and Price Look-Up codes (PLUs) for supplemental foods authorized by the Department.

(2) *Certifying Entity.* The Certifying Entity is an agent of the Department that is authorized to conduct certification and recertification testing for Point of Sale Systems to determine whether a system meets the requirements necessary to be deemed an EBT Capable Point of Sale System.

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

(4) *EBT Balance Inquiry.* An EBT Balance Inquiry is an essential function of an EBT Capable Point of Sale System that is used to obtain the benefit balance, also known as the food balance, associated with a participant's WIC EBT card.

(5) *EBT Transactions.* EBT Transactions include EBT food instrument transactions for WIC authorized supplemental foods or EBT Balance Inquiries.

(6) *Lane.* A Lane is a checkout location that is capable of transacting "food sales," as defined in 7 Code of Federal Regulations part 246.2.

(7) *Point of Sale System.* A Point of Sale System is the hardware and software that is used to process transactions. A Point of Sale System includes one (1) or more Terminals and may also include bar code scanners, printers, cash register systems, or back office software.

(8) *Point of Sale System, EBT Capable.* An EBT Capable Point of Sale System is a Point of Sale System that has been certified for use in California by the Department or the Department's Certifying Entity based on the determination that the system complies with all federal requirements for online WIC EBT point of sale systems set forth in the United States Department of Agriculture's (USDA's):

(A) "Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)"; and

(B) "WIC EBT Technical Implementation Guide."

(9) Terminal. A Terminal is the component of a Point of Sale System that is located at a checkout location and is used to process transactions. A Terminal typically includes a card reader, key pad, display screen, printer, hardware, and software.

(10) Terminal, EBT Capable. An EBT Capable Terminal is a Terminal that is part of, or independently meets the criteria for, an EBT Capable Point of Sale System.

(11) WIC Program. The WIC Program is the California Special Supplemental Nutrition Program for Women, Infants, and Children.

70300 Cash Register Systems.

(a) Each vendor and vendor applicant ~~must~~ shall maintain and use a cash register system ~~in~~ for conducting all business sales transactions.

(1) For paper food instrument transactions:

(b) ~~(A)~~ (A) The cash register system ~~must~~ shall calculate, record, and print a daily totals summary of all sales transactions conducted during each business day showing the transfer of goods for money or monetary equivalents.

~~(c) The cash register system must automatically print an itemized receipt of each transaction. The receipt must be given to the customer at each transaction.~~

(d) (B) The daily totals summary of all sales transactions from the cash register system ~~must~~ shall have the vendor's name and address, the transaction date, the quantity purchased, the sale price of the item purchased, the amount of tax charged, and the indication of tax status. Cash register receipt detail and daily totals summaries are part of the standard business records vendors are required to maintain for a minimum of three (3) years and are subject to both verification and Program audit. The daily totals summary of all sales transactions ~~can~~ may be retained in paper or electronic formats.

(2) For EBT Transactions, a vendor's EBT Capable Point of Sale System is considered a cash register system.

(b) The cash register system shall automatically print an itemized receipt of each paper food instrument transaction and EBT Transaction. The vendor shall give the receipt(s) to the customer.

(1) For EBT food instrument transactions, receipts shall comply with the requirements in the United States Department of Agriculture's (USDA's) "Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)" (Operating Rules) and "WIC EBT Technical Implementation Guide" (Technical Implementation Guide). At minimum, an EBT food instrument transaction receipt shall include the following information:

(A) Last four (4) digits of the card number of the Primary Account Number (PAN). No other portion of the PAN may be printed on the receipt;

(B) Vendor name. The vendor name is the generally accepted name for the location or a name consistent with the application the vendor submitted to the Department to become an authorized WIC vendor;

(C) Vendor street address, city, state abbreviation, and zip code;

(D) Local date and time of the transaction;

(E) WIC food item identifier, if a separate WIC Purchase receipt is not provided;

(F) Benefit expiration date and time;

(G) Purchased food items, including the food item quantity, description, and unit of measure;

(H) Unit cost;

(I) Total transaction amount;

(J) Discounts (coupons) applied;

(K) Benefits remaining, including the benefit description, quantity, and unit of measure; and

(L) A unique transaction identifier or systems trace audit number.

(2) For EBT Balance Inquiries, receipts shall comply with the requirements in the USDA's Operating Rules and Technical Implementation Guide. At minimum, an EBT Balance Inquiry receipt shall include the following information:

(A) Last four (4) digits of the card number of the PAN. No other portion of the PAN may be printed on the receipt;

(B) Vendor name. The vendor name is the generally accepted name for the location or a name consistent with the application the vendor submitted to the Department to become an authorized WIC vendor;

(C) Vendor street address, city, state abbreviation, and zip code;

(D) Local date and time of the balance inquiry;

(E) Benefit expiration date or benefit effective and benefit ending dates;

(F) Benefits available (even if zero (0) balances), including the benefit description, quantity, and unit of measure; and

(G) A unique transaction identifier or systems trace audit number.

70725 EBT Capability.

(a) All vendors and vendor applicants shall obtain an EBT Capable Point of Sale System certified for use in California and use the EBT Capable Point of Sale System for all EBT Transactions.

(1) A list of all certified EBT Capable Point of Sale Systems shall be available on the Department's website. This list does not represent the Department's connection with, or approval or endorsement of, the certified systems or their manufacturers.

(b) Vendors shall maintain the EBT Capable Point of Sale System in a manner that ensures the system's ongoing compliance with all federal requirements for online WIC EBT point of sale systems set forth in the United States Department of Agriculture's (USDA's):

(1) "Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)" (Operating Rules); and

(2) "WIC EBT Technical Implementation Guide" (Technical Implementation Guide).

(c) If the Department determines that a vendor's previously certified Point of Sale System is not complying with the Operating Rules' or Technical Implementation Guide's requirements for accurately settling, reconciling, or processing EBT Transactions or processing the Authorized Product List, the Department shall issue the vendor a written notice to stop use of the Point of Sale System for WIC EBT Transactions.

(1) Upon receipt of such notice, the vendor shall immediately stop use of the Point of Sale System for EBT Transactions and either:

(A) Obtain and use a different EBT Capable Point of Sale System and notify the Department in writing upon installation of the system; or

(B) Request that the Certifying Entity recertify the vendor's current Point of Sale System. The vendor shall notify the Department in writing when the system has been recertified.

(2) If, after five (5) days from the date of the notice, the vendor has not stopped use of the Point of Sale System for EBT Transactions, the Department shall temporarily freeze the vendor's ability to transact EBT food instruments.

(3) If, after thirty (30) days from the date of the notice, the vendor has not complied with subsection (c)(1)(A) or (c)(1)(B), the vendor shall be terminated for failure to meet vendor authorization criteria.

(d) A vendor that is temporarily unable to process EBT Transactions shall post a notice stating: "California WIC Card Transactions are Temporarily Unavailable at this Location." The notice shall be affixed to either the front window or the front door of the vendor's store. If the vendor's store has multiple entrances that customers use during store hours, the vendor shall post this notice at all such entrances.

(1) Vendors that are temporarily unable to accept EBT Transactions include but are not limited to:

(A) Vendors experiencing temporary internet or power outages; and

(B) Vendors that have received a notice from the Department pursuant to subsection (c).

(e) A vendor or vendor applicant that the Department determines is necessary for participant access as specified in California Code of Regulations, title 22, section 40740, subdivision (h), may mail a request for Department-subsidized equipment in order to meet the vendor authorization criteria set forth in this section. The Department shall furnish the vendor or vendor applicant with such equipment in the manner set forth in section 71050, subsection (d)(1).

71050 Minimum Lane Coverage Requirements.

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

(1) "Annual gross food sales" means the vendor's documented non-taxable sales of food products, as calculated by the Department in accordance with subsection (c)(2)(B)3.

(2) “Monthly WIC redemptions” means the monthly average of the vendor’s WIC redemptions for the most recent six (6)-month period, rounded to the nearest dollar, as calculated using the Department’s WIC redemption information.

(b) Assessments and Reassessments of Minimum Lane Coverage Requirements.

(1) At initial authorization, and at any reauthorization that occurs before a vendor has at least six (6) months of annual gross food sales and monthly WIC redemptions data, the Department shall assess the minimum number of Lanes that a vendor is required to equip with EBT Capable Terminals pursuant to subsection (c)(2)(A).

(2) After one (1) year from the vendor’s initial authorization, and at reauthorization, the Department shall reassess the minimum number of Lanes that a vendor is required to equip with EBT Capable Terminals pursuant to subsection (c)(2)(B). The Department may also reassess a vendor’s minimum lane coverage requirements at any time during the term of the vendor agreement.

(3) A vendor that has been authorized for at least six (6) months may submit a written request for the Department to reassess the minimum number of Lanes that the vendor is required to equip with EBT Capable Terminals. This reassessment shall be made in accordance with subsection (c)(2)(B) and the Department shall provide no more than one (1) reassessment per vendor per year pursuant to this subsection.

(c) Minimum Lane Coverage Requirements.

(1) When determining the number of Lanes in a vendor’s store:

(A) All Lanes shall be counted whether they are used full-time or occasionally.

(B) All Lanes in specialty areas or sections shall be counted if the checkout location is capable of transacting “food sales,” as defined in 7 Code of Federal Regulations part 246.2. Examples of specialty areas or sections include but are not limited to jewelry, clothing, and electronics sections, as well as delicatessens and coffee bars where customers may order prepared foods and drinks.

1. Specialty areas or sections shall not be included in the lane count if the checkout location is incapable of transacting food sales.

(C) Automated Teller Machines (ATMs) or in-store banks shall not be included in the lane count.

(2) To satisfy applicable minimum lane coverage requirements, vendors and vendor applicants shall equip Lanes with EBT Capable Terminals as follows:

(A) All vendor applicants, and all vendors that have not undergone a reassessment pursuant to subsection (b)(2) or (b)(3), shall equip at least one (1) Lane with an EBT Capable Terminal.

(B) All vendors that have had their minimum lane coverage requirements reassessed by the Department pursuant to subsection (b)(2) or (b)(3) shall equip Lanes with EBT Capable Terminals based on the reassessment, which shall take into account the vendor's annual gross food sales and monthly WIC redemptions.

1. If the vendor's annual gross food sales are greater than two million dollars (\$2,000,000), the vendor shall equip Lanes with EBT Capable Terminals as follows:

A. At least one (1) EBT Capable Terminal if the vendor has less than eleven thousand dollars (\$11,000) in monthly WIC redemptions.

B. At least two (2) EBT Capable Terminals if the vendor has eleven thousand and one dollars (\$11,001) to twenty-two thousand dollars (\$22,000) in monthly WIC redemptions.

C. At least three (3) EBT Capable Terminals if the vendor has twenty-two thousand and one dollars (\$22,001) to thirty-three thousand dollars (\$33,000) in monthly WIC redemptions.

D. At least four (4) EBT Capable Terminals if the vendor has greater than thirty-three thousand and one dollars (\$33,001) in monthly WIC redemptions.

E. A vendor shall not be required to equip more than four (4) EBT Capable Terminals, or more EBT Capable Terminals than the number of Lanes in the vendor's store, regardless of the vendor's annual gross food sales or monthly WIC redemptions.

2. If the vendor's annual gross food sales are less than or equal to two million dollars (\$2,000,000), the vendor shall equip Lanes with EBT Capable Terminals as follows:

A. At least one (1) EBT Capable Terminal if the vendor has less than eight thousand dollars (\$8,000) in monthly WIC redemptions.

B. At least two (2) EBT Capable Terminals if the vendor has eight thousand and one dollars (\$8,001) to sixteen thousand dollars (\$16,000) in monthly WIC redemptions.

C. At least three (3) EBT Capable Terminals if the vendor has sixteen thousand and one dollars (\$16,001) to twenty-four thousand dollars (\$24,000) in monthly WIC redemptions.

D. At least four (4) EBT Capable Terminals if the vendor has greater than twenty-four thousand and one dollars (\$24,001) in monthly WIC redemptions.

E. A vendor shall not be required to equip more than four (4) EBT Capable Terminals, or more EBT Capable Terminals than the number of Lanes in the vendor's store, regardless of the vendor's annual gross food sales or monthly WIC redemptions.

3. For purposes of this section, annual gross food sales shall be calculated as follows:

A. If the vendor files California Department of Tax and Fee Administration State, Local, and District Sales and Use Tax Return statements (CDTFA statements), upon request by the Department, the vendor shall provide true, correct, and complete copies of its most recently filed CDTFA statement(s). The CDTFA statement(s) shall be provided to the Department within thirty (30) days of the date of the Department's request. Except as provided in this subsection, the vendor's CDTFA statement(s) shall cover a period of twelve (12) months. If the vendor has not been in operation long enough to have filed CDTFA statement(s) covering a full twelve (12) months, the vendor shall provide CDTFA statement(s) covering the most recent six (6)-month period.

i. If the vendor provides CDTFA statement(s) covering a period of twelve (12) months, the Department shall calculate the vendor's annual gross food sales as the vendor's total non-taxable sales of food products for the twelve (12)-month period set forth in the CDTFA statement(s).

ii. If the vendor provides CDTFA statement(s) covering the most recent six (6)-month period, the Department shall calculate the vendor's annual gross food sales as the vendor's total non-taxable sales of food products for the most recent six (6)-month period set forth in the CDTFA statement(s), multiplied by two (2).

B. If the vendor does not file CDTFA statements because the vendor does not sell any taxable goods, or if the vendor recently began operations and

has not yet filed CDTFAs covering at least six (6) months of sales, upon request by the Department, the vendor shall provide true, correct, and complete copies of its most recent monthly sales statements and inventory records detailing the vendor's sales of foods eligible for purchase under the Supplemental Nutrition Assistance Program (SNAP-eligible foods). The monthly sales statements and inventory records shall be provided to the Department within thirty (30) days of the date of the Department's request. Except as provided in this subsection, the vendor's monthly sales statements and inventory records shall cover a period of twelve (12) months. If the vendor has not been in operation long enough to have monthly sales statements and inventory records covering a full twelve (12) months, the vendor shall provide monthly sales statements and inventory records covering the most recent six (6)-month period.

i. If the vendor provides monthly sales statements and inventory records covering a period of twelve (12) months, the Department shall calculate the vendor's annual gross food sales as the vendor's total sales of SNAP-eligible foods for the twelve (12)-month period set forth in the monthly sales statements and inventory records.

ii. If the vendor provides monthly sales statements and inventory records covering the most recent six (6)-month period, the Department shall calculate the vendor's annual gross food sales as the vendor's total sales of SNAP-eligible foods for the most recent six (6)-month period set forth in the monthly sales statements and inventory records, multiplied by two (2).

(3) Self-Checkout Lanes.

(A) A vendor or vendor applicant that makes both attended Lanes with cashiers and self-checkout Lanes available to non-WIC customers shall not equip only self-checkout Lanes with EBT Capable Terminals.

(d) Equipment Provided by the Department.

(1) If the Department determines that the vendor or vendor applicant is necessary for participant access as specified in California Code of Regulations, title 22, section 40740, subdivision (h), upon written request, the Department shall provide the vendor or vendor applicant with the number of EBT Capable Terminals necessary to meet the vendor's or vendor applicant's minimum lane coverage requirements.

(2) If, after a reassessment pursuant to this section, the minimum lane coverage requirement for a vendor using Department-provided equipment is reduced, the Department shall stop paying the monthly charge, as set forth in the merchant agreement between the vendor and the Certifying Entity, for any EBT Capable Terminal(s) in excess of the vendor's reassessed minimum lane coverage requirement. Payment shall terminate after thirty (30) days from the date of the Department's written notice of intent to stop payment.

(e) Any vendor that fails to submit the annual gross food sales documentation requested by the Department pursuant to this section shall be issued a written notice of the vendor's failure to meet authorization criteria. If, after thirty (30) days from the date of the notice, the vendor has failed to submit the requested annual gross food sales documentation, the Department shall terminate the vendor's agreement.

(f) Any vendor that fails to meet applicable minimum lane coverage requirements pursuant to this section shall be issued a written notice of the vendor's failure to meet authorization criteria. If, after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice, the vendor subsequently fails to meet the minimum lane coverage authorization criteria, the vendor shall have demonstrated a pattern of failure to meet vendor authorization criteria and shall be disqualified for a period of one (1) year.

71400 Restrictions and Allowed Uses of the WIC Acronym and WIC Logo.

(a) For the purposes of this section and all contracts, instructions, forms and other documents related hereto, the following terms are defined:

(1) General Definitions

(A) Point of Display. Point of Display items are used to identify WIC authorized supplemental foods and where ~~the~~ authorized supplemental foods items are located or shelved. Point of Display items include shelf_talkers and signs.

(2) Printing and Image Definitions

(A) CMYK. CMYK, also known as process color, four-color or full color, refers to the four process colors (cyan, magenta, yellow and black) used to create all colors in standard color printing. This process is one of two allowed printing processes for reproduction of the California WIC logo. The CMYK process can create thousands of clear, vibrant colors; therefore, this option is permitted and is the preferred image file for vendors to reproduce the California WIC logo.

(B) EPS Format. EPS, Encapsulated PostScript, is a method for creating logos and other line-art illustrations using mathematical vectors to define the lines and curves that make up the logo or other artwork. These vectors retain proportion within the artwork regardless of how it is resized without loss of detail or distortion. This format is the only allowable option permitted for all reproduction of the California WIC logo.

(C) Spot Color. Spot Color refers to an image file which uses individual Pantone colors instead of CMYK process to reproduce the California WIC logo. It takes four separate Pantone colors to print the logo and the results will not be as rich in color as the CMYK process defined above. This format is one of two allowed options permitted for all reproduction of the California WIC logo. The black and white EPS image file is a variant of the spot color logo that uses a single color (black) to create the California WIC logo.

(D) Vector. Graphic images created by a computer program and stored in file format as a series of numbers which define shape, position and color of EPS images. Vectors are object-oriented and work as a whole unit together. The mathematic property of the vectors allows increase and decrease in image size without distortion.

(E) White Space Required for Newspaper Ad or Insert. Visual area surrounding logo which must be free of typeset, color, or other imagery to prevent detracting from the appearance of the logo. White space is literally space around the logo which is white.

(b) The federal WIC logo and the WIC acronym are registered service marks of the United States Department of Agriculture (USDA). The federal WIC logo and the California WIC logo are the property of the Federal and State Governments, respectively. Vendors and vendor applicants shall not use of the WIC acronym and or logo only except as permitted in this Section 71400:

(1) Vendors and vendor applicants shall not use the federal WIC logo or acronym or the State WIC logo or acronym or close facsimiles thereof, in total or in part in any manner, only without prior written consent of the Department, ~~except when printing signs and shelf talkers pursuant to the requirements in subsection (d)(3).~~

(2) The Department shall deny authorization or shall not continue authorization of a vendor or vendor applicant whose name or logo includes the WIC acronym, the federal WIC logo, the California WIC logo, or close facsimiles thereof, in total or in part, either in the official name in which the vendor or vendor applicant is registered or in the name under which it does business, if different. This includes, but is not

limited to, using the letters “W”, “I”, and “C” in that order next to one another in the vendor or vendor applicant’s name, or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters.

(3) Vendors and vendor applicants must not attach or affix in any manner the WIC acronym, the federal WIC logo, or the California WIC logo on any authorized supplemental food or incentive item.

(4) Vendors and vendor applicants may use the California WIC logo only on materials produced or approved by the Department including shelf talkers, posters, signs, decals or stickers.

(5) Vendors may reproduce the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor’s store, as specified in subsection (d) below.

(c) Upon prior written approval by the Department vendors are permitted to print the California WIC logo pursuant to the printing and formatting requirements specified in this Section 71400. When using the California WIC logo, the vendor shall use only the California WIC logo files that are available for download on the Vendor WIC Information eXchange website (“VWIX”) at: <https://vwix.ca.gov>. These are the only image file options available to WIC authorized vendors for printing the California WIC logo image; no other image file formats are allowed.

(1) Vendors shall print the California WIC logo image using the CMYK process or spot color image file options, as defined in subsection (a) above and in color as specified in subsections (c)(1)(B)-(C) below:

(A) The California WIC logo and tagline may appear in a single color, but only in black on white.

(B) The CMYK combination, a permitted and preferred option, which produces a full-color image of the California WIC logo, shall be as follows:

1. Purple: fifty (50) percent cyan, ninety (90) percent magenta, zero (0) percent yellow, and zero (0) percent black.

2. Red: zero (0) percent cyan, ninety-one (91) percent magenta, eighty-seven (87) percent yellow, and zero (0) percent black.

3. Lime: forty-three (43) percent cyan, zero (0) percent magenta, seventy-nine (79) percent yellow, and zero (0) percent black.

4. Green: seventy-five (75) percent cyan, zero (0) percent magenta, one-hundred (100) percent yellow, and zero (0) percent black.

(C) Pantone colors, a permitted option of the CMYK combination, is used to produce a full-color image of the California WIC logo, shall be as follows:

1. Purple: ~~p~~Pantone 258
2. Red: ~~p~~Pantone 179
3. Lime: ~~p~~Pantone 368
4. Green: ~~p~~Pantone 361

(2) When printing the California WIC logo, vendors ~~must~~ shall ensure the California WIC logo remains intact each time it is printed. The California WIC logo includes the WIC acronym and tagline “Families grow healthy with WIC.”. The vendor shall not use the tagline as a separate graphic element. Shelf talkers are the only exception and may be printed without the tagline.

(3) When printing the California WIC logo, vendors ~~must~~ shall not distort the California WIC logo. When enlarging or scaling it down, vendors shall keep the logo proportionate in size. Changes to the size must be the same percentage increase in both height and width. For example, if the height of the logo image is increased twenty-five (25) percent, the width must also be increased twenty-five (25) percent.

(4) When printing the California WIC logo, vendors ~~must~~ shall print only the California WIC logo and not add any additional graphics or text around the logo. Exception: upon approval by the Department additional graphics or text may be allowed when printing the California WIC logo in general circulation newspaper ads or inserts that advertise the vendor’s store when used as specified in subsection (b)(5).

(5) When printing the California WIC logo, vendors ~~must~~ shall maintain integrity of the California WIC logo when printing in newspaper ads or inserts by using the “white space,” as defined in subsection (a)(2)(E), around the logo as downloaded from VWIX. ~~White space means visual area free of typeset or other imagery to prevent detracting from the appearance of the logo.~~

(6) Vendors shall not wrap text around the white space surrounding the California WIC logo. Vendors shall always leave enough white space around the logo to prevent “crowding” by other elements.

(7) Vendors shall print the California WIC logo in a white box when the logo is placed on a background color or photograph. Vendors shall not print the logo on a solid background color, screen or tint of a color, or a photographic or illustrative background if the background shows through the logo.

(8) Vendors shall not enclose the California WIC logo in other framing shapes including, but not limited to circles or ellipses.

(d) Vendor uses of the California WIC logo. The California WIC logo shall ~~not~~ be used only in any media other than print as specified in this subsection (d).

(1) Posters. The Department may provide vendors with posters which include the California WIC logo to identify a store as authorized to accept food instruments from participants for the sale of authorized supplemental foods. ~~Only posters provided by the Department may include the WIC acronym or logo. Department supplied posters may only be displayed on store walls and boards or in window displays.~~ Vendors shall ~~may~~ not print or display posters with the federal WIC logo, the WIC acronym, or the California WIC logo. Only posters provided by the Department may include the WIC acronym or logo. Posters provided by the Department may be displayed only on store walls and boards or in window displays.

(2) Decals. The Department may provide vendors with decals to identify a store as authorized to accept food instruments from participants for the sale of authorized supplemental foods. Only decals provided by the Department may be used if the decals include the WIC acronym or logo. Department supplied decals may only be affixed to windows or doors. Vendors ~~may~~ shall not print or display any other decals with the federal WIC logo, the WIC acronym, or the California WIC logo.

(3) EBT Lane Markers. The Department may provide vendors with EBT lane markers to identify the Lanes where the vendor processes WIC EBT Transactions. EBT lane markers provided by the Department may be displayed only on Lanes equipped with EBT Capable Terminals or at locations where customers may form a line to use one or more Lanes equipped with EBT Capable Terminals. Only EBT lane markers provided by the Department may include the WIC acronym or logo, and vendors shall not print or display any other EBT lane markers with the federal WIC logo, the WIC acronym, or the California WIC logo.

~~(3)~~ (4) Point of Display Items

(A) Signs. The Department may provide vendors with signs to identify WIC authorized supplemental foods and where the food items are located or shelved. Signs provided by the Department supplied signs may only be affixed only on to

displays to identify where authorized supplemental food items are located or to emphasize fruits and vegetables as a food item choice. Except as provided in this subsection (d)(4)(A), ~~V~~vendors ~~may~~ shall not print or display signs with the federal WIC logo, the WIC acronym, or the California WIC logo.

1. Vendors may print signs with the California WIC logo in accordance with the standards set forth in this subsection. When printing signs for WIC authorized supplemental foods, a vendor may ~~only~~ use only the following image containing the California WIC logo, which is available on VWIX and represented below. Vendors may resize the following logo ~~for sign use~~ up to six (6) inches in height, but shall not without ~~distorting~~ the proportion of the logo image. This image is available on VWIX for use as a sign ~~or decal on VWIX.~~

A. Logo for Signs



(B) Shelf Talkers. Vendors ~~are permitted to~~ may display shelf talkers to identify WIC authorized supplemental foods. Shelf talkers may ~~only~~ be affixed only to shelves to identify where authorized supplemental foods ~~items~~ are located or shelved. Shelf talkers may be ~~supplied~~ provided by the Department or printed by a vendor ~~with approval from the Department pursuant to~~ in accordance with subsections ~~(c)(3)(B)(3)~~ (d)(4)(B)1.-3. below.

1. Shelf talkers printed by a vendor that identify WIC authorized supplemental foods ~~must~~ shall comply with the printing and formatting requirements specified in subsection (c).

2. Shelf talkers for WIC authorized supplemental foods ~~must~~ shall be printed in color.

3. When printing shelf talkers for WIC authorized supplemental foods, a vendor may ~~only~~ use only ~~one of the following~~ the images containing the

~~California WIC logo, available on VWIX and represented below. Vendors may shall not resize or make any other changes to these images available for use as shelf talkers on VWIX.~~

A. Right Shelf Talker



B. Left Shelf Talker



C. Standard Shelf Talker



~~(4) (5) Newspaper Ads or Inserts Requirements.~~ Upon approval of the Department, vendors may print the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor's store (~~Ex. for example, a w~~Weekly store ad).

(A) Newspaper ads or inserts printed by a vendor must comply with the printing and formatting requirements specified in subsection (c).

(B) Newspaper ads or inserts may be printed in color or in black and white. The black and white logo may only be used in black and white newspaper ads or inserts.

(C) When printing newspaper ads or inserts a vendor may only use one of the following logos, available on VWIX and represented below. The following logos may not be printed larger than one-eighth (1/8) of the total size of the ad or insert:

1. Color Logo



2. Black and White Logo



(e) All vendors wishing to print or use the WIC logo pursuant to the requirements of this Section 71400 shall submit a sample of the proposed use prior to printing or publication to the Department for approval. The Department will review the proposed use for compliance with this Section 71400 and issue a determination as to whether the use is approved within ten (10) business days of receipt of request for approval.

(f) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with restrictions on the use of the WIC acronym and logo. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with restrictions on the use of the WIC acronym and logo, the vendor shall have demonstrated a pattern of failure to comply with restrictions on the use of the WIC acronym and logo and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

Nature of the Regulation

CDPH is proposing to amend the WIC Bulletin Regulations, Articles 2 and 4, to revise sections 50200, 70000, 70300, and 71400, and adopt sections 70001, 70725, and 71050. These proposed regulatory amendments would (1) establish a definitions section that reflect the California WIC Program's transition to an EBT food instrument system; (2) establish requirements that all vendors and vendor applicants obtain and use an EBT Capable Point of Sale System for all EBT Transactions, including WIC EBT food instrument transactions and EBT Balance Inquiries, and demonstrate compliance with the relevant federal authorities established or identified by the USDA Secretary; (3) establish the minimum number of Lanes that a vendor is required to equip with EBT Capable Terminals; (4) update cash register system requirements to reflect requirements for both paper food instrument transactions and EBT Transactions; (5) clarify that a checkout location equipped with both a cash register and an EBT Capable Terminal will be counted as one register for purposes of determining register count for Full-Line Grocery Peer Group/Category B vendors; (6) establish requirements pertaining to the use of EBT lane markers to identify Lanes at which the vendor processes EBT Transactions; (7) and make other miscellaneous revisions in the WIC Bulletin Regulation sections included in this notice.

Reason for the Regulation

The reasons for these amendments 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 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 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', is positioned above the typed name.

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

Attachment 1

**Regulatory Alert 2020-01:
Statement of Reasons for
Amendments to Sections 50200,
70000, 70300, and 71400, and
Adoption of Sections 70001, 70725,
and 71050**

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

February 4, 2020

Health and Safety Code section 123322 authorizes the California Department of Public Health to establish regulations regarding the peer group and vendor authorization criteria 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 50200, 70000, 70300, and 71400, and adopt sections 70001, 70725, and 71050, as specified in Regulatory Alert 2020-01.

California Department of Public Health
WIC Program
February 4, 2020

Attachment 1
Regulatory Alert 2020-01:
Statement of Reasons for
Amendments to Sections 50200,
70000, 70300, and 71400, and
Adoption of Sections 70001, 70725, and 71050

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PROPOSED REGULATION

50200 Full-Line Grocery Peer Group/Category B.

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

(1) For ~~the~~ purposes of this section, the Department shall use the following definitions to determine variety and quantity of food items stocked:

(A) A variety includes different types of food items in the food group. For purposes of this section, food groups include cereals, breads/tortillas, fresh dairy products, fresh fruits and vegetables, and fresh meats/poultry/seafood. For example, a variety of dairy products includes eggs, cheese, milk, yogurt, and butter. A variety of cereal includes but is not limited to shredded wheat, toasted o's, corn flakes, rice flakes, puffed rice, oatmeal, and cream of wheat. A variety of breads includes but is not limited to rye, whole wheat, white, and multi-grain. A variety of breads also includes different forms of bread, regardless of the grain; for example, a variety of bread includes rolls, a whole loaf, a pre-sliced loaf, and buns. A variety of fresh meats includes but is not limited to different cuts of the same type of fresh meat. For example, a variety of fresh meats includes boneless chicken breasts, chicken legs, whole chicken and ground chicken.

(B) The variety requirement cannot be met by stocking different brands or flavors of the same food item. For example, a variety of fresh dairy products does not include five (5) different brands of yogurt. A variety of fresh dairy products also does not include five (5) different flavors of yogurt. A variety of cereal does not include different brands of the same type of cereal or different flavors of the same brand. For example, a variety of cereal does not include different brands of puffed rice or different flavors of toasted o's. Rolled oats, steel cut oats and instant oatmeal shall not count as more than one (1) variety.

(C) For food items packaged for sale as one item, a unit shall mean one package.

(D) For food items sold in bulk quantities, a unit shall be determined by the method in which the food item is sold. For example if produce or meat is sold by weight, a unit shall be one pound. For example for bananas, apples, oranges and other fruits sold by the pound, one pound shall be one unit.

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

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

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

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

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

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

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

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

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

(A) 1-2 registers

(B) 3-5 registers

(C) 6-9 registers

(D) 10+ registers

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

1. All registers ~~must~~ shall be counted whether they are used full time or occasionally.
2. All registers in specialty locations or sections shall be counted if those registers transact any “foods sales,” as defined in 7 Code of Federal Regulations part C.F.R. §246.2. Examples of specialty locations or sections include but are not limited to jewelry, clothing, and electronics.
3. Specialty locations shall not be included in the register count if the location does not have a register.
4. Automated Teller Machines (ATMs) or in-store banks with registers shall not be included in the register count.
5. A checkout location equipped with both a register and a separate EBT Capable Terminal shall be counted as one (1) register.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2019): *Vendor peer group system* means a classification of authorized vendors into groups based on common characteristics or criteria that affect food prices, for the purpose of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels.

7 Code of Federal Regulations part 246.12(g)(4) (2019): The State agency must establish a vendor peer group system and distinct competitive price criteria and allowable reimbursement levels for each peer group The State agency must inform all vendors of the criteria for peer groups, and must inform each individual vendor of its peer group assignment.

7 Code of Federal Regulations part 246.12(g)(4)(ii)(A) (2019): *Implementing effective peer groups.* The State agency’s methodology for establishing a vendor peer group system must include the following:

- (A) At least two criteria for establishing peer groups, one of which must be a measure of geography, such as metropolitan or other statistical areas that form distinct labor and products markets, unless the State agency receives FNS approval to use a single criterion

State:

Health and Safety Code section 123310, subdivision (a)(4): 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 The department shall establish criteria to limit the number of retail food vendors with which the department enters into agreements. The criteria, at a minimum, shall include: . . . [t]he prices the vendor charges for foods in relation to other vendors in its peer group. For purposes of this subdivision, “peer group” means a group of vendors with similar characteristics that may include, but shall not be limited to . . .[n]umber of cash registers.

Health and Safety Code section 123322, subdivisions (a)(1), (b): [T]he department shall establish requirements for . . . [p]eer groups and a corresponding reimbursement system [T]he department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

STATEMENT OF REASONS

50200(a)(1) For grammatical correctness, the Department is proposing to remove the word “the” before “Purposes” and to make the “P” in the “Purposes” lowercase. These proposed changes will not alter the substance of the regulation text.

(a)(3) The Department is proposing to change the phrase “cash registers” to “cash register systems (registers)” in order to align section 50200, subsection (a)(3), with section 70300, which uses the term “cash register system.”

(a)(3)(E) The Department is proposing to change the phrase “cash registers” to “cash register systems” in order to align section 50200, subsection (a)(3)(E), with section 70300, which uses the term “cash register system.”

For consistency with other regulation text, the Department is proposing to change the phrase “W.B.R. § 70300” to “section 70300.” This proposed change will not alter the substance of the regulation text.

(a)(3)(E)1. For consistency with other regulation text, the Department is proposing to change the word “must” to “shall.” This proposed change will not alter the substance of the regulation text.

(a)(3)(E)2. For grammatical clarity and to call attention to the use of a federally defined term, the Department is proposing to add quotation marks around the term “food sales,” as well as a comma between the word “sales” and the closing quotation mark. Both of

these proposed changes will appear before the citation for the federal WIC regulation that defines food sales, which is 7 Code of Regulations part 246.2. For consistency with other regulations text, and in order to comply with applicable citation rules, the Department is proposing to change phrase “7 C.F.R. §246.2.” to 7 Code of Federal Regulations part 246.2.” These proposed changes will not alter the substance of the regulation text.

(a)(3)(E)5. In light of the proposed changes to section 70300, the Department is proposing to add new subsection (a)(3)(E)5. to this section 50200. The proposed subsection would provide that a checkout location that is equipped with both a cash register system and a separate EBT Capable Terminal would be counted as one register for purposes of assigning vendors to a Category B register count subgroup. This subsection would ensure that the proposed changes to section 70300 do not alter the intent of the register counting formula adopted in WIC Regulatory Bulletin 2014-01 by inadvertently counting a vendor’s cash register system and separate EBT Capable Terminal as two registers instead of one register.

PROPOSED REGULATION

70000 Vendor Authorization Criteria.

(a) When authorizing a vendor the Department shall assign a peer group to new vendor applicants for purposes of authorization. For determining ongoing compliance with authorization criteria the Department shall apply the criteria based on the vendor's currently assigned peer group. ~~For purposes of this article, the Department is defined as, the California Department of Public Health and the California WIC Program. "WIC" is defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children.~~

(b) In order to be authorized for participation in the program all vendors must enter into a vendor agreement with the Department.

(c) The Department shall apply the vendor authorization criteria in this article to all vendors throughout the authorization period and to vendor applicants. Vendor applicants will be denied authorization for failure to meet the vendor authorization criteria. If a vendor fails to meet the authorization criteria at any time during the authorization period, the Department shall terminate the vendor's participation in WIC.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.12(g)(3) (2019): Vendor selection criteria. The State agency must develop and implement criteria to select stores for authorization.

State:

Health and Safety Code section 123322, subdivisions (a)(2), (b): [T]he department shall establish requirements for . . . [c]riteria used for vendor authorization [T]he department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

STATEMENT OF REASONS

70001(a) In light of the proposed addition of section 70001, which would include all definitions for purposes of Article 4 of the WIC Bulletin Regulations, the Department is proposing to remove two definitions at the end of section 70000, subsection (a): "Department" and "WIC." For clarity and ease of reference, and to ensure that vendors and other stakeholders can easily locate all definitions that apply to Article 4, Vendor

Authorization Criteria, the Department is proposing to add these definitions to proposed section 70001.

PROPOSED REGULATION

70001 Definitions.

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

(1) *Authorized Product List.* The Authorized Product List or APL is an electronic file of all Universal Product Codes (UPCs) and Price Look-Up codes (PLUs) for supplemental foods authorized by the Department.

(2) *Certifying Entity.* The Certifying Entity is an agent of the Department that is authorized to conduct certification and recertification testing for Point of Sale Systems to determine whether a system meets the requirements necessary to be deemed an EBT Capable Point of Sale System.

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

(4) *EBT Balance Inquiry.* An EBT Balance Inquiry is an essential function of an EBT Capable Point of Sale System that is used to obtain the benefit balance, also known as the food balance, associated with a participant's WIC EBT card.

(5) *EBT Transactions.* EBT Transactions include EBT food instrument transactions for WIC authorized supplemental foods or EBT Balance Inquiries.

(6) *Lane.* A Lane is a checkout location that is capable of transacting "food sales," as defined in 7 Code of Federal Regulations part 246.2.

(7) *Point of Sale System.* A Point of Sale System is the hardware and software that is used to process transactions. A Point of Sale System includes one (1) or more Terminals and may also include bar code scanners, printers, cash register systems, or back office software.

(8) *Point of Sale System, EBT Capable.* An EBT Capable Point of Sale System is a Point of Sale System that has been certified for use in California by the Department or the Department's Certifying Entity based on the determination that the system complies with all federal requirements for online WIC EBT point of sale systems set

forth in the United States Department of Agriculture's (USDA's):

(A) "Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)"; and

(B) "WIC EBT Technical Implementation Guide."

(9) Terminal. A Terminal is the component of a Point of Sale System that is located at a checkout location and is used to process transactions. A Terminal typically includes a card reader, key pad, display screen, printer, hardware, and software.

(10) Terminal, EBT Capable. An EBT Capable Terminal is a Terminal that is part of, or independently meets the criteria for, an EBT Capable Point of Sale System.

(11) WIC Program. The WIC Program is the California Special Supplemental Nutrition Program for Women, Infants, and Children.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2019): 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

Multi-function equipment means Point-of-Sale equipment obtained by a WIC vendor through commercial suppliers, which is capable of supporting WIC EBT and other payment tender types

Single-function equipment means Point-of-Sale equipment, such as barcode scanners, card readers, PIN pads and printers, provided to an authorized WIC vendor solely for use with the WIC Program

7 Code of Federal Regulations part 246.3(b) (2019): Delegation to the State agency. The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; . . . FNS guidelines; and, instructions issued under the FNS Directives Management System.

7 Code of Federal Regulations part 246.12(g)(3) (2019): Vendor selection criteria. The State agency must develop and implement criteria to select stores for authorization. The State agency must apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the

reassessment and must terminate the agreements with those vendors that fail to meet them.

7 Code of Federal Regulations part 246.12(bb)(1) (2019): EBT Technical standards and requirements. (1) Each State agency, contractor and authorized vendor participating in the program shall follow and demonstrate compliance with:

- (i) Operating rules, standards and technical requirements as established by the Secretary; and
- (ii) Other industry standards identified by the Secretary.

Federal Guidelines and Instructions:

United States Department of Agriculture, WIC EBT Retail Certification Procedures and Test Scripts Version 3 (Feb. 2013).

United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT) (Sept. 2014).

United States Department of Agriculture, WIC EBT Technical Implementation Guide (Feb. 26, 2018).

State:

Health and Safety Code section 123322, subdivisions (a)(2), (b): [T]he department shall establish requirements for . . . [c]riteria used for vendor authorization [T]he department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

STATEMENT OF REASONS

70001(a) Federal statute requires WIC state agencies to implement electronic benefit transfer (EBT) food instrument systems no later than October 1, 2020. (42 U.S.C. § 1786(h)(12)(B)(i).) As part of the transition from a paper food instrument system to an EBT food instrument system, the Department is proposing to add a new section 70001 in order to define key terms related to EBT that are not found in existing federal or state regulations. These definitions apply to Article 4 of the WIC Bulletin Regulations, Vendor Authorizatin Criteria, only.

(a)(1) The Department is proposing to add this subsection to clarify the use of the term Authorized Product List (APL) for purposes of Article 4. This proposed definition of APL is already included in Article 5 and is derived from the definition found on page ix of the

United States Department of Agriculture’s (USDA’s) “Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT).”

(a)(2) The Department is proposing to define “Certifying Entity” in order to identify the organization, other than the Department, that performs certification-related functions for Point of Sale Systems.

As explained in section 7 of the USDA’s “WIC EBT Retail Certification Procedures and Test Scripts,” WIC Retail Certification is a process used to verify that a Point of Sale System processes WIC EBT Transactions in compliance with state and federal requirements. When a Point of Sale System is developed or modified to support WIC EBT processing, the system must be certified in order to confirm that it works as required by the USDA and the Department. As explained below, the Department is proposing that only Point of Sale Systems certified for use in California will be considered EBT Capable Point of Sale Systems. The Certifying Entity will perform certification testing for Point of Sale Systems as well as recertification testing when necessary due to software updates, system modifications, or other changes or errors that cause a Point of Sale System to become non-compliant with state and federal requirements.

(a)(3) For clarity and ease of reference, and to ensure that vendors and other stakeholders can easily locate all definitions that apply to Article 4, the Department is proposing to remove the definition of “Department” currently included in section 70000 and add it to proposed section 70001. For consistency with other regulation text, including the definition of “Department” set forth in Article 5, the Department is proposing to change the sentence “For purposes of this article, the Department is defined as, the California Department of Public Health and California WIC Program” to “The Department is the California Department of Public Health, which administers the California Special Supplemental Nutrition Program for Women, Infants, and Children.” These proposed changes will not alter the substance, purpose, or applicability of the regulation text.

(a)(4) As part of the transition to an EBT food instrument system, the Department is proposing to define “EBT Balance Inquiry.” The proposed definition of EBT Balance Inquiry is intended to reflect USDA’s requirement that vendors provide certain information related to the benefit balance, also known as the food balance, associated with a participant’s WIC EBT card.

The federal authorities mandate that vendors provide the benefits balance for a WIC EBT card if requested by the cardholder.¹ Among other federally mandated information, a receipt reflecting the benefits balance must include a list of the participant's available benefits, including zero balances; the benefit description, quantity, and unit of measure; and the benefits' effective and ending dates. Vendors are prohibited from requiring cardholders to make a purchase before providing a balance receipt. (United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT), §§ 4.6.1(a), 4.7.1(a)-(b), 5.5(a) (Sept. 2014); United States Department of Agriculture, WIC EBT Technical Implementation Guide, §§ 6.2.3, 12.1, Table 45 (Feb. 26, 2018).)

The Department's proposed definition of EBT Balance Inquiry is intended to describe the function that an EBT Capable Point of Sale System must be able to perform in order to provide the required balance information and receipt to cardholders.

(a)(5) As part of the transition to an EBT food instrument system, the Department is proposing to define "EBT Transactions." EBT Transactions include EBT food instrument transactions through which cardholders obtain authorized supplemental foods, as well as EBT Balance Inquiries, which do not require a purchase. EBT Transactions do **not** include paper food instrument transactions or non-WIC transactions.

(a)(6) As part of the transition to an EBT food instrument system, the Department is proposing to define "Lane."

As explained in detail in the regulation text and corresponding Statement of Reasons for proposed section 71050, the Department is proposing to require vendors to equip a minimum number of Lanes with EBT Capable Terminals. Although the USDA requires WIC State agencies to prescribe lane coverage requirements for vendors (7 C.F.R. § 246.12(z)(2)(i)-(ii)), the federal regulations do not define what constitutes a "lane."

¹ Cardholders may include the participant as well as individuals authorized to use the participant's WIC EBT card, such as a proxy. (See United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT), p. ix, §§ 7(a), 8.6 (Sept. 2014).)

In order to identify an objective standard that the Department will use to assess vendor compliance with minimum lane coverage requirements, the Department is proposing to define a “Lane” as a checkout location that is capable of transacting “food sales.” Federal regulation defines “food sales” as sales of all foods eligible for purchase under the Supplemental Nutrition Assistance Program (SNAP) (7 C.F.R. § 246.2),² and WIC authorized supplemental foods are a subset of SNAP-eligible foods. By proposing to define Lane in a manner that only covers checkout locations that are capable of transacting SNAP-eligible food sales, the Department is narrowing the possible locations where vendors may be required to equip EBT Capable Terminals from all checkout locations in the vendor’s store to only those locations that have the functionality to transact SNAP-eligible foods.

(a)(7) As part of the transition to an EBT food instrument system, and in order to identify for vendors and other stakeholders the general purpose, setup, and components of a point of sale system, the Department is proposing to define “Point of Sale System.” As explained in the proposed definition, Point of Sale Systems are used to process transactions and generally include a Terminal, printer, and back office software.

A Point of Sale System may be single-function or multi-function, stand-beside or integrated. “Single-function” refers to equipment that is used solely to process WIC EBT Transactions, while “multi-function” means that the Point of Sale System is capable of processing WIC EBT Transactions and other, non-WIC transactions, such as purchases using SNAP benefits or credit and debit card transactions. (See 7 C.F.R. § 246.2.) A “stand-beside” Point of Sale System is separate from, and cannot communicate with, the vendor’s cash register system, back office software, or other stand-beside equipment, while an “integrated” Point of Sale System is interconnected and allows communications between multiple Terminals and the vendor’s back office software.

As explained below, the Department is proposing to separately define “**EBT Capable** Point of Sale System.” A Point of Sale System would not be considered an EBT Capable Point of Sale System unless it meets the criteria specified in proposed subsection (a)(8).

² Specifically, 7 Code of Federal Regulations part 246.2 defines “food sales” as “sales of all SNAP eligible foods intended for home preparation and consumption, including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with SNAP benefits, such as hot foods or food that will be eaten in the store.”

(a)(8) As part of the transition to an EBT food instrument system, the Department is proposing to define “EBT Capable Point of Sale System” as a Point of Sale System that has been certified for use in California based on the determination that the system complies with all federal requirements for online WIC EBT systems established or identified by the USDA Secretary. Proposed subsections (a)(8)(A) and (a)(8)(B) set out the authorities that contain these federal requirements, which include the USDA’s: (1) “Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)” (Operating Rules); and (2) “WIC EBT Technical Implementation Guide” (Technical Implementation Guide). The Department is proposing to incorporate these documents by reference as part of the Department’s requirements for EBT and, more specifically, the definition of an EBT Capable Point of Sale System. This will ensure that a Point of Sale System cannot be deemed an EBT Capable Point of Sale System unless either the Department or its Certifying Entity has certified or recertified that the system complies with the applicable federal requirements.

(a)(9) As part of the transition to an EBT food instrument system, and in order to identify for vendors and other stakeholders the general purpose, setup, and components of a point of sale terminal, the Department is proposing to define “Terminal.” As explained in the proposed definition, a Terminal is located at a checkout location and typically includes a card reader, key pad, display screen, printer, hardware, and software. A Terminal may be part of equipment that can only process WIC EBT Transactions (single-function equipment) or equipment that can process WIC EBT Transactions **and** other types of electronic transactions such as SNAP or credit card purchases (multi-function equipment).

The Department is proposing to separately define “**EBT Capable** Terminal.” As explained below, a Terminal would not be considered an EBT Capable Terminal unless the Terminal meets the criteria set forth in proposed subsection (a)(10).

(a)(10) The Department is proposing to define “EBT Capable Terminal.” As explained above, the Department is proposing to define “Terminal” in order to identify the general purpose, setup, and components of a point of sale terminal. The term “EBT Capable Terminal,” by contrast, would be used to specifically identify those Terminals that are part of an EBT Capable Point of Sale System or themselves meet the criteria for an EBT Capable Point of Sale System. An EBT Capable Terminal that is “part of” an EBT Capable Point of Sale System is a Terminal that is one of the components of, and communicates with, the vendor’s **integrated** EBT Capable Point of Sale System. An EBT Capable Terminal that “independently meets the criteria for” an EBT Capable Point of Sale System is a Terminal that is a **stand-beside** EBT Capable Point of Sale

System.³ Under proposed section 71050, only those Terminals that are EBT Capable Terminals would count towards a vendor's minimum lane coverage requirements.

(a)(11) For clarity and ease of reference, and to ensure that vendors and other stakeholders can easily locate all definitions that apply to Article 4, the Department is proposing to remove the definition of "WIC" currently located in section 70000 and add it to proposed section 70001. For clarity and consistency with other regulation text, including the definition of "WIC Program" set forth in Article 5, the Department is proposing to change the name of the defined term from "WIC" to "WIC Program" and change the sentence "'WIC' is defined as the California Special Supplemental Nutrition Program for Women, Infants, and Children" to "The WIC Program is the California Special Supplemental Nutrition Program for Women, Infants, and Children." These proposed changes will not alter the substance, purpose, or applicability of the regulation text.

³ As explained above, a "stand-beside" Point of Sale System is separate from, and cannot communicate with, the vendor's cash register system or other stand-beside equipment, including other Terminals, while an "integrated" Point of Sale System is interconnected and allows communications between multiple Terminals, the vendor's back office software, etc.

PROPOSED REGULATION

70300 Cash Register Systems.

(a) Each vendor and vendor applicant ~~must~~ shall maintain and use a cash register system ~~in~~ for conducting all business sales transactions.

(1) For paper food instrument transactions:

(b) (A) The cash register system ~~must~~ shall calculate, record, and print a daily totals summary of all sales transactions conducted during each business day showing the transfer of goods for money or monetary equivalents.

~~(c) The cash register system must automatically print an itemized receipt of each transaction. The receipt must be given to the customer at each transaction.~~

(d) (B) The daily totals summary of all sales transactions from the cash register system ~~must~~ shall have the vendor's name and address, the transaction date, the quantity purchased, the sale price of the item purchased, the amount of tax charged, and the indication of tax status. Cash register receipt detail and daily totals summaries are part of the standard business records vendors are required to maintain for a minimum of three (3) years and are subject to both verification and Program audit. The daily totals summary of all sales transactions ~~can~~ may be retained in paper or electronic formats.

(2) For EBT Transactions, a vendor's EBT Capable Point of Sale System is considered a cash register system.

(b) The cash register system shall automatically print an itemized receipt of each paper food instrument transaction and EBT Transaction. The vendor shall give the receipt(s) to the customer.

(1) For EBT food instrument transactions, receipts shall comply with the requirements in the United States Department of Agriculture's (USDA's) "Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)" (Operating Rules) and "WIC EBT Technical Implementation Guide" (Technical Implementation Guide). At minimum, an EBT food instrument transaction receipt shall include the following information:

(A) Last four (4) digits of the card number of the Primary Account Number (PAN). No other portion of the PAN may be printed on the receipt;

(B) Vendor name. The vendor name is the generally accepted name for the location or a name consistent with the application the vendor submitted to the Department to become an authorized WIC vendor;

(C) Vendor street address, city, state abbreviation, and zip code;

(D) Local date and time of the transaction;

(E) WIC food item identifier, if a separate WIC Purchase receipt is not provided;

(F) Benefit expiration date and time;

(G) Purchased food items, including the food item quantity, description, and unit of measure;

(H) Unit cost;

(I) Total transaction amount;

(J) Discounts (coupons) applied;

(K) Benefits remaining, including the benefit description, quantity, and unit of measure; and

(L) A unique transaction identifier or systems trace audit number.

(2) For EBT Balance Inquiries, receipts shall comply with the requirements in the USDA's Operating Rules and Technical Implementation Guide. At minimum, an EBT Balance Inquiry receipt shall include the following information:

(A) Last four (4) digits of the card number of the PAN. No other portion of the PAN may be printed on the receipt;

(B) Vendor name. The vendor name is the generally accepted name for the location or a name consistent with the application the vendor submitted to the Department to become an authorized WIC vendor;

(C) Vendor street address, city, state abbreviation, and zip code;

(D) Local date and time of the balance inquiry;

(E) Benefit expiration date or benefit effective and benefit ending dates;

(F) Benefits available (even if zero (0) balances), including the benefit description, quantity, and unit of measure; and

(G) A unique transaction identifier or systems trace audit number.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2019): *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 246.3(b) (2019): *Delegation to the State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; . . . FNS guidelines; and, instructions issued under the FNS Directives Management System.

7 Code of Federal Regulations part 246.12(g)(3) (2019): *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization. The State agency must apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them.

7 Code of Federal Regulations part 246.12(h)(3)(xvi) (2019): *Recordkeeping.* The vendor must maintain inventory records used for Federal tax reporting purposes and other records the State agency may require for the period of time specified by the State agency in the vendor agreement. Upon request, the vendor must make available to representatives of the State agency, the Department, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments and cash-value vouchers in the vendor's possession and all program-related records.

7 Code of Federal Regulations part 246.12(bb)(1) (2019): *EBT Technical standards and requirements.* (1) Each State agency, contractor and authorized vendor participating in the program shall follow and demonstrate compliance with:

(i) Operating rules, standards and technical requirements as established by the Secretary; and

(ii) Other industry standards identified by the Secretary.

Federal Guidelines and Instructions:

United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT) (Sept. 2014).

United States Department of Agriculture, WIC EBT Technical Implementation Guide (Feb. 26, 2018).

State:

Health and Safety Code section 123280, subdivision (c): In order to be in conformity with federal law and to remain in compliance with federal funding, the department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal . . . WIC program The department may adopt these requirements and guidelines by bulletin or similar instruction.

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 The department shall establish criteria to limit the number of retail food vendors with which the department enters into agreements.

Health and Safety Code section 123315, subdivision (a)(6): The department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall. . .[m]aintain for a period of at least three years records that shall include, but not be limited to, all of the following:

- (A) Inventory records showing all purchases, both wholesale and retail, in the form of invoices that identify the quantity and prices of specified authorized supplemental foods.
- (B) Sales and use tax returns.
- (C) Books of account.
- (D) Other pertinent records that the department determines are necessary to substantiate the volume and prices charged to the state department through the nutrition coupons redeemed by the vendor.

Health and Safety Code section 123322, subdivisions (a)(2), (b): [T]he department shall establish requirements for . . . [c]riteria used for vendor authorization [T]he

department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

WIC Regulatory Bulletin 2012-02: The California Department of Public Health, which administers the California WIC Program, adopts the following rule into California regulation: All persons and entities participating in the California WIC Program, including participants, local agencies, vendors and contractors, shall be subject to all the mandatory federal requirements contained in:

- The Child Nutrition Act of 1966 and the amendments thereto (Chapter 13A (commencing with Section 1786) of Title 42 of the United States Code
- Part 246 of Title 7 of the Code of Federal Regulations
- All federal memoranda and guidance letters clarifying and interpreting the federal laws and regulations as the requirements of the WIC Program

Mandatory requirements include all federal directive language and definitions. Federal directive language includes, but is not limited to, all requirements that the State Agency “must”, “shall”, or “will” meet and all requirements that do not permit discretion by the State agency.

STATEMENT OF REASONS

70300 To conform the title of this section to the regulation text, the Department is proposing to change the name of this section from “Cash Register” to “Cash Register Systems.” This proposed change will not alter the substance, purpose, or applicability of this section.

(a) For consistency with other regulation text, the Department is proposing to change the word “must” to “shall.” For grammatical clarity and correctness, the Department is proposing to change the word “in” to “for.” These proposed changes will not alter the substance of the regulation text.

(a)(1) As part of the transition to an EBT food instrument system, the Department is proposing to amend the vendor authorization criteria applicable to vendors’ cash register systems to reflect the different requirements for paper food instrument transactions, on the one hand, and EBT food instrument transactions and EBT Balance Inquiries (collectively referred to as “EBT Transactions”), on the other hand. The Department is proposing to add subsection (a)(1), and the corresponding regulation text (“For paper food instrument transactions:”), in order to clearly distinguish the

requirements that apply to paper food instrument transactions only from those requirements that apply to other types of transactions.

(a)(1)(A) The Department is proposing to redesignate current subsection (b) as subsection (a)(1)(A). For consistency with other regulation text, the Department is proposing to change the phrase “must calculate, record, and print” to “shall calculate, record, and print.” These proposed changes will not alter the substance of the regulation text.

(c) The Department is proposing to redesignate current subsection (c) as proposed subsection (b). The Department will explain its reasons for the substantive revisions to proposed subsection (b) below.

(a)(1)(B) The Department is proposing to redesignate current subsection (d) as subsection (a)(1)(B). For consistency with other regulation text, the Department is proposing to change the phrase “must have” to “shall have” and to change the phrase “can be” to “may be.” These proposed changes will not alter the substance of the regulation text.

(a)(2) As part of proposed section 70725, the Department is proposing to require all vendors to use an EBT Capable Point of Sale System for all EBT Transactions. Depending on their size and business model, vendors may choose to use either stand-beside equipment or integrated equipment to process EBT Transactions. Unlike integrated equipment, a vendor’s stand-beside equipment would not include, or communicate with, the vendor’s cash register system or back office software. However, stand-beside equipment that satisfies the Department’s proposed definition of an EBT Capable Point of Sale System would include all of the hardware and software necessary to process EBT Transactions and would be certified for use in California as based on its compliance with the federal requirements for online WIC EBT point of sale systems. Since the stand-beside equipment would meet these criteria, there would be no need for a vendor to process an EBT Transaction on both the stand-beside equipment and a separate cash register system. This subsection is designed to ensure that a vendor who chooses to use a stand-beside EBT Capable Point of Sale System to process EBT Transactions is not unnecessarily required to use two systems: the stand-beside equipment **and** the cash register system.

(b) As noted above, the Department is proposing to redesignate current subsection (c) as proposed subsection (b). For consistency with other regulation text, the Department is proposing to change the phrase “must automatically print” to “shall automatically print.”

Under current subsection (c), a vendor's cash register system must automatically print an itemized of "each transaction." For the reasons explained below, the Department is proposing to change the phrase "each transaction" to "each paper food instrument transaction and EBT Transaction."

Under 7 Code of Federal Regulations part 246.12(bb)(1), vendors are required to follow and demonstrate compliance with the operating rules, standards, technical requirements, and other industry standards established or identified by the USDA Secretary. The relevant rules, standards, and technical requirements for EBT include the requirements set forth in the USDA's Operating Rules and Technical Implementation Guide.

Section 5.5 of the Operating Rules requires that both balance inquiry receipts and WIC purchase receipts be provided to WIC EBT cardholders. To reflect this requirement, the Department is proposing to change the phrase "itemized receipt of each transaction" to "itemized receipt of each paper food instrument transaction and EBT Transaction." The Department's proposed definition of EBT Transaction, discussed above, includes EBT food instrument transactions and EBT Balance Inquiries.

To reflect the USDA's receipt requirements and to make it clear that **vendors** are responsible for ensuring that customers receive the appropriate receipt(s), the Department is proposing to change the sentence "The receipt must be given to the customer at each transaction" to "The vendor shall give the receipt(s) to the customer."

(b)(1)(A)-(L) Section 5.5.2 of the Operating Rules and section 12.1 of the Technical Implementation Guide identify the minimum information that must appear on receipts for EBT food instrument transactions, also called WIC purchase receipts. For vendor convenience, and in order to clarify any ambiguity between the requirements in the Operating Rules and Technical Implementation Guide following consultation with the USDA, the Department is proposing to include the relevant receipt requirements for EBT food instrument transactions in proposed subsections (b)(1)(A) through (b)(1)(L).

(b)(2)(A)-(G) Section 5.5.1 of the Operating Rules and section 12.1 of the Technical Implementation Guide identify the minimum information that must appear on receipts for EBT Balance Inquiries. For vendor convenience, the Department is proposing to include the relevant receipt requirements for EBT Balance Inquiries in proposed subsections (b)(2)(A) through (b)(2)(G).

PROPOSED REGULATION

70725 EBT Capability.

(a) All vendors and vendor applicants shall obtain an EBT Capable Point of Sale System certified for use in California and use the EBT Capable Point of Sale System for all EBT Transactions.

(1) A list of all certified EBT Capable Point of Sale Systems shall be available on the Department's website. This list does not represent the Department's connection with, or approval or endorsement of, the certified systems or their manufacturers.

(b) Vendors shall maintain the EBT Capable Point of Sale System in a manner that ensures the system's ongoing compliance with all federal requirements for online WIC EBT point of sale systems set forth in the United States Department of Agriculture's (USDA's):

(1) "Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT)" (Operating Rules); and

(2) "WIC EBT Technical Implementation Guide" (Technical Implementation Guide).

(c) If the Department determines that a vendor's previously certified Point of Sale System is not complying with the Operating Rules' or Technical Implementation Guide's requirements for accurately settling, reconciling, or processing EBT Transactions or processing the Authorized Product List, the Department shall issue the vendor a written notice to stop use of the Point of Sale System for WIC EBT Transactions.

(1) Upon receipt of such notice, the vendor shall immediately stop use of the Point of Sale System for EBT Transactions and either:

(A) Obtain and use a different EBT Capable Point of Sale System and notify the Department in writing upon installation of the system; or

(B) Request that the Certifying Entity recertify the vendor's current Point of Sale System. The vendor shall notify the Department in writing when the system has been recertified.

(2) If, after five (5) days from the date of the notice, the vendor has not stopped use of the Point of Sale System for EBT Transactions, the Department shall temporarily freeze the vendor's ability to transact EBT food instruments.

(3) If, after thirty (30) days from the date of the notice, the vendor has not complied with subsection (c)(1)(A) or (c)(1)(B), the vendor shall be terminated for failure to meet vendor authorization criteria.

(d) A vendor that is temporarily unable to process EBT Transactions shall post a notice stating: "California WIC Card Transactions are Temporarily Unavailable at this Location." The notice shall be affixed to either the front window or the front door of the vendor's store. If the vendor's store has multiple entrances that customers use during store hours, the vendor shall post this notice at all such entrances.

(1) Vendors that are temporarily unable to accept EBT Transactions include but are not limited to:

(A) Vendors experiencing temporary internet or power outages; and

(B) Vendors that have received a notice from the Department pursuant to subsection (c).

(e) A vendor or vendor applicant that the Department determines is necessary for participant access as specified in California Code of Regulations, title 22, section 40740, subdivision (h), may mail a request for Department-subsidized equipment in order to meet the vendor authorization criteria set forth in this section. The Department shall furnish the vendor or vendor applicant with such equipment in the manner set forth in section 71050, subsection (d)(1).

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.2 (2019): *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

Multi-function equipment means Point-of-Sale equipment obtained by a WIC vendor through commercial suppliers, which is capable of supporting WIC EBT and other payment tender types

Single-function equipment means Point-of-Sale equipment, such as barcode scanners, card readers, PIN pads and printers, provided to an authorized WIC vendor solely for use with the WIC Program

Statewide EBT means the State agency has converted all WIC clinics to an EBT delivery method and all authorized vendors are capable of transacting EBT purchases.

7 Code of Federal Regulations part 246.3(b) (2019): Delegation to the State agency.

The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; . . . FNS guidelines; and, instructions issued under the FNS Directives Management System.

7 Code of Federal Regulations part 246.12(g)(3) (2019): Vendor selection criteria. The State agency must develop and implement criteria to select stores for authorization.

The State agency must apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them.

7 Code of Federal Regulations part 246.12(h)(3)(xxv) (2019): Compliance with vendor selection criteria. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. Using the current vendor selection criteria, the State agency may reassess a vendor at any time during the agreement period. The State agency will terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria.

7 Code of Federal Regulations part 246.12(aa)(4)(ii) (2019): Statewide operations. After completion of statewide EBT implementation, the State agency shall not: . . .

- (ii) Authorize a vendor, farmer, or farmers' market that cannot successfully demonstrate EBT capability in accordance with State agency requirements, unless the State agency determines the vendor is necessary for participant access.

7 Code of Federal Regulations part 246.12(bb)(1) (2019): EBT Technical standards and requirements. (1) Each State agency, contractor and authorized vendor participating in the program shall follow and demonstrate compliance with:

- (i) Operating rules, standards and technical requirements as established by the Secretary; and
- (ii) Other industry standards identified by the Secretary.

Federal Guidelines and Instructions:

United States Department of Agriculture, WIC EBT Final Rule Frequently Asked Questions v8 (July 15, 2016).

United States Department of Agriculture, WIC EBT Retail Certification Procedures and Test Scripts Version 3 (Feb. 2013).

United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT) (Sept. 2014).

United States Department of Agriculture, WIC EBT Technical Implementation Guide (Feb. 26, 2018).

State:

Health and Safety Code section 123322, subdivisions (a)(2), (b): [T]he department shall establish requirements for . . . [c]riteria used for vendor authorization [T]he department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

STATEMENT OF REASONS

70725(a) Federal statute requires that State agencies implement EBT systems no later than October 1, 2020. (42 U.S.C. § 1786(h)(12)(B)(i).) As part of the transition from a paper food instrument system to an EBT food instrument system, the Department is proposing to require that all vendors and vendor applicants obtain an EBT Capable Point of Sale System and use this system for all EBT Transactions, including WIC EBT food instrument transactions and EBT Balance Inquiries.

Under proposed section 70001, the Department would define an “EBT Capable Point of Sale System” as a Point of Sale System that has been certified for use in California based on the determination that the system complies with all federal requirements for online WIC EBT point of sale systems.⁴ As explained in detail below, the USDA has identified these federal requirements in the Operating Rules and Technical Implementation Guide. In order to comply with federal requirements for online WIC EBT,

⁴ In general, EBT transactions may be processed using either **online** EBT transaction processing technology, which uses magnetic-stripe cards, or **offline** EBT transaction processing technology, which relies on smart cards with embedded microchips. The Department elected to use online EBT transaction processing technology for the California WIC Program and is therefore requiring compliance with the federal requirements for online EBT only.

Point of Sale Systems must be able to accurately scan or accept a WIC authorized supplemental food's Universal Product Code (UPC) or Product Lookup (PLU) code, match the UPC or PLU code to the Department's Authorized Product List (APL), determine if a participant's food balance is sufficient to purchase the food items that the cardholder has selected, and calculate the amount of the transaction, among other things. (See 81 Fed.Reg. 10433, 10439 (Mar. 1, 2016).) Multi-function systems, which can handle both WIC EBT Transactions and non-WIC transactions such as credit card or SNAP purchases, must also be capable of managing WIC and non-WIC items and applying any appropriate sales tax to non-WIC items. (*Id.*)

After statewide implementation of EBT, the Department may not authorize vendors that "cannot successfully demonstrate EBT capability in accordance with State agency requirements, unless the State agency determines the vendor is necessary for participant access." (7 C.F.R § 246.12(aa)(4)(ii); see also U.S. Dept. of Agr., WIC EBT Final Rule Frequently Asked Questions v8 (July 15, 2016) p. 5.) Statewide implementation of EBT, which is referred to as "Statewide EBT" in federal regulation, occurs when "the State agency has converted all WIC clinics to an EBT delivery method and all authorized vendors are capable of transacting EBT purchases." (7 C.F.R. § 246.2.) Once all WIC local agencies have transitioned to an EBT food instrument system, no additional paper food instruments will be issued and only vendors that have EBT Capable Point of Sale Systems will be able to successfully process WIC transactions. By requiring vendors and vendor applicants to obtain and use an EBT Capable Point of Sale System as part of California's vendor authorization criteria, the Department is helping to ensure that participants will be able to redeem their EBT food instruments at all authorized vendor locations after statewide implementation.

(a)(1) The USDA recommends that State agencies "compile and maintain a list of certified [EBT capable] systems." (81 Fed.Reg. 10433, 10439 (Mar. 1, 2016)). In order to assist vendors, the Department is proposing to publish a list of all EBT Capable Point of Sale Systems that have been certified for use in California. The list of certified systems will help vendors and vendor applicants in California identify EBT Capable Point of Sale Systems that may fit their specific business models and needs. A Point of Sale System will be added to this list only if the system is deemed compliant with all relevant federal requirements for online WIC EBT systems. Vendors, manufacturers, and other stakeholders may request that the Department certify and add additional Point of Sale Systems to the list of certified systems.

As stated in the proposed regulation text, the list would not represent the Department's connection with, or approval or endorsement of, any of the certified systems or their manufacturers.

(b)-(b)(2) Under federal regulation, all authorized vendors are required to follow and demonstrate compliance with the operating rules, standards, technical requirements, and other industry standards (collectively referred to as "federal authorities") established or identified by the USDA Secretary. (7 C.F.R. § 246.12(bb)(1).) As noted above, the current federal requirements for online WIC EBT are primarily set forth in two main authorities: the Operating Rules and Technical Implementation Guide.

Because federal regulation requires authorized vendors to comply with the federal authorities governing WIC EBT, the Department is proposing that vendors must maintain their EBT Capable Point of Sale Systems in a manner that ensures the system's ongoing compliance with all relevant federal requirements for online WIC EBT systems set forth in the Operating Rules and Technical Implementation Guide. The vendor's responsibility to maintain their system includes, but is not limited to, making any software updates or other modifications that are necessary to ensure ongoing compliance with federal requirements, including any updates or changes to the system's software or hardware. This responsibility is ongoing and applies for the duration of the vendor's agreement with the Department regardless of the cause of non-compliance. By obligating vendors to comply with federal requirements on an ongoing basis, the Department is seeking to accomplish several goals. This obligation is designed to protect WIC participants' ability to access and use their benefits as well as ensure timely and appropriate payments to vendors. This obligation is also intended to make it more likely that only those systems that are capable of retrieving and applying the most current APL and accurately and securely settling, reconciling, and processing transactions are being used to process WIC EBT Transactions in California.

(c) In accordance with the USDA's "WIC EBT Retail Certification Procedures and Test Scripts," the Department is proposing to issue a notice directing vendors to stop use of a Point of Sale System for EBT Transactions when the vendor's system experiences a serious error that threatens WIC Program integrity. This Statement of Reasons sometimes refers to such a notice as a "stop use notice." As set forth in the proposed regulation text, serious errors that would require a vendor to stop use of their Point of Sale System include non-compliance with the Operating Rules or Technical Implementation Guide that causes (1) settlement, reconciliation, or processing errors affecting EBT Transactions or (2) APL processing errors. In general, these errors affect the ability of the system to properly debit purchases from participants' food balances,

transmit accurate and appropriate price information to the Department, facilitate accurate payment to vendors, or process EBT food instrument transactions at all. The Department is proposing to instruct vendors to stop use of their Point of Sale Systems for EBT Transactions when the system experiences these errors because they are likely to cause significant disruption to the delivery of authorized supplemental foods and the appropriate and efficient use of WIC Program dollars.

Taken together, proposed subsection (b) would require vendors' systems to comply with all federal requirements for online WIC EBT while subsection (c) would limit the instances in which the Department will issue a stop use notice to serious errors that jeopardize participants' electronic benefits or accurate vendor reimbursement. By offering this approach, the Department is seeking to protect the integrity of the EBT food instrument system without creating unnecessary disruptions to participants' use of their electronic benefits or requiring vendors to incur costs replacing or recertifying a Point of Sale System when the problem is not severe enough to warrant these actions. (See U.S. Dept. of Agr., WIC EBT Retail Certification Procedures and Test Scripts, § 7.3.2 (Feb. 2013).)

As indicated in the proposed regulation text, the Department will make the determination regarding whether a stop use notice is necessary. These determinations will be made in cooperation with the Department's Certifying Entity. Together, the Department and the Certifying Entity are well-positioned to quickly identify and address problems affecting a vendor's Point of Sale System. (See U.S. Dept. of Agr., WIC EBT Retail Certification Procedures and Test Scripts, §§ 7.3, 7.3.1, 7.3.2 (Feb. 2013).) The Certifying Entity will work with vendors to resolve all errors that cause non-compliance with subsection (b), including errors that do not fall within the scope of subsection (c).

(c)(1) The Department is proposing to require that a vendor that receives a notice from the Department pursuant to subsection (c) immediately stop use of the Point of Sale System for WIC EBT Transactions. Stopping use of a Point of Sale System that is out of compliance with federal requirements is necessary in order to ensure that only those systems that are capable of accurately settling, reconciling, and processing WIC EBT Transactions, as well as correctly processing the most recent APL, are used to process EBT Transactions.

Requiring vendors to immediately stop using Point of Sale Systems that cannot accurately settle, reconcile, and process WIC EBT food instrument transactions will protect WIC Program dollars by ensuring that the deductions from participants' food balances, and the compensation paid to vendors, are appropriate and accurate based

on the food item(s) being transacted. (See 81 Fed.Reg. 10433, 10439 (Mar. 1, 2016); U.S. Dept. of Agr., WIC EBT Final Rule Frequently Asked Questions v8 (July 15, 2016) p. 2).)

Similarly, requiring vendors to immediately stop using Point of Sale Systems that cannot process the most current APL will protect both participants and the WIC Program. (See U.S. Dept. of Agr., Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT), §§ A.2.1.1, 4.7.2 (Sept. 2014); U.S. Dept. of Agr., WIC EBT Technical Implementation Guide, § 11.3 (Feb. 2018).) A Point of Sale System that cannot correctly process the APL may result in the vendor providing unauthorized foods to participants. (81 Fed.Reg. 10433, 10439, 10447 (Mar. 1, 2016).) The USDA considers the provision of unauthorized food items in exchange for food instruments to be a serious violation of Program rules:

[The USDA] wishes to make clear that it does not consider ‘providing unauthorized food items in exchange for food instruments’ . . . to be a minor violation. The WIC Program is a nutrition assistance program that provides specific foods to participants in order to improve their health and nutritional well-being. In addition, one-fourth of participants are able to receive program benefits due to rebates from manufacturers. Substituting unauthorized food items for WIC approved food items may undermine State agency contracts with rebate manufacturers and is contrary to the mission and goals of the WIC Program.

(64 Fed.Reg. 13311, 13317 (Mar. 18, 1999).)

Because a Point of Sale System’s inability to accurately process the APL is likely to create errors that undermine the WIC Program’s mission and goals, the Department considers this error sufficiently serious to require a vendor to stop use of their Point of Sale System.

(c)(1)(A) If a vendor’s existing Point of Sale System experiences one or more serious errors that lead to the issuance of a stop use notice, the vendor may choose to obtain and use a different EBT Capable Point of Sale System. Obtaining and using a different EBT Capable Point of Sale System, i.e., replacing the non-compliant Point of Sale System, would quickly restore the vendor’s ability to accept EBT food instruments and minimize the length of disruption to participants who shop at the vendor’s store. Under this proposed regulation, if the problem with a vendor’s Point of Sale System is specific to the hardware or software being used at the vendor’s store, and not a broader issue with a particular brand or model of Point of Sale System, the vendor could obtain and

use the same brand or model that the vendor was using before the error(s) occurred to replace the non-compliant system.

(c)(1)(B) As an alternative to replacing their Point of Sale System with a different EBT Capable Point of Sale System pursuant to proposed subsection (c)(1)(A), vendors that receive a stop use notice can choose to work with the Department's Certifying Entity to have their Point of Sale System recertified pursuant to subsection (c)(1)(B). (U.S. Dept. of Agr., WIC EBT Retail Certification Procedures and Test Scripts, § 7.3 (Feb. 2013).) Some vendors may prefer to have their existing Point of Sale System recertified due to prior investments in the system and to ensure a consistent, familiar checkout process for participants and cashiers. Upon request, the Department's Certifying Entity will work with a vendor that has received a stop use notice to identify the errors affecting the vendor's system and recertify the system.

While recertifying the vendor's current system in accordance with subsection (c)(1)(B) will generally be more time-consuming than replacing a system in accordance with subsection (c)(1)(A), vendors may choose to temporarily lease single-function EBT Capable Terminal(s) from the Department's Certifying Entity in order to retain their authorization with the WIC Program if recertifying their current system will take more than 30 days.⁵ As explained with regard to proposed subsection (c)(3) below, a vendor that has not successfully replaced or recertified their system within 30 days of the date of the stop use notice shall be terminated for failure to meet vendor authorization criteria.

(c)(2) If, after five days from the date of the Department's stop use notice, the vendor has not stopped using the affected Point of Sale System for EBT Transactions, the Department is proposing to temporarily freeze the vendor's ability to transact EBT food instruments. The Department is proposing to give vendors five days from the date of the notice to stop making EBT transactions because the United States Postal Service estimates that first class mail will be delivered in one to three business days.⁶ Five days gives vendors a short period in which to voluntarily stop use of a non-compliant Point of Sale System for EBT Transactions while allowing the Department to act quickly to protect the integrity of the WIC Program.

⁵ Any vendors seeking to temporarily lease one or more single-function EBT Capable Terminals while their system is being replaced or recertified should immediately contact the Department.

⁶ (United States Postal Service, *First-Class Mail* <<https://www.usps.com/ship/first-class-mail.htm>> [as of Jan. 22, 2020].)

(c)(3) If, after 30 days from the date of the Department's stop use notice, the vendor fails to: (1) obtain and use a different EBT Capable Point of Sale System or have the current Point of Sale System recertified; and (2) provide written notice to the Department of the system's replacement or recertification, the Department will terminate the vendor for failure to meet vendor authorization criteria. Pursuant to federal regulations, all authorized vendors are required to comply with vendor selection criteria and must be terminated if they fail to meet these criteria. (7 C.F.R. § 246.12(g)(3), (h)(3)(xxv).) For the reasons stated below, the Department has determined that 30 days is a reasonable amount of time for vendors to comply with the authorization criteria by either obtaining and using a different EBT Capable Point of Sale System or recertifying a previously certified system. Regardless of which option the vendor chooses, written notice to the Department is necessary for the Department to have confirmation that the vendor has taken appropriate steps to ensure compliance with the relevant federal requirements when transacting EBT food instruments.

The Department has determined that 30 days is a reasonable amount of time for vendors to comply with the vendor authorization criteria set forth in this section, including replacing or recertifying a non-compliant system in response to a stop use notice. The prior experiences of the Department's Certifying Entity indicate that vendors that choose to replace their non-compliant systems by obtaining and using a different system that is already a certified EBT Capable Point of Sale System will generally be capable of processing EBT Transactions in a manner that complies with the federal requirements for online WIC EBT within 30 days. Vendors that choose to recertify non-compliant systems may also be capable of processing EBT Transactions in compliance with applicable federal requirements within 30 days. Whether the vendor elects to replace or recertify the non-compliant system, vendors will have the option to temporarily lease single-function EBT Capable Terminals from the Certifying Entity in order to retain their authorization with the WIC Program if there are delays in replacing or recertifying their current system.

The Department does not expect this proposed regulation to adversely impact WIC participants who rely on participant access stores because, as explained below, the Department will provide participant access stores with the equipment necessary to meet the vendor authorization criteria set forth in this section upon request pursuant to sections 70725, subsection (e) and 71050, subsection (d).

(d) The Department is proposing to require vendors that are temporarily unable to process EBT Transactions to post a notice at the store entrance stating: "California WIC Card Transactions are Temporarily Unavailable at this Location." This requirement is

intended to ensure that WIC participants can easily determine when a store is unable to accept EBT food instruments.

This subsection would require the vendor to post the notice on either the front window or front door of the vendor's store. A vendor with a store that has multiple main entrances that customers use during store hours would need to post this notice at all such entrances. These proposed requirements are designed to ensure that the notice is located in one or more places that are likely to be seen by participants **before** they begin shopping and alert them that they cannot redeem their EBT food instruments at that particular store location.

(d)(1)(A)-(B) In order to ensure that participants are given notice when a vendor is temporarily unable to process their California WIC Card transactions, the Department is proposing to require vendors to post the notice described in proposed subsection (d) whenever their Point of Sale Systems are unable to process EBT Transactions for any reason, including, but not limited to, the circumstances described in proposed subsections (d)(1)(A) and (d)(1)(B). The proposed regulation text identifies two examples of issues that could cause a vendor to be temporarily unable to accept California WIC Card transactions. This non-exhaustive list of examples describes circumstances in which a point of sale system is unable to successfully complete EBT Transactions, including because the system (1) cannot process transactions at all due to an internet or power outage or (2) cannot process transactions in compliance with the federal requirements for online WIC EBT systems, which resulted in the vendor receiving a stop use notice from the Department. This list is non-exhaustive because there may be other circumstances in which EBT Transactions would be temporarily unavailable at the vendor's store location, such as mechanical errors that prevent the system's card reader(s) from successfully swiping participants' California WIC Cards or accepting their personal identification numbers (PINs).

(e) The Department is proposing to subsidize single-function EBT Capable Terminals for vendors and vendor applicants that the Department determines are necessary for participant access upon receipt of a written request from the vendor or vendor applicant.⁷ This proposal is designed to reflect federal laws governing WIC EBT and participant access stores. After Statewide EBT, the Department is prohibited from authorizing retail stores that cannot successfully demonstrate EBT capability **before**

⁷ As indicated in the regulation text, the criteria the Department uses to determine whether a vendor is necessary for participant access are set forth in California Code of Regulations, title 22, section 40740, subdivision (h).

authorization unless the Department determines that the vendor is necessary for participant access. (42 U.S.C § 1786(h)(12)(E)(iv)(II); 7 C.F.R. § 246.12(aa)(4)(ii).) Federal law also requires that the Department provide at least one terminal to participant access stores in order to enable them to demonstrate EBT capability in accordance with the Department's requirements. (See 7 C.F.R. § 246.12(aa)(4)(ii), (z)(2)(iv).)

As explained in detail in the regulation text and corresponding Statement of Reasons for proposed section 71050, the Department is proposing to require vendors and vendor applicants to equip only the minimum number of EBT Capable Terminals required to meet their applicable minimum lane coverage requirements. For this reason, the Department is proposing that any equipment furnished to a participant access store pursuant to this subsection (e) shall be provided in the manner set forth in proposed section 71050, subsection (d)(1). This will ensure that the Department is subsidizing no more and no less equipment than the participant access store would be required to equip if it were a non-participant access store paying for the equipment with its own funds.

PROPOSED REGULATION

71050 Minimum Lane Coverage Requirements.

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

(1) “Annual gross food sales” means the vendor’s documented non-taxable sales of food products, as calculated by the Department in accordance with subsection (c)(2)(B)3.

(2) “Monthly WIC redemptions” means the monthly average of the vendor’s WIC redemptions for the most recent six (6)-month period, rounded to the nearest dollar, as calculated using the Department’s WIC redemption information.

(b) Assessments and Reassessments of Minimum Lane Coverage Requirements.

(1) At initial authorization, and at any reauthorization that occurs before a vendor has at least six (6) months of annual gross food sales and monthly WIC redemptions data, the Department shall assess the minimum number of Lanes that a vendor is required to equip with EBT Capable Terminals pursuant to subsection (c)(2)(A).

(2) After one (1) year from the vendor’s initial authorization, and at reauthorization, the Department shall reassess the minimum number of Lanes that a vendor is required to equip with EBT Capable Terminals pursuant to subsection (c)(2)(B). The Department may also reassess a vendor’s minimum lane coverage requirements at any time during the term of the vendor agreement.

(3) A vendor that has been authorized for at least six (6) months may submit a written request for the Department to reassess the minimum number of Lanes that the vendor is required to equip with EBT Capable Terminals. This reassessment shall be made in accordance with subsection (c)(2)(B) and the Department shall provide no more than one (1) reassessment per vendor per year pursuant to this subsection.

(c) Minimum Lane Coverage Requirements.

(1) When determining the number of Lanes in a vendor’s store:

(A) All Lanes shall be counted whether they are used full-time or occasionally.

(B) All Lanes in specialty areas or sections shall be counted if the checkout location is capable of transacting “food sales,” as defined in 7 Code of Federal Regulations part 246.2. Examples of specialty areas or sections include but are not limited to jewelry, clothing, and electronics sections, as well as delicatessens and coffee bars where customers may order prepared foods and drinks.

1. Specialty areas or sections shall not be included in the lane count if the checkout location is incapable of transacting food sales.

(C) Automated Teller Machines (ATMs) or in-store banks shall not be included in the lane count.

(2) To satisfy applicable minimum lane coverage requirements, vendors and vendor applicants shall equip Lanes with EBT Capable Terminals as follows:

(A) All vendor applicants, and all vendors that have not undergone a reassessment pursuant to subsection (b)(2) or (b)(3), shall equip at least one (1) Lane with an EBT Capable Terminal.

(B) All vendors that have had their minimum lane coverage requirements reassessed by the Department pursuant to subsection (b)(2) or (b)(3) shall equip Lanes with EBT Capable Terminals based on the reassessment, which shall take into account the vendor’s annual gross food sales and monthly WIC redemptions.

1. If the vendor’s annual gross food sales are greater than two million dollars (\$2,000,000), the vendor shall equip Lanes with EBT Capable Terminals as follows:

A. At least one (1) EBT Capable Terminal if the vendor has less than eleven thousand dollars (\$11,000) in monthly WIC redemptions.

B. At least two (2) EBT Capable Terminals if the vendor has eleven thousand and one dollars (\$11,001) to twenty-two thousand dollars (\$22,000) in monthly WIC redemptions.

C. At least three (3) EBT Capable Terminals if the vendor has twenty-two thousand and one dollars (\$22,001) to thirty-three thousand dollars (\$33,000) in monthly WIC redemptions.

D. At least four (4) EBT Capable Terminals if the vendor has greater than thirty-three thousand and one dollars (\$33,001) in monthly WIC redemptions.

E. A vendor shall not be required to equip more than four (4) EBT Capable Terminals, or more EBT Capable Terminals than the number of Lanes in the vendor's store, regardless of the vendor's annual gross food sales or monthly WIC redemptions.

2. If the vendor's annual gross food sales are less than or equal to two million dollars (\$2,000,000), the vendor shall equip Lanes with EBT Capable Terminals as follows:

A. At least one (1) EBT Capable Terminal if the vendor has less than eight thousand dollars (\$8,000) in monthly WIC redemptions.

B. At least two (2) EBT Capable Terminals if the vendor has eight thousand and one dollars (\$8,001) to sixteen thousand dollars (\$16,000) in monthly WIC redemptions.

C. At least three (3) EBT Capable Terminals if the vendor has sixteen thousand and one dollars (\$16,001) to twenty-four thousand dollars (\$24,000) in monthly WIC redemptions.

D. At least four (4) EBT Capable Terminals if the vendor has greater than twenty-four thousand and one dollars (\$24,001) in monthly WIC redemptions.

E. A vendor shall not be required to equip more than four (4) EBT Capable Terminals, or more EBT Capable Terminals than the number of Lanes in the vendor's store, regardless of the vendor's annual gross food sales or monthly WIC redemptions.

3. For purposes of this section, annual gross food sales shall be calculated as follows:

A. If the vendor files California Department of Tax and Fee Administration State, Local, and District Sales and Use Tax Return statements (CDTFA statements), upon request by the Department, the vendor shall provide true, correct, and complete copies of its most recently filed CDTFA

statement(s). The CDTFA statement(s) shall be provided to the Department within thirty (30) days of the date of the Department's request. Except as provided in this subsection, the vendor's CDTFA statement(s) shall cover a period of twelve (12) months. If the vendor has not been in operation long enough to have filed CDTFA statement(s) covering a full twelve (12) months, the vendor shall provide CDTFA statement(s) covering the most recent six (6)-month period.

i. If the vendor provides CDTFA statement(s) covering a period of twelve (12) months, the Department shall calculate the vendor's annual gross food sales as the vendor's total non-taxable sales of food products for the twelve (12)-month period set forth in the CDTFA statement(s).

ii. If the vendor provides CDTFA statement(s) covering the most recent six (6)-month period, the Department shall calculate the vendor's annual gross food sales as the vendor's total non-taxable sales of food products for the most recent six (6)-month period set forth in the CDTFA statement(s), multiplied by two (2).

B. If the vendor does not file CDTFA statements because the vendor does not sell any taxable goods, or if the vendor recently began operations and has not yet filed CDTFA statements covering at least six (6) months of sales, upon request by the Department, the vendor shall provide true, correct, and complete copies of its most recent monthly sales statements and inventory records detailing the vendor's sales of foods eligible for purchase under the Supplemental Nutrition Assistance Program (SNAP-eligible foods). The monthly sales statements and inventory records shall be provided to the Department within thirty (30) days of the date of the Department's request. Except as provided in this subsection, the vendor's monthly sales statements and inventory records shall cover a period of twelve (12) months. If the vendor has not been in operation long enough to have monthly sales statements and inventory records covering a full twelve (12) months, the vendor shall provide monthly sales statements and inventory records covering the most recent six (6)-month period.

i. If the vendor provides monthly sales statements and inventory records covering a period of twelve (12) months, the Department shall calculate the vendor's annual gross food sales as the vendor's total sales of SNAP-eligible foods for the twelve (12)-month period set forth in the monthly sales statements and inventory records.

ii. If the vendor provides monthly sales statements and inventory records covering the most recent six (6)-month period, the Department shall calculate the vendor's annual gross food sales as the vendor's total sales of SNAP-eligible foods for the most recent six (6)-month period set forth in the monthly sales statements and inventory records, multiplied by two (2).

(3) Self-Checkout Lanes.

(A) A vendor or vendor applicant that makes both attended Lanes with cashiers and self-checkout Lanes available to non-WIC customers shall not equip only self-checkout Lanes with EBT Capable Terminals.

(d) Equipment Provided by the Department.

(1) If the Department determines that the vendor or vendor applicant is necessary for participant access as specified in California Code of Regulations, title 22, section 40740, subdivision (h), upon written request, the Department shall provide the vendor or vendor applicant with the number of EBT Capable Terminals necessary to meet the vendor's or vendor applicant's minimum lane coverage requirements.

(2) If, after a reassessment pursuant to this section, the minimum lane coverage requirement for a vendor using Department-provided equipment is reduced, the Department shall stop paying the monthly charge, as set forth in the merchant agreement between the vendor and the Certifying Entity, for any EBT Capable Terminal(s) in excess of the vendor's reassessed minimum lane coverage requirement. Payment shall terminate after thirty (30) days from the date of the Department's written notice of intent to stop payment.

(e) Any vendor that fails to submit the annual gross food sales documentation requested by the Department pursuant to this section shall be issued a written notice of the vendor's failure to meet authorization criteria. If, after thirty (30) days from the date of

the notice, the vendor has failed to submit the requested annual gross food sales documentation, the Department shall terminate the vendor's agreement.

(f) Any vendor that fails to meet applicable minimum lane coverage requirements pursuant to this section shall be issued a written notice of the vendor's failure to meet authorization criteria. If, after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice, the vendor subsequently fails to meet the minimum lane coverage authorization criteria, the vendor shall have demonstrated a pattern of failure to meet vendor authorization criteria and shall be disqualified for a period of one (1) year.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.12(g)(3) (2019): Vendor selection criteria. The State agency must develop and implement criteria to select stores for authorization The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them.

7 Code of Federal Regulations part 246.12(h)(3)(xxv) (2019): Compliance with vendor selection criteria. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. Using the current vendor selection criteria, the State agency may reassess the vendor at any time during the agreement period. The State agency will terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria.

7 Code of Federal Regulations part 246.12(z)(2)(i)-(ii) (2019): Minimum lane coverage. The Point-of-Sale (POS) terminals, whether single-function equipment or multi-function equipment, shall be deployed as follows:

(i) *Superstores and supermarkets.* There will be one POS terminal for every \$11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location, whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption threshold increments as follows: one terminal for \$0 to \$11,000; two terminals for \$11,001 to \$22,000; three terminals for \$22,001 to \$33,000; and four terminals for \$33,001 and above. A State agency may utilize an alternative installation formula with Department approval.

The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(ii) *All other vendors.* One POS terminal for every \$8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption thresholds as follows: one terminal for \$0 to \$8,000; two terminals for \$8,001 to \$16,000; three terminals for \$16,001 to \$24,000; and four terminals for \$24,001 and above. A State agency may utilize an alternative installation formula with Department approval. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption[.]

7 Code of Federal Regulations part 246.12(z)(2)(iv) (2019): For newly authorized WIC vendors deemed necessary for participant access by the State agency, the vendor shall be provided one POS terminal unless the State agency determines other factors in this location warrant additional terminals[.]

7 Code of Federal Regulations part 246.12(z)(2)(vii) (2019): The State agency may remove excess POS terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraphs (z)(2)(i) through (ii) of this section.

7 Code of Federal Regulations part 246.12(aa)(4)(ii) (2019): *Statewide operations.* After completion of statewide EBT implementation, the State agency shall not . . .

(ii) Authorize a vendor, farmer, or farmers' market that cannot successfully demonstrate EBT capability in accordance with State agency requirements, unless the State agency determines the vendor is necessary for participant access.

Federal Guidelines and Instructions:

United States Department of Agriculture, WIC EBT Retail Certification Procedures and Test Scripts Version 3 (Feb. 2013).

United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT) (Sept. 2014).

United States Department of Agriculture, WIC EBT Technical Implementation Guide (Feb. 26, 2018).

State:

Health and Safety Code section 123310: The department shall establish criteria to limit the number of retail food vendors with which the department enters into agreements.

Health and Safety Code section 123322, subdivisions (a)(2), (b): [T]he department shall establish requirements for . . . criteria used for vendor authorization [T]he department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

STATEMENT OF REASONS

71050(a) The Department is proposing to add definitions for purposes of section 71050. These definitions would apply exclusively to this section, which sets forth the proposed vendor authorization criteria specifying the minimum number of Lanes that a vendor is required to equip with EBT Capable Terminals. These requirements are frequently referred to as vendors' "minimum lane coverage requirements."

(a)(1) The Department is proposing to use vendors' annual gross food sales, in combination with their monthly WIC redemptions, to determine each vendor's minimum lane coverage requirements. For purposes of section 71050 only, the Department is proposing to define "annual gross food sales" as a vendor's "documented non-taxable sales of food products, as calculated by the Department in accordance with subsection (c)(2)(B)3." The Department is proposing to use two types of documentation to calculate vendors' annual gross food sales and will explain its reasons for these proposals in the Statement of Reasons for subsections (c)(2)(B)3.A. and (c)(2)(B)3.B. below.

(a)(2) The proposed formulae for determining vendors' minimum lane coverage requirements, which are described in detail below, are also based on the vendor's monthly WIC redemptions. As used elsewhere, the Department is using the term "redemptions" to describe the amounts paid by the Department to the vendor rather than the amounts requested by the vendor. This is because the amounts requested by the vendor may be adjusted by the Department to reflect the applicable price limitations. (See 7 C.F.R. § 246.12(h)(3)(viii).) For purposes of section 71050 only, the Department is proposing to define "monthly WIC redemptions" as the monthly average of the vendor's most recent six months of WIC redemptions rounded to the nearest dollar. Under this proposal, monthly WIC redemptions would be calculated using the Department's WIC redemption information as opposed to redemption information from other sources.

Using a monthly **average** of WIC redemptions over a multi-month period will help account for seasonal or periodic variations in a vendor's WIC redemptions and make it less likely that the redemption data being relied on by the Department are artificially inflated or deflated due to temporary ups and downs in the vendor's business. As explained below, the Department is proposing to give vendors that believe their minimum lane coverage requirements should be adjusted due to a change to the vendor's WIC redemptions or food sales the option to request a reassessment of their minimum lane requirements after they have been authorized for at least six months. This option, discussed in detail in the Statement of Reasons for subsection (b)(3), will allow a vendor to seek a reassessment outside of the Department's proposed reassessment schedule if the vendor believes that the vendor's current minimum lane coverage requirements do not accurately reflect the store's business volume.

Using redemption data over a **six-month period** specifically will allow the Department to reassess a vendor's minimum lane coverage requirements using a straightforward calculation even if the vendor has less than one year's worth of data. This may apply to vendors that seek a reassessment pursuant to subsection (b)(3) or to vendors that are reassessed along with other vendors on a Master Vendor Agreement before being authorized for a full year.

Using the **most recent** six-month period to determine a vendor's monthly WIC redemptions will ensure that vendors' minimum lane coverage requirements are based on their latest redemptions, not stale or out-of-date data.

The Department is proposing to use redemption information from the Department's Query Management Facility (QMF) software to calculate vendors' paper food instrument redemptions and data from the WIC Direct EBT processing system to calculate vendors' EBT food instrument redemptions. The Department is planning to use its own redemption data, derived from these two sources, in order to ensure that all vendors' minimum lane coverage requirements are being evaluated using reliable data from the same source. Paper food instrument data from the QMF software may be used to calculate some vendors' monthly WIC redemptions if the vendor was authorized prior to "Statewide EBT." As noted above, Statewide EBT occurs when all WIC local agencies have converted to an EBT delivery method and all authorized vendors are capable of transacting EBT food instruments. (7 C.F.R. § 246.2.) As a result, for vendors authorized prior to Statewide EBT, the Department's WIC redemption information may include redemption data for paper food instruments **and** EBT food instruments.

As explained in more detail below, the Department is proposing to adopt the national WIC EBT vendor equipment coverage formula created by the USDA and set forth in 7 Code of Federal Regulations part 246.12(z)(2)(i) and (ii), with two minor modifications.

One of the modifications is necessary due to a calculation gap in the federal formula. To address this gap, the Department is proposing to round vendors' monthly WIC redemptions to the nearest dollar in order to eliminate an ambiguity in the federal regulation and provide a consistent standard for determining vendors' minimum lane coverage requirements regardless of the exact dollar amount of the vendor's monthly WIC redemptions.

For example, without rounding to the nearest dollar, it is unclear whether a vendor whose annual gross food sales are less than or equal to \$2 million and whose monthly WIC redemptions fall between \$16,000.01 and \$16,000.99 would be required to equip two or three terminals. This is because the federal formula requires those vendors to equip "two terminals for \$8,001 to \$16,000" in monthly WIC redemptions and "three terminals for \$16,001 to \$24,000" in monthly WIC redemptions, but does not specify how many terminals a vendor must equip if the vendor's monthly redemptions fall **between** \$16,000 and \$16,001. By proposing to round monthly WIC redemptions to the nearest dollar, the Department is making clear that a vendor with \$16,000.01 to \$16,000.49 in monthly WIC redemptions would equip two terminals, while a vendor with \$16,000.50 to \$16,000.99 in monthly WIC redemptions would equip three. Without rounding vendors' monthly WIC redemptions to the nearest dollar, it would be unclear how many terminals these vendors would be required to equip.⁸

(b) In order to make it clear to vendors and vendor applicants how and when the Department will be assessing and reassessing vendors' minimum lane coverage requirements, the Department is proposing to include this information in proposed subsection (b).

(b)(1) As specified in this subsection (b)(1) as well as subsection (c)(2)(A), the Department is proposing to require that all vendors equip at least one Lane with an EBT Capable Terminal at the vendor's initial authorization. Under federal regulation, once Statewide EBT has occurred and participants can only obtain WIC authorized supplemental foods by redeeming EBT food instruments, the Department is prohibited

⁸ This ambiguity affects all vendors whose monthly WIC redemptions would fall between the ranges identified by the USDA in 7 Code of Federal Regulations part 246.12(z)(2)(i) and (ii), regardless of whether the vendor is required to equip terminals based on monthly WIC redemptions in \$8,000 or \$11,000 increments.

from authorizing vendors that “cannot successfully demonstrate EBT capability in accordance with State agency requirements.” (7 C.F.R § 246.12(aa)(4)(ii); see 7 C.F.R. § 246.2 [defining Statewide EBT].) This provision is designed to ensure that all authorized vendors have the equipment necessary to accurately and securely process WIC EBT Transactions by the time EBT food instruments become the only means by which WIC participants can obtain authorized supplemental foods.

As noted above, the requirement to equip at least one Lane with an EBT Capable Terminal would apply to new vendors at initial authorization. This requirement would also apply to existing vendors whose minimum lane coverage requirements are being reassessed at what is colloquially referred to as “reauthorization”⁹ but do not yet have sufficient food sales and WIC redemptions data to be reassessed pursuant to proposed subsection (c)(2)(B). The Department anticipates that this second scenario will generally apply to vendors that are part of a Master Vendor Agreement. Since all vendors on a Master Vendor Agreement are reauthorized at the same time, a newly authorized vendor that is included on a Master Vendor Agreement may be reauthorized and have its minimum lane coverage requirements reassessed before it has sufficient annual gross food sales or monthly WIC redemptions data to be reassessed pursuant to subsection (c)(2)(B). Because the Department would not have enough data to conduct a reassessment in accordance with subsection (c)(2)(B), the Department is proposing to require that these vendors equip at least one Lane with an EBT Capable Terminal during this period of time before additional sales and redemptions data becomes available.

The Department is proposing to require the vendors covered by subsection (b)(1) to equip at least one Lane with an EBT Capable Terminal, rather than a higher number of Lanes, to avoid placing an unnecessary financial imposition on new vendors. The Department recognizes that in many cases, customer demand and prudent business practices would prompt a new vendor to request or equip more than one EBT Capable Terminal if the vendor’s volume of WIC business justified equipping more terminals

⁹ When applied to applications for authorization submitted by stores that are currently authorized vendors for the WIC Program, the authorization process is often colloquially referred to as “reauthorization.” Although the term reauthorization provides a simple, easy-to-understand shorthand for the authorization process as applied to vendors that are seeking to continue to serve WIC participants beyond the expiration of their current vendor agreements with the Department, it is important to note that pursuant to federal regulation: (1) vendors do not have a license or property interest in their vendor agreements; (2) the Department is required to terminate agreements with vendors that fail to meet the Department’s vendor selection criteria; and (3) the expiration of a vendor’s agreement with the Department is not subject to an administrative appeal. (7 C.F.R. § 246.12(g)(3), (h)(3)(xxii); 7 C.F.R. § 246.18(a)(iii)(l).)

before the vendor's next reassessment. And, as explained throughout this Statement of Reasons, future reassessments would be based on the vendor's actual annual gross food sales and monthly WIC redemptions and would therefore reflect the vendor's actual WIC business.

(b)(2) The Department is proposing to reassess a vendor's minimum lane coverage requirements pursuant to subsection (c)(2)(B) after one year from the vendor's initial authorization and at the interval that is commonly referred to as "reauthorization."

Reassessment after one year from the vendor's initial authorization will allow the Department to accurately reassess vendors' minimum lane coverage requirements based on their actual annual gross food sales and monthly WIC redemptions. Although the Department considered reassessing vendors at an earlier interval, reassessing **all vendors** in California before one year of authorization would increase the administrative burden for both vendors and the Department due to the required submission and review of annual gross food sales documentation, as described in detail below. The Department also anticipates that vendors that are newly operational or new to the WIC Program are likely to have more variability in their monthly WIC redemptions than established vendors as they build their customer base generally and their WIC customer base specifically. As a result, the Department is proposing to reassess vendors' minimum lane coverage requirements after one year from the vendor's initial authorization, which would likely account for the ups and downs that new stores encounter. For those vendors that wish to be reassessed before the one-year mark, they will have the option to request a reassessment before a full year passes in accordance with proposed subsection (b)(3).

Reassessment at reauthorization, which would occur when a vendor's agreement with the Department is close to expiring, will allow the Department to monitor and periodically adjust a vendor's minimum lane coverage requirements if appropriate. The Department is proposing to reassess vendors' minimum lane coverage requirements at reauthorization, in part, to align the minimum lane coverage reassessments with other assessments that already occur at authorization or reauthorization. Reassessment at reauthorization will generally occur once vendors are more established and have more consistent WIC redemptions from month to month.

As noted above, if a vendor wishes to be reassessed outside of the Department's proposed reassessment schedule set forth in subsections (b)(1) and (b)(2), the vendor could request up to one reassessment per year pursuant to subsection (b)(3).

Under federal regulation, vendors must comply with the Department's vendor selection criteria at all times during the authorization period and the Department is required to terminate its agreements with authorized vendors that fail to meet these criteria. (7 C.F.R. § 246.12(g)(3).) Federal regulation also allows the Department to reassess a vendor for compliance with vendor selection criteria at any time during the agreement period. (*Id.*) To reflect the Department's authority to assess vendors' compliance with the proposed minimum lane coverage authorization criteria at any time during the agreement period, the Department is proposing to include language to that effect in proposed subsection (b)(2).

(b)(3) As noted above, the Department is proposing to give vendors the option to request that their minimum lane coverage requirements be reassessed after at least six months of authorization pursuant to proposed subsection (b)(3).

The Department is proposing to offer the option for a vendor to request a reassessment only after a vendor has been authorized for at least six months. Based on the definition of monthly WIC redemptions in proposed subsection (a)(2), the formulae for calculating vendors' minimum lane coverage requirements set forth in proposed subsections (c)(2)(B)1. and (c)(2)(B)2., and the formulae for calculating vendors' annual gross food sales set forth in proposed subsections (c)(2)(B)3.A. and (c)(2)(B)3.B., vendors will need to be authorized for at least six months in order to ensure that the vendor's minimum lane coverage requirements are being calculated based on the vendor's actual food sales and WIC redemptions data. As stated throughout this Statement of Reasons, these proposed subsections are intended to ensure that the Department is collecting accurate, up-to-date information about vendors' food sales and redemptions in order to reassess their minimum lane coverage requirements.

This optional reassessment is being offered as a courtesy to vendors that believe their minimum lane coverage requirements do not reflect their current monthly WIC redemptions or annual gross food sales data and would like to have their minimum lane coverage requirements reassessed. The Department anticipates that some vendors may request a reassessment pursuant to proposed subsection (b)(3) because they believe that they meet the criteria for a participant access store and are therefore eligible to receive one or more Department-provided EBT Capable Terminal(s) pursuant to proposed subsection (d)(1). Other vendors may seek a reassessment because they believe their minimum lane coverage requirements no longer accurately reflect their volume of WIC business, especially if the vendor experiences a decline in WIC redemptions and is still paying for a higher number of EBT Capable Terminals than may be warranted by their current WIC business.

As noted above, the Department is proposing to give vendors the opportunity to request one reassessment per vendor per year. Limiting vendors to one reassessment each year balances vendors' potential desire for a reassessment before their next scheduled reassessment with the administrative burden on the Department that comes with conducting additional reassessments beyond those that will already be performed after one year from vendors' initial authorization and at reauthorization.

(c) The Department is proposing to include the parameters for determining a vendor's minimum lane coverage requirements in proposed subsection (c). In order to reduce vendor confusion and the administrative burden on the Department, this proposed lane-counting methodology is consistent with the existing register-counting methodology in section 50200.

(c)(1) Under the USDA's national WIC EBT vendor equipment coverage formula (USDA's equipage formula), which is set forth in 7 Code of Federal Regulations part 246.12(z)(2)(i) and (ii), a vendor's minimum lane coverage requirements are based on: (1) whether the vendor is a supermarket or superstore or falls in the separate category of "all other vendors"; (2) the vendor's monthly WIC redemptions; and (3) the number of lanes in the vendor location. However, the federal regulations do not define what constitutes a "lane." The Department is proposing to define the term "Lane" in proposed section 70001 and use lane-counting standards in this proposed section that mirror the cash register-counting standards in current section 50200. The Department is proposing to use this methodology to ensure that consistent criteria are being applied whenever the Department is determining the number of Lanes in a vendor's store.

(c)(1)(A) The Department is proposing to count all Lanes in a vendor's store regardless of whether the Lanes are used on a full-time or occasional basis. It is a common practice for vendors to vary the number of Lanes in use in their stores based on the amount of traffic in the store. By counting Lanes that are used on both a full-time and part-time basis, the Department is seeking to ensure that vendors are equipping enough Lanes to adequately serve WIC participants during their stores' busiest hours.

(c)(1)(B) The Department is proposing to count all checkout locations in specialty areas or sections that meet section 70001's proposed definition of "Lane" because they are capable of transacting "food sales," as defined in 7 Code of Federal Regulations part 246.2. In general, minimum lane coverage requirements are designed to obligate vendors to equip enough Lanes with EBT Capable Terminals to ensure that WIC participants can purchase foods "in the same manner as all other non-program customers." (81 Fed.Reg. 10433, 10440 (Mar. 1, 2016).) By counting all Lanes in

specialty areas or sections that are capable of transacting non-taxable food sales, the Department is seeking to ensure that a vendor's lane count reflects and includes any Lanes that can process purchases of non-taxable foods. This proposed definition includes a non-exhaustive list of examples of specialty areas or sections which, depending on the vendor's store, may be capable of transacting non-taxable food sales. Such examples include electronics and clothing sections, as well as delicatessens and coffee bars that offer prepared foods and drinks.

It is important to note that larger vendors with five or more Lanes will not be required to equip more than four Lanes with EBT Capable Terminals regardless of their lane count. However, for smaller stores this counting methodology is intended to yield minimum lane coverage requirements that enable participants to redeem their benefits in the same manner as non-WIC customers.

(c)(1)(B)1. The Department is proposing to exclude checkout locations in specialty areas or sections from the vendor's lane count if they do not meet the proposed definition of Lane because they are incapable of transacting non-taxable food sales. This is because Lanes that are incapable of transacting non-taxable food sales cannot be used to sell non-taxable foods to WIC customers or non-WIC customers. In other words, there is no risk that WIC customers will not be able to purchase foods in the same manner as non-WIC customers because neither group can buy non-taxable foods at that particular checkout location. Overall, if the vendor has disabled or otherwise eliminated the functionality for transacting non-taxable food sales in a specialty area or section, that checkout location will not be counted as part of the lane count. Checkout locations in specialty areas or sections that are capable of transacting non-taxable food sales, including checkout locations in clothing sections, coffee bars, or other specialty areas that are not commonly used to transact non-taxable food sales but still have the **functionality** to be used in this manner, will be counted as part of the lane count pursuant to subsection (c)(1)(B).

(c)(1)(C) The Department is proposing to exclude automated teller machines (ATMs) and in-store banks from a vendor's lane count. ATMs and in-store banks would be excluded from the lane count because, in general, these locations cannot be used to transact non-taxable food sales. As a result, there is little risk that WIC participants will be treated differently from non-WIC customers if these locations are not included in a vendor's lane count.

(c)(2) Under federal regulation, the Department is required to ensure that vendors and vendor applicants equip an adequate number of Lanes with EBT Capable Terminals. (See 7 C.F.R. § 246.12(z)(2); see also 7 C.F.R. § 246.12(h)(3)(xxvii).)

(c)(2)(A) The Department is proposing that all vendor applicants, and all vendors that have not undergone a reassessment pursuant to subsection (b)(2) or (b)(3), must equip at least one Lane with an EBT Capable Terminal. Under federal regulation, the Department is required to provide all newly authorized participant access stores with one point of sale terminal. (7 C.F.R. § 246.12(z)(2)(iv).) By requiring all vendor applicants and newly authorized vendors to equip at least one Lane with an EBT Capable Terminal until their minimum lane coverage requirements are reassessed, the Department will be holding all vendor applicants and newly authorized vendors to the same standard. A vendor must equip at least one Lane with an EBT Capable Terminal in order to be in compliance with all relevant federal requirements and proposed section 70725.¹⁰

(c)(2)(B)-(c)(2)(B)2. In order to ensure that all vendors are being reassessed using similar data, the Department intends to reassess vendors' minimum lane requirements using a modified version of the USDA's equipage formula set forth in 7 Code of Federal Regulations part 246.12(z)(2)(i) and (ii).

When evaluating options for minimum lane coverage requirements in California, the Department considered three options: (1) using the USDA's equipage formula; (2) requiring all vendors to equip all Lanes in their stores with EBT Capable Terminals; or (3) requiring all vendors to equip only one Lane with an EBT Capable Terminal.

The Department rejected option (2), requiring all vendors to equip all Lanes in their stores with EBT Capable Terminals, because this option could impose a significant financial burden on smaller vendors without providing a corresponding benefit to participants. The Department also rejected option (3), which would have required that all vendors equip only one Lane with an EBT Capable Terminal. The Department rejected this alternative because it is more likely to result in reduced levels of service for WIC participants and would not account for vendors' different sizes and business models. Option (1), using the USDA's equipage formula, strikes a balance between the needs of participants and potential costs to vendors.

¹⁰ As the USDA noted in the proposed rule for WIC EBT, other states developing their lane coverage formulas have also allowed "newly authorized WIC vendor[s] with no prior sales history available" to equip one lane in their stores. (78 Fed.Reg. 13549, 13554 (Feb. 28, 2013).)

In proposing to adopt option (1), the Department intends to make two minor changes to the USDA's equipage formula in 7 Code of Federal Regulations part 246.12(z)(2)(i) and (ii). First, for the reasons explained above in the Statement of Reasons for subsection (a)(2), the Department is proposing to round a vendor's monthly WIC redemptions to the nearest dollar. Second, the Department is proposing to determine which lane equipage formula applies to any given vendor based on whether the vendor has greater than \$2 million in annual gross food sales. The USDA has given State agencies the discretion to assign an equipage formula based on the vendor's store type in one of two ways, based on either: (1) whether the vendor's annual food sales are greater than \$2 million; or (2) whether the vendor meets the SNAP definition of "supermarket." For the reasons explained below, the Department is proposing to determine which equipage formula applies to a vendor based on whether the vendor's annual gross food sales are greater than \$2 million.

Although the terms "supermarket" and "superstore" are not defined in the federal regulations, the USDA has indicated that State agencies may use either: (1) the U.S. Census Bureau Census on Retail Trade definition of supermarkets; or (2) SNAP's "supermarket" category, to determine the vendor's store type. (81 Fed.Reg. 10433, 10440 (Mar. 1, 2016).) The U.S. Census Bureau defines supermarkets as retail establishments with more than \$2 million in food sales annually (*id.*), and the Department is proposing to categorize vendors using this definition in order to ensure that the Department is using consistent criteria for all stores when determining vendors' minimum lane coverage requirements. While section 71700 generally requires SNAP/CalFresh authorization for WIC vendors, section 71600 provides a narrow exception for participant access stores. This means that the Department will not have information about whether a participant access store that meets section 71600's exception falls into SNAP's supermarket category. Rather than adopt a separate standard for participant access stores authorized pursuant to section 71600, the Department is proposing to use the U.S. Census Bureau Census on Retail Trade's definition of supermarkets, which provides a universal standard that can be applied to all vendors in California: the \$2 million threshold.

Using the U.S. Census Bureau's definition of supermarkets, vendors with greater than \$2 million in annual gross food sales will be required to equip lanes with terminals based on monthly WIC redemptions in \$11,000 increments, while vendors with less than or equal to \$2 million in annual gross food sales will equip lanes based on monthly WIC redemptions in \$8,000 increments. For example, a vendor whose annual gross food sales are greater than \$2 million, which are described as "superstores" and

“supermarkets” in federal regulation, must equip at least one lane with a terminal if its monthly WIC redemptions are between zero and \$11,000, equip at least two lanes with terminals if its monthly WIC redemptions are between \$11,001 and \$22,000, etc. (See 7 C.F.R. § 246.12(z)(2)(i).) By contrast, vendors with annual gross food sales of less than or equal to \$2 million, which are described in federal regulation as “all other stores,” must equip at least one lane with a terminal if its monthly WIC redemptions are between zero and \$8,000, must equip at least two lanes with terminals if its monthly WIC redemptions are between \$8,001 and \$16,000, etc. (See 7 C.F.R. § 246.12(z)(2)(ii).) The USDA’s equipage formula does not require vendors to equip more than four lanes, or more lanes than the number of lanes in the vendor’s store, regardless of the vendor’s store type or monthly WIC redemptions. (7 C.F.R. § 246.12(z)(2)(i)-(ii).) As a result, larger vendors with five or more lanes would not be required to equip more than four lanes with terminals regardless of their lane counts while smaller vendors with fewer lanes would not be required to equip more terminals than the number of lanes in their stores.

(c)(2)(B)3. As noted above, the Department is proposing to apply the USDA’s equipage formula based on the U.S. Census Bureau’s definition of supermarkets, which considers annual food sales, rather than the SNAP category of supermarkets. As a result, the Department must determine a vendor’s annual gross food sales in order to reassess that vendor’s minimum lane coverage requirements.

As explained in detail below, the Department is proposing to use two different types of food sales data to determine the vendor’s annual gross food sales depending on whether or not the vendor files State, Local, and District Sales and Use Tax Return statements with the California Department of Tax and Fee Administration (CDTFA statements).¹¹ If the vendor files CDTFA statements, the Department is proposing to calculate the vendor’s annual gross food sales using the non-taxable sales of food products reported on the vendor’s CDTFA statement or statements for the relevant time period.¹² For vendors that do not file CDTFA statements, which this Statement of Reasons sometimes refers to as “non-filers,” the Department is proposing to calculate the vendor’s non-taxable food sales using the monthly sales statements and inventory

¹¹ Taxpayers previously submitted these statements to the California Board of Equalization or BOE.

¹² Because CDTFA statements may be submitted at different frequencies—including monthly, quarterly, yearly, or fiscal yearly—depending on the vendor’s filing schedule, a vendor may file one or more CDTFA statements during the time period used to calculate the vendor’s annual gross food sales.

records detailing the vendor's sales of foods eligible for purchase under SNAP (SNAP-eligible foods).

(c)(2)(B)3.A. For any vendor that files CDTFA statements, the Department is proposing to calculate the vendor's annual gross food sales using the non-taxable food sales reported on the vendor's most recently filed CDTFA statement(s). For a CDTFA-filer, the non-taxable food sales reported on the vendor's CDTFA statement or statements represent verifiable documentation of the vendor's food sales that have been reviewed by another state agency and the vendor has certified as true, correct, and complete. The Department is requiring the vendor's most recently filed CDTFA statement or statements in order to ensure that regardless of the vendor's exact filing schedule, the Department is using the most up-to-date information available.

In general, regardless of whether the vendor files CDTFA statements on a monthly, quarterly, yearly, or fiscal yearly basis, the CDTFA statements provided to the Department would need to cover a 12-month period. However, if newly authorized or newly operational vendors are being reassessed before they have CDTFA statements covering a full 12 months, those vendors must be able to provide CDTFA statements covering at least six months if they wish to be reassessed using CDTFA statements rather than the alternate documentation described below. The proposed option to submit CDTFA statements covering a six-month period instead of a 12-month period is being offered because, pursuant to proposed subsection (b)(3), a vendor that has been authorized for at least six months could request that the Department reassess the vendor's minimum lane coverage requirements. A vendor that has been authorized for at least six months could also be reassessed pursuant to proposed subsection (b)(2) if the vendor is part of a Master Vendor Agreement and all stores on that agreement are being reauthorized and reassessed.

In recognition of these potential scenarios, the Department has developed a methodology for estimating the vendor's annual gross food sales for purposes of performing a reassessment that occurs before the vendor has been authorized for a full year. This estimation would involve calculating the vendor's total non-taxable sales of food products for a six-month period then multiplying that total by two, which would allow vendors that have been in operation for more than six months but less than a year to be reassessed at the vendor's request. As noted above, the Department anticipates that this scenario may apply to participant access stores seeking a reassessment in order to obtain additional Department-provided equipment to meet participant demand, or to vendors that are part of a Master Vendor Agreement and are being reassessed along with other vendors on the Master Vendor Agreement. The calculation described

above and in proposed subsection (c)(2)(B)3.A.ii. is intended to give the Department a reasonable estimate of the vendor's annual gross food sales even if the vendor does not have CDTFA statements for a one-year period at the time of the reassessment.

The Department is proposing that vendors must provide a copy of their CDTFA statement or statements within 30 days of the Department's request for such statements. The Department has determined that 30 days from the date of the Department's request provides sufficient time for vendors to collect, organize, and provide the relevant CDTFA statement or statements. The Department is proposing to require vendors to provide true, correct, and complete copies of their CDTFA statement(s) in order to ensure that the Department is receiving the same non-taxable food sales information that the vendor previously communicated to the CDTFA.

(c)(2)(B)3.A.i. This subsection is intended to clarify how the Department is proposing to calculate annual gross food sales when a vendor provides one or more CDTFA statements that document 12 months of non-taxable food sales. As noted above, for vendors providing documentation that covers 12 months, the Department is planning to calculate the vendor's annual gross food sales as the vendor's total non-taxable sales of food products for the 12-month period set forth in the CDTFA statement or statements provided. For example, if the vendor files CDTFA statements on a quarterly basis, the vendor's annual gross food sales would be the total non-taxable food sales reported on all four of the quarterly statements for the 12-month period. By contrast, if the vendor files CDTFA statements on a yearly basis, the vendor's annual gross food sales would be the non-taxable food sales reported on the one yearly statement, which covers a full 12 months. As noted above, CDTFA statements contain verifiable information about a vendor's non-taxable food sales that the vendor has already certified as true, correct, and complete, and provided to another state agency for review. Additionally, a significant percentage of vendors already provide CDTFA statements to the Department as part of the peer group assessment process described in sections 50000 through 50300. Since these vendors already collect, organize, and provide CDTFA statements for purposes of the peer group assessments and the Department is purposefully timing the peer group and minimum lane reassessments to occur at the same time in many cases—at reauthorization—submitting these statements should entail only a minimal administrative burden for vendors.

(c)(2)(B)3.A.ii. If the vendor provides CDTFA statements covering only six months because CDTFA statements covering a full 12 months are unavailable at the time of the reassessment, the Department is proposing to calculate the vendor's annual gross food sales as the vendor's total non-taxable food sales for the documented, six-month period

multiplied by two. The Department expects that this calculation will offer a reliable estimate of a vendor's annual food sales as calculated using the vendor's actual non-taxable food sales for the shorter six-month period. The Department also anticipates that this estimate of annual gross food sales would apply to a small number of vendors in specific scenarios. First, vendors that the Department determines are participant access stores may request a reassessment pursuant to proposed subsection (b)(3) in order to obtain additional Department-provided equipment. Second, the Department may reassess a vendor that is included on a Master Vendor Agreement before the vendor has been authorized for a full year pursuant to proposed subsection (b)(2) since, in general, all vendors on a Master Vendor Agreement would be reauthorized and reassessed at the same time.

(c)(2)(B)3.B. For vendors that either: (1) do not sell taxable goods and therefore do not file CDTFA statements; or (2) have not been in operation long enough to have filed CDTFA statements covering at least six months, the Department is proposing to require these vendors to submit copies of their most recent monthly sales statements and inventory records detailing the vendor's sales of SNAP-eligible foods instead of submitting CDTFA statements.

The Department's proposed use of vendors' monthly sales statements and inventory records documenting the sale of SNAP-eligible foods is consistent with the documentation that the Department currently uses to assess vendors' peer group categories and subgroups pursuant to sections 50000 through 50300 for the small subgroup of vendors that do not file CDTFA statements. It is reasonable for the Department to request this documentation in order to determine non-filers' annual gross food sales because vendors are already required to maintain adequate inventory records pursuant to section 71100, and monthly sales statements are a type of documentation that vendors will generally keep in the ordinary course of business or be able to compile using documentation kept in the ordinary course of business.

The Department is proposing to require that the copies of the vendor's most recent monthly sales statements and inventory records—which will be used to reassess the vendor's minimum lane coverage requirements—be true, correct, and complete. Since proposed subsection (c)(2)(B)3.A. requires that copies of the vendors' CDTFA statements be true, correct, and complete, requiring non-filers to provide true, correct, and complete copies of their monthly sales statements and inventory records would impose the same documentation standards on both groups. Applying these standards to CDTFA filers and non-filers will also help ensure that the Department is conducting

reassessments using information that will provide an accurate picture of the vendor's non-taxable food sales.

The Department is proposing that vendors must provide a copy of their monthly sales statements and inventory records within 30 days of the Department's request for such documents. The Department has determined that 30 days from the date of the Department's request provides sufficient time for vendors to collect, organize, and provide the relevant documentation.

(c)(2)(B)3.B.i. This proposed subsection explains how the Department would calculate annual gross food sales for non-filers that provide monthly sales statements and inventory records of SNAP-eligible foods for a 12-month period. Because such documents would show the vendor's non-taxable food sales in one-month increments over a 12-month period, the Department would calculate the vendor's annual gross food sales as the total non-taxable sales of food products reflected in the 12 sets of monthly sales statements and inventory records.

(c)(2)(B)3.B.ii. If a vendor's monthly sales statements and inventory records only cover a period of six months because the vendor has requested or is subject to a reassessment and has not been in operation long enough to have documentation covering 12 months, the Department is proposing to calculate the vendor's annual gross food sales by multiplying the vendor's total sales of SNAP-eligible foods for the most recent six-month-period by two. This calculation would give the Department a reliable estimate of a vendor's annual food sales, as estimated based on the vendor's actual non-taxable food sales for six months. As noted above regarding subsection (c)(2)(B)2.A.ii., the Department anticipates that this estimate would apply only in a limited set of circumstances, including to participant access stores seeking additional Department-provided equipment during their first year of operation and to vendors being reassessed before their first year of initial authorization as part of the reauthorization process for a Master Vendor Agreement.

(c)(3) Section 4.7.6 of the Operating Rules gives State agencies the option to allow vendors to offer a self-checkout option for WIC EBT Transactions. In order to provide WIC participants with a shopping experience that is comparable to that of non-WIC customers, the Department is proposing to allow vendors to provide a self-checkout option for WIC EBT Transactions. Self-checkout lanes, also known as "unattended" lanes, are those checkout locations where there is no cashier or other staff person to assist with processing the transaction or bagging the customer's groceries.

(c)(3)(A) To help ensure that WIC participants are treated in the same manner as non-WIC customers, the Department is proposing to require that if a vendor or vendor applicant chooses to make both Lanes with cashiers and self-checkout Lanes available to non-WIC customers, the vendor cannot equip **only** self-checkout Lanes with EBT Capable Terminals. Whether a vendor provides a self-checkout option for WIC EBT Transactions will continue to be the choice of the vendor. However, for those vendors that choose to make self-checkout Lanes available to WIC participants, the vendor is prohibited from equipping only self-checkout Lanes with EBT Capable Terminals if both attended Lanes and self-checkout Lanes are available to non-WIC customers. This proposed regulation is intended to ensure that a WIC participant will not be **required** to use a self-checkout Lane to process WIC EBT Transactions when other customers have access to the checkout and bagging assistance provided at attended Lanes.

(d) Federal law requires that prior to Statewide EBT, the Department must provide single-function equipment to vendors at no cost. (42 U.S.C. §1786(h)(12)(E)(i); 7 C.F.R. § 246.12(aa)(1), (4).) After Statewide EBT, any retail store that applies for authorization to become a vendor must successfully demonstrate EBT capability **before** authorization unless the Department determines that the vendor is necessary for participant access. (42 U.S.C § 1786(h)(12)(E)(iv)(II); 7 C.F.R. § 246.12(aa)(4)(ii).)

(d)(1) Upon written request, the Department is proposing to provide vendors or vendor applicants that qualify as participant access stores with the number of EBT Capable Terminals that the vendor or vendor applicant is required to equip in order to comply with their minimum lane coverage requirements, as calculated by the Department pursuant to subsection (c)(2). If participant access stores wish to equip additional EBT Capable Terminals, they can obtain these terminals at their own expense. This proposed subsection will reduce the cost of authorization for participant access stores and is intended to reflect the requirements related to participant access stores set forth in 7 Code of Federal Regulations part 246.12(aa)(4)(ii) and (z)(2)(iv).

As explained above, under this proposed section, vendors and vendor applicants will be able to meet the minimum lane coverage authorization criteria by equipping the number of EBT Capable Terminals required by their applicable minimum lane coverage requirements. By way of example, a vendor with annual gross food sales of less than \$2 million and monthly WIC redemptions of \$15,000 will need to equip at least two EBT Capable Terminals, while a vendor with annual gross food sales of greater than \$2 million and monthly WIC redemptions of \$35,000 will need to equip at least four. To contain costs, and ensure that the Department is providing participant access stores with only the amount of equipment necessary to comply with their minimum lane

coverage requirements, the Department is proposing that the number of EBT Capable Terminals provided pursuant to this subsection (d)(1) shall not exceed the number of terminals the store is required to equip in order to comply with subsection (c). As a result, if a vendor with annual gross food sales of less than \$2 million and monthly WIC redemptions of \$15,000 is a participant access store, the Department shall provide the vendor with two EBT Capable Terminals. If this participant access store wished to equip more than two Lanes with EBT Capable Terminals, it would need to purchase or lease the additional equipment with the store's own funds.

(d)(2) Federal regulation permits the Department to remove excess Department-provided terminals if the vendor's actual redemption activity warrants a reduction consistent with applicable minimum lane coverage requirements. (See 7 C.F.R. § 246.12(z)(2)(vii).) Rather than physically provide terminals to vendors, the Department has chosen to subsidize the cost of these terminals by paying the monthly charge for EBT Capable Terminals set forth in the merchant agreement between the vendor and the Certifying Entity.¹³ As a cost saving measure, and pursuant to federal regulation, the Department is proposing to stop paying the monthly charge identified in the merchant agreement for any Department-subsidized EBT Capable Terminals in excess of the vendor's minimum lane coverage requirements if the number of required terminals is reduced following a reassessment. Given the Department's decision to pay the monthly charge for Department-subsidized equipment rather than physically provide the equipment to vendors, stopping payment of the monthly charge has the same practical effect as removing excess equipment.

The Department shall provide vendors with written notice of intent to stop payment of the monthly charge through a "stop payment notice" and shall stop payment after 30 days from the date of the stop payment notice. The Department has determined that 30 days is a reasonable period of time for vendors to decide whether to keep the same number of EBT Capable Terminals and consequently take on any related costs that were previously borne by the Department or, alternatively, reduce the number of terminals in their store based on the reduction in redemption activity. The Department's ability to stop payment of the monthly charge for Department-subsidized EBT Capable Terminals would apply to participant access stores that receive Department-subsidized equipment before or after Statewide EBT as well as non-participant access stores that received Department-subsidized equipment before Statewide EBT.

¹³ All vendors that have Department-provided equipment will already have entered into a merchant agreement with the Certifying Entity in order to receive that equipment.

By way of example, a participant access store with annual gross food sales of less than or equal to \$2 million and monthly WIC redemptions of \$17,000 would be required to equip three Lanes with EBT Capable Terminals in order to comply with the minimum lane coverage authorization criteria and could request and receive Department-subsidized equipment pursuant to proposed subsection (d)(1). If, at the vendor's next reassessment, the vendor's annual gross food sales continued to be less than or equal to \$2 million but its monthly WIC redemptions dropped to \$15,000, to reflect the vendor's reduced redemption activity, the Department would stop paying the monthly charge, as set forth in the merchant agreement between the vendor and the Certifying Entity, for one of the three Department-subsidized EBT Capable Terminals. As stated in the proposed regulation text, payment would terminate after 30 days from the date of the stop payment notice.

(e) As explained above, the Department will need documentation of vendors' annual gross food sales in the form of true, correct, and complete copies of the vendor's CDTFA statement(s) or true, correct, and complete copies of the vendor's monthly sales statements and inventory records for SNAP-eligible foods in order to perform reassessments and determine whether vendors are complying with the minimum lane coverage authorization criteria. The Department is proposing to terminate a vendor's agreement with the Department if the vendor fails to timely submit such documentation upon request. Failure to timely provide these materials is a serious issue because the Department uses the requested documentation to assess whether the vendor is meeting current vendor authorization criteria at all times during the agreement period. As noted above, the Department has determined that 30 days from the date of the Department's request provides sufficient time for vendors to collect, organize, and provide the relevant documentation.

(f) Under proposed subsection (f), vendors with a pattern of failing to meet applicable minimum lane coverage requirements will be disqualified for failing to meet authorization criteria. The first time a vendor fails to meet the minimum lane coverage authorization criteria, the vendor will receive a warning notice and opportunity to correct. If, after 30 days from the date of the warning notice and within 24 months, the vendor fails to meet the minimum lane coverage authorization criteria for a second time, the Department is proposing to disqualify the vendor from the WIC Program for one year. The Department has determined that 30 days provides sufficient time for vendors to correct any violations related to the minimum lane coverage authorization criteria. The Department is proposing to use a 24-month period for assessing patterns of non-compliance with vendor authorization criteria based on the Department's

determination that 24 months is a fair and reasonable timeframe in which to evaluate whether a vendor has displayed a pattern of failing to meet authorization criteria.

PROPOSED REGULATION

71400 Restrictions and Allowed Uses of the WIC Acronym and WIC Logo.

(a) For ~~the~~ purposes of this section and all contracts, instructions, forms and other documents related hereto, the following terms are defined:

(1) General Definitions

(A) Point of Display. Point of Display items are used to identify WIC authorized supplemental foods and where ~~the~~ authorized supplemental foods ~~items~~ are located or shelved. Point of Display items include shelf_talkers and signs.

(2) Printing and Image Definitions

(A) CMYK. CMYK, also known as process color, four-color or full color, refers to the four process colors (cyan, magenta, yellow and black) used to create all colors in standard color printing. This process is one of two allowed printing processes for reproduction of the California WIC logo. The CMYK process can create thousands of clear, vibrant colors; therefore, this option is permitted and is the preferred image file for vendors to reproduce the California WIC logo.

(B) EPS Format. EPS, Encapsulated PostScript, is a method for creating logos and other line-art illustrations using mathematical vectors to define the lines and curves that make up the logo or other artwork. These vectors retain proportion within the artwork regardless of how it is resized without loss of detail or distortion. This format is the only allowable option permitted for all reproduction of the California WIC logo.

(C) Spot Color. Spot Color refers to an image file which uses individual Pantone colors instead of CMYK process to reproduce the California WIC logo. It takes four separate Pantone colors to print the logo and the results will not be as rich in color as the CMYK process defined above. This format is one of two allowed options permitted for all reproduction of the California WIC logo. The black and white EPS image file is a variant of the spot color logo that uses a single color (black) to create the California WIC logo.

(D) Vector. Graphic images created by a computer program and stored in file format as a series of numbers which define shape, position and color of EPS images. Vectors are object-oriented and work as a whole unit together. The

mathematic property of the vectors allows increase and decrease in image size without distortion.

(E) White Space Required for Newspaper Ad or Insert. Visual area surrounding logo which must be free of typeset, color, or other imagery to prevent detracting from the appearance of the logo. White space is literally space around the logo which is white.

(b) The federal WIC logo and the WIC acronym are registered service marks of the United States Department of Agriculture (USDA). The federal WIC logo and the California WIC logo are the property of the Federal and State Governments, respectively. Vendors and vendor applicants shall not use of the WIC acronym and or logo only except as permitted in this Section 71400:

(1) Vendors and vendor applicants shall not use the federal WIC logo or acronym or the State WIC logo or acronym or close facsimiles thereof, in total or in part in any manner, only without prior written consent of the Department, ~~except when printing signs and shelf talkers pursuant to the requirements in subsection (d)(3).~~

(2) The Department shall deny authorization or shall not continue authorization of a vendor or vendor applicant whose name or logo includes the WIC acronym, the federal WIC logo, the California WIC logo, or close facsimiles thereof, in total or in part, either in the official name in which the vendor or vendor applicant is registered or in the name under which it does business, if different. This includes, but is not limited to, using the letters “W”, “I”, and “C” in that order next to one another in the vendor or vendor applicant’s name, or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters.

(3) Vendors and vendor applicants must not attach or affix in any manner the WIC acronym, the federal WIC logo, or the California WIC logo on any authorized supplemental food or incentive item.

(4) Vendors and vendor applicants may use the California WIC logo only on materials produced or approved by the Department including shelf talkers, posters, signs, decals or stickers.

(5) Vendors may reproduce the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor’s store, as specified in

subsection (d) below.

(c) Upon prior written approval by the Department vendors are permitted to print the California WIC logo pursuant to the printing and formatting requirements specified in this Section 71400. When using the California WIC logo, the vendor shall use only the California WIC logo files that are available for download on the Vendor WIC Information eXchange website (“VWIX”) at: <https://vwix.ca.gov>. These are the only image file options available to WIC authorized vendors for printing the California WIC logo image; no other image file formats are allowed.

(1) Vendors shall print the California WIC logo image using the CMYK process or spot color image file options, as defined in subsection (a) above and in color as specified in subsections (c)(1)(B)-(C) below:

(A) The California WIC logo and tagline may appear in a single color, but only in black on white.

(B) The CMYK combination, a permitted and preferred option, which produces a full-color image of the California WIC logo, shall be as follows:

1. Purple: fifty (50) percent cyan, ninety (90) percent magenta, zero (0) percent yellow, and zero (0) percent black.
2. Red: zero (0) percent cyan, ninety-one (91) percent magenta, eighty-seven (87) percent yellow, and zero (0) percent black.
3. Lime: forty-three (43) percent cyan, zero (0) percent magenta, seventy-nine (79) percent yellow, and zero (0) percent black.
4. Green: seventy-five (75) percent cyan, zero (0) percent magenta, one-hundred (100) percent yellow, and zero (0) percent black.

(C) Pantone colors, a permitted option of the CMYK combination, is used to produce a full-color image of the California WIC logo, shall be as follows:

1. Purple: Pantone 258
2. Red: Pantone 179
3. Lime: Pantone 368
4. Green: Pantone 361

(2) When printing the California WIC logo, vendors ~~must~~ shall ensure the California WIC logo remains intact each time it is printed. The California WIC logo includes the WIC acronym and tagline “Families grow healthy with WIC.”. The vendor shall not use the tagline as a separate graphic element. Shelf talkers are the only exception and may be printed without the tagline.

(3) When printing the California WIC logo, vendors ~~must~~ shall not distort the California WIC logo. When enlarging or scaling it down, vendors shall keep the logo proportionate in size. Changes to the size must be the same percentage increase in both height and width. For example, if the height of the logo image is increased twenty-five (25) percent, the width must also be increased twenty-five (25) percent.

(4) When printing the California WIC logo, vendors ~~must~~ shall print only the California WIC logo and not add any additional graphics or text around the logo. Exception: upon approval by the Department additional graphics or text may be allowed when printing the California WIC logo in general circulation newspaper ads or inserts that advertise the vendor’s store when used as specified in subsection (b)(5).

(5) When printing the California WIC logo, vendors ~~must~~ shall maintain integrity of the California WIC logo when printing in newspaper ads or inserts by using the “white space,” as defined in subsection (a)(2)(E), around the logo as downloaded from VWIX. ~~White space means visual area free of typeset or other imagery to prevent detracting from the appearance of the logo.~~

(6) Vendors shall not wrap text around the white space surrounding the California WIC logo. Vendors shall always leave enough white space around the logo to prevent “crowding” by other elements.

(7) Vendors shall print the California WIC logo in a white box when the logo is placed on a background color or photograph. Vendors shall not print the logo on a solid background color, screen or tint of a color, or a photographic or illustrative background if the background shows through the logo.

(8) Vendors shall not enclose the California WIC logo in other framing shapes including, but not limited to circles or ellipses.

(d) Vendor uses of the California WIC logo. The California WIC logo shall ~~not~~ be used only in any media other than print as specified in this subsection (d).

(1) Posters. The Department may provide vendors with posters which include the California WIC logo to identify a store as authorized to accept food instruments from participants for the sale of authorized supplemental foods. ~~Only posters provided by the Department may include the WIC acronym or logo. Department supplied posters may only be displayed on store walls and boards or in window displays.~~ Vendors ~~shall~~ may not print or display posters with the federal WIC logo, the WIC acronym, or the California WIC logo. Only posters provided by the Department may include the WIC acronym or logo. Posters provided by the Department may be displayed only on store walls and boards or in window displays.

(2) Decals. The Department may provide vendors with decals to identify a store as authorized to accept food instruments from participants for the sale of authorized supplemental foods. Only decals provided by the Department may be used if the decals include the WIC acronym or logo. Department supplied decals may only be affixed to windows or doors. Vendors ~~may~~ shall not print or display any other decals with the federal WIC logo, the WIC acronym, or the California WIC logo.

(3) EBT Lane Markers. The Department may provide vendors with EBT lane markers to identify the Lanes where the vendor processes WIC EBT Transactions. EBT lane markers provided by the Department may be displayed only on Lanes equipped with EBT Capable Terminals or at locations where customers may form a line to use one or more Lanes equipped with EBT Capable Terminals. Only EBT lane markers provided by the Department may include the WIC acronym or logo, and vendors shall not print or display any other EBT lane markers with the federal WIC logo, the WIC acronym, or the California WIC logo.

~~(3)~~ (4) Point of Display Items

(A) Signs. The Department may provide vendors with signs to identify WIC authorized supplemental foods and where the food items are located or shelved. Signs provided by the Department supplied signs may only be affixed only on to displays to identify where authorized supplemental food items are located or to emphasize fruits and vegetables as a food item choice. Except as provided in this subsection (d)(4)(A), ~~v~~vendors ~~may~~ shall not print or display signs with the federal WIC logo, the WIC acronym, or the California WIC logo.

1. Vendors may print signs with the California WIC logo in accordance with the standards set forth in this subsection. When printing signs for WIC authorized supplemental foods, a vendor may ~~only~~ only use only the following

image containing the California WIC logo, which is available on VWIX and represented below. Vendors may resize the following logo ~~for sign use~~ up to six (6) inches in height, but shall not ~~without~~ distorting the proportion of the logo image. This image is available on VWIX for use as a sign ~~or decal on VWIX~~.

A. Logo for Signs



(B) Shelf Talkers. Vendors ~~are permitted to~~ may display shelf talkers to identify WIC authorized supplemental foods. Shelf talkers may ~~only~~ be affixed only to shelves to identify where authorized supplemental foods items are located or shelved. Shelf talkers may be ~~supplied~~ provided by the Department or printed by a vendor ~~with approval from the Department pursuant to~~ in accordance with subsections ~~(c)(3)(B)(3) (d)(4)(B)1.-3.~~ below.

1. Shelf talkers printed by a vendor that identify WIC authorized supplemental foods ~~must~~ shall comply with the printing and formatting requirements specified in subsection (c).
2. Shelf talkers for WIC authorized supplemental foods ~~must~~ shall be printed in color.
3. When printing shelf talkers for WIC authorized supplemental foods, a vendor may ~~only~~ use only one of the following ~~the~~ images ~~containing the California WIC logo, available on VWIX and represented below~~. Vendors may ~~may~~ shall not resize or make any other changes to these images ~~available for use as shelf talkers on VWIX~~.

A. Right Shelf Talker



B. Left Shelf Talker



C. Standard Shelf Talker



(4) (5) Newspaper Ads or Inserts Requirements. Upon approval of the Department, vendors may print the California WIC logo in dated, general circulation newspaper ads or inserts that advertise the vendor's store (Ex. for example, a weekly store ad).

(A) Newspaper ads or inserts printed by a vendor must comply with the printing and formatting requirements specified in subsection (c).

(B) Newspaper ads or inserts may be printed in color or in black and white. The black and white logo may only be used in black and white newspaper ads or inserts.

(C) When printing newspaper ads or inserts a vendor may only use one of the following logos, available on VWIX and represented below. The following logos may not be printed larger than one-eighth (1/8) of the total size of the ad or insert:

1. Color Logo



2. Black and White Logo



(e) All vendors wishing to print or use the WIC logo pursuant to the requirements of this Section 71400 shall submit a sample of the proposed use prior to printing or publication to the Department for approval. The Department will review the proposed use for compliance with this Section 71400 and issue a determination as to whether the use is approved within ten (10) business days of receipt of request for approval.

(f) Vendors found to be out of compliance with this section on the first incidence will be issued a written notice of the vendor's failure to comply with restrictions on the use of the WIC acronym and logo. If after thirty (30) days from the date of the notice and within a twenty-four (24) month period from the date of the notice the vendor in a subsequent incident fails to comply with restrictions on the use of the WIC acronym and logo, the vendor shall have demonstrated a pattern of failure to comply with restrictions on the

use of the WIC acronym and logo and shall be disqualified from participation in the program for a period of one (1) year for failure to meet authorization criteria.

AUTHORITY

Federal:

7 Code of Federal Regulations part 246.12(g)(3) (2019): Vendor selection criteria. The State agency must develop and implement criteria to select stores for authorization. The State agency must apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them.

Federal Guidelines and Instructions:

United States Department of Agriculture, Food & Nutrition Service, WIC Policy Memorandum #2009-01, Clarification on Use of the WIC Acronym and Logo (Dec. 31, 2008).

United States Department of Agriculture, Food & Nutrition Service, FNS Instruction 800-2, WIC Program – Use of WIC Acronym and Logo (June 2, 1992).

United States Department of Agriculture, Operating Rules Women, Infants and Children (WIC) Electronic Benefit Transfer (EBT) (Sept. 2014).

State:

Health and Safety Code section 123280, subdivision (c): In order to be in conformity with federal law and to remain in compliance with federal funding, the department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for . . . the WIC program . . . and federal memoranda and guidance letters clarifying and interpreting those laws and regulations as the requirements for the WIC Program The department may adopt these requirements and guidelines by bulletin or similar instruction.

Health and Safety Code section 123322, subdivisions (a)(2), (b): [T]he department shall establish requirements for . . . [c]riteria used for vendor authorization [T]he department may . . . implement, interpret, or make specific this section by means of an action by bulletin or similar instruction.

Regulatory Bulletin 2012-01: All persons and entities participating in the California WIC Program, including participants, local agencies, vendors and contractors, shall be subject to all the mandatory federal requirements contained in:

- The Child Nutrition Act of 1966 and the amendments thereto (Chapter 13A (commencing with Section 1786)[)] of Title 42 of the United States Code
- Part 246 of Title 7 of the Code of Federal Regulations
- All federal memoranda and guidance letters clarifying and interpreting the federal laws and regulations as the requirements of the WIC Program

Mandatory requirements include all federal directive language and definitions. Federal directive language includes, but is not limited to, all requirements that the State Agency “must”, “shall”, or “will” meet and all requirements that do not permit discretion by the State agency.

STATEMENT OF REASONS

71400(a) For grammatical correctness and consistency with other regulation text, the Department is proposing to remove the word “the” before “purpose” and to add an “s” to purpose to make it plural (“purposes”). These proposed changes will not alter the substance of the regulation text.

(a)(1)(A) For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change phrase “the food items” to “authorized supplemental foods.” For grammatical correctness and consistency with the use of “shelf talkers” in other regulation text, the Department is removing the hyphen between “shelf-talkers.” These proposed changes will not alter the substance of the regulation text.

(a)(2)(A) For grammatical correctness, the Department is proposing to add the word “color” after “four-” in the description of CMYK. This proposed change will not alter the substance of the regulation text.

(b) For clarity regarding the distinct ownership interests held by the federal and state governments in relation to the federal WIC logo and California WIC logo, the Department is proposing to add a comma followed by the word “respectively” to the end of the second sentence of this subsection. With the proposed change, this sentence would read: “The federal WIC logo and the California WIC logo are the property of the Federal and State Governments, respectively.”

Because several of the subsections covered under this subsection (b) apply to both vendors and vendor applicants, the Department is proposing to change “Vendors” at the beginning of the third sentence of this subsection (b) to “Vendors and vendor applicants.” To reflect the guidance and instructions promulgated by the USDA, which discourage industry use of the WIC acronym or logo except for official use consistent with WIC regulations, instructions, and policies, the Department is proposing to rephrase the third sentence of this subsection (b). Instead of saying “Vendors shall use of the WIC acronym and logo only as permitted in this Section 71400,” the Department is proposing that this sentence should read: “Vendors and vendor applicants shall not use the WIC acronym or logo except as permitted in this Section 71400.” This proposed sentence also addresses an error by removing the grammatically incorrect use of the word “of,” and changes the phrase “acronym and logo” to “acronym or logo” to make clear that inappropriate use of either the acronym or the logo—not just inappropriate use of both the acronym and the logo—could result in non-compliance with this section.

(b)(1) To clarify the Department’s intended meaning and to address a grammatical error, the Department is proposing to add a comma after the word “manner” and remove the word “only” that currently appears before the phrase “without prior consent.” Because the clause beginning with the phrase “except when printing signs and shelf talkers” conflicts with subsection (e), the Department is also proposing to remove this clause entirely. With these proposed changes, this subsection (b)(1) would read: “Vendors and vendor applicants shall not use the federal WIC logo or acronym or the State WIC logo or acronym or close facsimiles thereof, in total or in part in any manner, without prior written consent of the Department.”

(b)(2) For consistency with other regulation text, the Department is proposing to change the phrase “authorization of a vendor or applicant” to “authorization of a vendor or vendor applicant.” Also for consistency, and to make clear that this provision applies to both vendors and vendor applicants, the Department is proposing to change the phrase “vendor is registered” to “vendor or vendor applicant is registered.”

(b)(3) For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change the phrase “authorized food” to “authorized supplemental food.” This proposed change will not alter the substance of the regulation text.

(c)(1)(B) For clarity and grammatical correctness, the Department is proposing to add a comma after “the California WIC logo.” This proposed change will not alter the substance of the regulation text.

(c)(1)(B)1. CMYK is a subtractive color model used in standard offset printing, also known as four-color or process color. In CMYK, four different colors—cyan, magenta, yellow, and black—are used in varying combinations and percentages of saturation to create a continuous range of colors. The current regulation does not include a percentage for yellow. The Department is proposing to amend this subsection in order to specify the percentage of yellow used to create the approved purple for the California WIC logo. Purple uses zero percent yellow in the CMYK combination.

(c)(1)(C)1.-4. For grammatical correctness, the Department is proposing to capitalize the word “Pantone,” which refers to the company that developed the color matching system, in subsections (c)(1)(C)1. through (c)(1)(C)4. These proposed changes will not alter the substance of the regulation text.

(c)(2) For consistency with other regulation text, the Department is proposing to change the word “must” to “shall.” Also, for consistency with other regulation text, the Department is proposing to move the period in the second sentence so that it appears within the closing quotation mark. These proposed changes will not alter the substance of the regulation text.

(c)(3) For grammatical correctness, the Department is proposing to replace the phrase “Change to the size” with “Changes to the size.” For consistency with other regulation text, the Department is proposing to change the word “must” to “shall.” Also for consistency, the Department is proposing to add the word “twenty-five” before both uses of the number “25” and add parentheses around both uses of the number “25.” These proposed changes will not alter the substance of the regulation text.

(c)(4) For consistency with other regulation text, the Department is proposing to replace the word “must” with “shall.” This proposed change will not alter the substance of the regulation text.

(c)(5) For consistency with other regulation text, the Department is proposing to replace the word “must” with “shall.” Because this section’s definition of white space is already contained in subsection (a)(2)(E), the Department is proposing to remove the quotes around the words “white space” and add a comma and the phrase “as defined in subsection (a)(2)(E),” after the words “white space” in order to make clear that this subsection is using subsection (a)(2)(E)’s definition of white space. In light of these proposed edits, and to avoid potential confusion, the Department is also proposing to remove the last sentence of this subsection, which currently provides an explanation of what is meant by the phrase white space.

(d) In order to clearly and explicitly convey to vendors that the California WIC logo may be used only in the manner described in subsection (d)—and that any other uses are prohibited—the Department is proposing to remove the word “not” after the word “shall,” and add the word “only” after the words “be used.”

The Department is also proposing to remove the phrase “in any media other than print.” Removing this phrase will permit the digital reproduction of a general circulation newspaper ad or insert on a newspaper’s or vendor’s website. The Department is proposing this change in recognition of newspapers’ digitization of their content, including advertising circulars. Based on these proposed changes, the new regulation text would read: “The California WIC logo shall be used only as specified in this subsection (d).”

(d)(1) For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change the phrase “supplemental foods” to “authorized supplemental foods.” For clarity and ease of reading, the Department is proposing to change the phrase “Department supplied posters” to “Posters provided by the Department” and the phrase “may only be displayed on store walls and boards or in window displays” to “may be displayed only on store walls and boards or in window displays.” These proposed changes will not affect the substance of the regulation text.

For clarity, and to eliminate a potential contradiction in the regulation text, the Department is proposing to make several changes to the second, third, and fourth sentences of this subsection’s regulation text. First, to eliminate the potential contradiction and clarify that the restriction being described is mandatory, not permissive, the Department is proposing to change the phrase “Vendors may not print or display” to “Vendors shall not print.” Second, the Department is proposing to move the second and third sentences of the current regulation text to follow after the fourth sentence. Currently, the second, third, and fourth sentences of this subsection read: “Only posters provided by the Department may include the WIC acronym or logo. Department supplied posters may only be displayed on store walls and boards or in window displays. Vendors may not print or display posters with the federal WIC logo, the WIC acronym, or the California WIC logo.” Based on these proposed changes, the new second, third, and fourth sentences of this subsection will read: “Vendors shall not print posters with the federal WIC logo, the WIC acronym, or the California WIC logo. Only posters provided by the Department may include the WIC acronym or logo. Posters provided by the Department may be displayed only on store walls and boards or in window displays.”

(d)(2) For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change “supplemental foods” to “authorized supplemental foods.” This proposed change will not alter the substance of the regulation text.

To clarify that the restriction being described is mandatory, not permissive, the Department is proposing to change the phrase “Vendors may not print or display” to “Vendors shall not print or display.” Because vendors may display decals provided by the Department, in order to prevent confusion, the Department is proposing to add “any other” before the word “decals” in the fourth sentence of this subsection. Based on the proposed changes described above, the new regulation text would read: “Vendors shall not print or display any other decals with the federal WIC logo, the WIC acronym, or the California WIC logo.”

(d)(3) As part of the transition to an EBT food instrument system, the Department is proposing to add a new subsection (d)(3) stating that the Department may provide vendors with EBT lane markers to identify Lanes, as defined in proposed section 70001, subsection (a)(6), at which the vendor processes WIC EBT Transactions.

The USDA recommends using signage to direct WIC participants to lanes capable of processing EBT transactions. (81 Fed.Reg. 10433, 10441 (Mar. 1, 2016).) By permitting vendors to use EBT lane markers provided by the Department, the Department is giving vendors a way to quickly and efficiently direct participants to the Lanes the vendor has equipped with EBT Capable Terminals. Eliminating extra hurdles in the checkout process, such as confusion over which Lanes can be used for EBT Transactions, benefits both WIC participants and vendor staff and should facilitate an easier and more efficient checkout experience.

The Department is proposing that EBT lane markers may be displayed only on Lanes equipped with EBT Capable Terminals or at the locations where customers may form a line to use one or more Lanes equipped with EBT Capable Terminals. As an example of the latter, a vendor may have a specific location where customers form a line before using one of four self-checkout Lanes that are equipped with EBT Capable Terminals. Under the proposed regulation, the vendor could mark both the location at which customers form the line, as well as each of the four self-checkout Lanes, with EBT lane markers. The Department is proposing to limit the placement of EBT lane markers to these two locations in order to ensure that EBT lane markers provide value to participants by clearly identifying where participants may use their electronic WIC

benefits. Limiting vendors to specific uses of EBT lane markers will prevent vendors from receiving an inappropriate advantage from using the WIC acronym and logo.

To ensure that EBT lane markers are used in a manner consistent with federal guidance, the Department is proposing to specify that only EBT lane markers provided by the Department may include the WIC acronym or logo and that vendors are not permitted to print or display other EBT lane markers with the federal WIC logo, the WIC acronym, or the California WIC logo. This language is intended to clarify that while EBT lane markers provided by the Department may include the WIC acronym or logo, other lane markers printed or displayed by the vendor must not include the WIC acronym or logo. Overall, these provisions are intended to protect the integrity of the WIC acronym and logo by permitting limited uses of the WIC service marks in appropriate contexts while prohibiting broader uses that could give participants the false impression that a vendor is owned, operated, endorsed, or preferred by the Department or the USDA.

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

(d)(4)(A) The Department is proposing to redesignate current subsection (d)(3)(A) as subsection (d)(4)(A). For clarity and ease of reading, the Department is proposing to change the phrase “Department supplied signs” to “signs provided by the Department.” For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change “food items” to “authorized supplemental foods.” For clarity and grammatical correctness, the Department is proposing to change the phrase “may only be affixed on displays” to “may be affixed only to displays.” These proposed changes will not alter the substance of the regulation text.

In order to clearly and accurately describe the options and restrictions applicable to signs, including permitted uses under proposed subsections (d)(4)(A) and (d)(4)(A)1., the Department is proposing to add the phrase “Except as provided in this subsection (d)(4)(A),” at the beginning of the last sentence of this subsection and make the “V” in “Vendors” lowercase.

For consistency with proposed subsections (d)(2) and (d)(3) above, and to clarify that the restriction being described is mandatory, not permissive, the Department is proposing to change the phrase “vendors may not print or display” to “vendors shall not print or display.” Based on the proposed changes described above, the new regulation text would read as follows: “Except as provided in this subsection (d)(4)(A), vendors

shall not print or display signs with the federal WIC logo, the WIC acronym, or the California WIC logo.”

(d)(4)(A)1. The Department is proposing to redesignate current subsection (d)(3)(A)1. as subsection (d)(4)(A)1. To avoid confusion, and for purposes of clearly and accurately describing the options and restrictions applicable to signs, the Department is proposing to begin this subsection with the sentence “Vendors may print signs with the California WIC logo in accordance with the standards set forth in this subsection.”

For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change the phrase “WIC authorized foods” to “WIC authorized supplemental foods.” For clarity and ease of reading, the Department is proposing to change the phrase “may only use” to “may use only”, add the phrase “which is” before the phrase “available on VWIX and represented below,” and remove the unnecessary phrase “for sign use.” For consistency with other regulation text, the Department is proposing to add “six” before “6” as well as place parentheses around “6.” These proposed changes will not alter the substance of the regulation text.

To avoid confusion, and for purposes of clearly and accurately describing the options and restrictions applicable to resizing the California WIC logo, the Department is proposing to change the phrase “may resize the following logo . . . , without distorting the proportion” to “may resize the following logo . . . , but shall not distort the proportion.” To account for the fact that proposed subsection (d)(4)(A) governs only those requirements related to signs, for consistency with the proposed changes discussed above, and for clarity and ease of reading, the Department is proposing to change the sentence “This image is available for use as a sign or decal on VWIX” to “This image is available on VWIX for use as a sign.”

(d)(4)(A)1.A. The Department is proposing to redesignate current subsection (d)(3)(A)1.A. as subsection (d)(4)(A)1.A.

(d)(4)(B) The Department is proposing to redesignate current subsection (d)(3)(B) as subsection (d)(4)(B). For grammatical clarity and correctness, the Department is proposing to change the phrase “Shelf talkers may only be affixed to shelves” to “Shelf talkers may be affixed only to shelves.” For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change “food items” to “authorized supplemental foods.” For clarity and consistency with other regulation text, the Department is proposing to change the phrases “Vendors are permitted to” to “Vendors may”;

“pursuant to” to “in accordance with”; and “may be supplied by the Department,” to “may be provided by the Department.” These proposed changes will not alter the substance of the regulation text.

To correct an incorrect cross-reference, and to reflect the proposed addition of a new subsection (d)(3), the Department is proposing to change the citation “subsection (c)(3)(B)(3)” to “subsections (d)(4)(B)1.-3.” In light of the changes to proposed subsection (e), which applies any time a vendor seeks to print or use the WIC logo, including when a vendor prints or uses a shelf talker specifically, the Department is proposing to remove the phrase “with approval from the Department” from this subsection. Based on the proposed changes described above, the last sentence of this subsection would read as follows: “Shelf talkers may be provided by the Department or printed by a vendor in accordance with subsections (d)(4)(B)1.-3. below.”

(d)(4)(B)1. The Department is proposing to redesignate current subsection (d)(3)(B)1. as subsection (d)(4)(B)1. For consistency with other regulation text, the Department is proposing to change the phrase “must comply with” to “shall comply with.” These proposed changes will not alter the substance of the regulation text.

(d)(4)(B)2. The Department is proposing to redesignate current subsection (d)(3)(B)2. as subsection (d)(4)(B)2. For consistency with other regulation text, the Department is proposing to change the phrase “authorized foods” to “authorized supplemental foods” and the phrase “must be printed” to “shall be printed.” These proposed changes will not alter the substance of the regulation text.

(d)(4)(B)3. The Department is proposing to redesignate current subsection (d)(3)(B)3. as subsection (d)(4)(B)3. For consistency with other regulation text and the definition of authorized supplemental foods in 7 Code of Federal Regulations part 246.2, the Department is proposing to change the phrase “WIC authorized foods” to “WIC authorized supplemental foods.” For grammatical clarity and correctness, the Department is proposing to add a comma after the phrase “WIC authorized supplemental foods.” For grammatical clarity and correctness, and to eliminate unnecessary text, the Department is proposing to change the phrase “a vendor may only use one of the following images containing the California WIC logo, available on VWIX and represented below,” to “a vendor may use only the images available on VWIX and represented below.” To eliminate unnecessary text, the Department is proposing to remove the phrase “available for use as shelf talkers on VWIX,” which currently appears at the end of this subsection. These proposed changes will not alter the substance of the regulation text.

For consistency with other regulation text, and to clarify that the restriction being described is mandatory, not permissive, the Department is proposing to change the phrase “may not resize” to “shall not resize.”

Based on the proposed changes described above, the new regulation text for subsection (d)(4)(B)3. would read as follows: “When printing shelf talkers for WIC authorized supplemental foods, a vendor may use only the images available on VWIX and represented below. Vendors shall not resize or make any other changes to these images.”

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

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

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

(d)(5) The Department is proposing to redesignate current subsection (d)(4) as subsection (d)(5). For grammatical correctness, and for consistency with other regulation text in subsection (d), including headings for posters, decals, etc., the Department is proposing to add the letter “s” to the word “Ad” to make this noun plural. For consistency with other regulation text, the Department is proposing to remove the word “Requirements” after “Inserts.” For grammatical correctness, the Department is proposing to change “Ex.” before “Weekly store ad” to “for example, a” and make the “W” in “Weekly” lowercase. These proposed changes will not alter the substance of the regulation text.

(d)(5)(A) The Department is proposing to redesignate current subsection (d)(4)(A) as subsection (d)(5)(A).

(d)(5)(B) The Department is proposing to redesignate current subsection (d)(4)(B) as subsection (d)(5)(B). To conform the first sentence in this subsection with the second sentence as well as the available logos in proposed subsection (d)(5)(C)2., the Department is proposing to change the reference to “black” in the first sentence to “black and white.” These proposed changes will not alter the substance of the regulation.

(d)(5)(C) The Department is proposing to redesignate current subsection (d)(4)(C) as subsection (d)(5)(C). For consistency with other regulation text, the Department is

proposing to add the word “one-eighth” before “1/8” and add parentheses around “1/8.” These proposed changes will not alter the substance of the regulation text.

(d)(5)(C)1. The Department is proposing to redesignate current subsection (d)(4)(C)1. as subsection (d)(5)(C)1.

(d)(5)(C)2. The Department is proposing to redesignate current subsection (d)(4)(C)2. as subsection (d)(5)(C)2.

(e) For consistency with other regulation text, the Department is proposing to add the word “ten” before “10” and add parentheses around “10.” These proposed changes will not alter the substance of the regulation text.

(f) For consistency with other regulation text, the Department is proposing to add the word “thirty” before “30” and add parentheses around “30.” These proposed changes will not alter the substance of the regulation text.