



April 8, 2016

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

EDMUND G. BROWN JR.
Governor

REGULATORY ALERT 2016-01

I. NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Department of Public Health (CDPH) California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) to inform stakeholders of CDPH’s plan to amend article 3, section 60300 of the WIC Bulletin Regulations (W.B.R.), pursuant to California Health and Safety Code section 123322 and in accordance with the federal and state requirements governing the WIC Program.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, CDPH will meet by webinar consultation with stakeholders between April 28, and May 5, 2016, to receive input on the proposed amendments to W.B.R. section 60300. If you are interested in participating in the stakeholder workgroup, please send an e-mail by close of business on April 19, 2016, with the subject line reading “Stakeholder RSVP” to WICRegulations@cdph.ca.gov, with the following information included in the body of the e-mail:

- Name:
- Company Name (if applicable):
- Address:
- E-mail Address:
- Stakeholder group represented: (Stakeholders can include, but are not limited to currently authorized WIC vendors, owners or representatives of a non-WIC authorized store, manufacturers, WIC Local agency representatives, WIC participants, advocates, and consumer groups.)

CDPH will contact you by April 25, 2016, with details on how and when to attend a webinar workgroup meeting. Stakeholders participating in a meeting will be assigned to the first available meeting.

Comment Period

CDPH will accept written comments from affected stakeholders regarding the amendment to W.B.R. section 60300. The comment period will be open for 34 calendar days, from April 9, 2016, through May 13, 2016. Send your comments electronically to the following e-mail address: WICRegulations@cdph.ca.gov.

If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.



Women, Infants, and Children (WIC) Division
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**Proposed
Regulation**

CDPH, which administers the WIC Program, proposes to amend the following rule in California regulation via regulatory bulletin.

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

(1) The MADR rate shall be calculated for all food item numbers for Peer Group Category A if there are at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period.

(2) The MADR rate shall be calculated for all food item numbers for Peer Group Category B if there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.

(3) The MADR rate shall be calculated for all food item numbers for Peer Group Category C if there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.

(b) The Department may manually adjust the MADR rates or the calculation methods, as specified below.

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

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

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

(2) When a food item number does not have at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period, the Department may manually adjust the MADR for Peer Group Category A to comply with federal requirements of cost neutrality by comparing the simple averages

of the prices at which the food item number was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A.

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

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

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

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

(c) The Department will remove partially-redeemed food instruments (FIs) when calculating the Statewide Average for non-infant formula food item numbers for which at least 75% of the food types and container sizes listed on the food instrument are included in the Market Basket, and for which redemption represents at least 0.1% of overall food expenditures, less CVV redemptions. Food item numbers will be selected for removal on a semi-annual basis thirty (30) days following the Department's request for vendors to

submit shelf prices pursuant to WIC- Bulletin- Regulations- §-section 70600(c) using redemption information from the most recently completed quarterly Vendor Cost Neutrality Assessment, required pursuant to title 7 Code of Federal Regulations part 246.12(g)(4)(i)(D).

(1) In order to identify a partially-redeemed FI, the Department will determine a minimum full redemption value (MFRV) at the peer group level for each food item number that meets the criteria in (c) above. The MFRV is a threshold dollar amount below which the Department will consider a food instrument to be partially-redeemed. Upon completion and Department verification of the prices submitted as part of the semi-annual shelf price collection, the Department shall sum the lowest reported shelf prices submitted by each vendor. The Department shall then identify the vendor in each Peer Group Category B subgroup and Peer Group Category C whose lowest reported prices have the lowest sum. Once the Department identifies the vendor within each peer group with the lowest sum, the Department shall use the low shelf prices submitted by those vendors to establish the MFRVs for eligible food item numbers at the peer group level will calculate a minimum full redemption value for each food item number that meets the criteria in (c) by determining the lowest shelf price for each Market Basket item reported by Peer Group B and C vendors in the most recent complete shelf price submission required by W.B.R. §70600. The minimum full redemption value is a threshold dollar amount below which the Department will consider a food instrument to be partially redeemed. The Department shall identify the minimum full redemption value for each food item number in one of two ways, dependent on the availability of reported shelf prices as follows:

(A) If the food item number meets the criteria in (c) above and all food types and container sizes that comprise the food item number are included in the Market Basket and consists only of Market Basket items, the Department will determine the minimum full redemption value MFRV for the food item number by adding summing the lowest reported non-sale shelf prices of the shelf prices submitted by a vendor identified through the process in (c)(1) for each of the food types included on the food item number-Market Basket items included in the food item number. Any redemption amount below the MFRV minimum full redemption value shall be deemed a partially-redeemed FI for purposes of calculating the Sstatewide Aaverage.

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

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

In this example, ~~a~~Any redemption below \$8.50 would be considered a partially-redeemed FI.

(B) If ~~a~~ the food item number meets the criteria in (c) above, but less than 100% of the food types and container sizes ~~in the that~~ comprise the food item number are included in the Market Basket, the Department will determine the MFRV minimum full redemption value by ~~adding~~ summing the lowest ~~reported non-sale~~ shelf prices submitted by a vendor identified through the process in (c)(1) above for each of the food types of the Market Basket items included in the food item number. For purposes of this calculation, all non-Market Basket items will be treated as having a shelf price of zero. Any redemption amount below the MFRV minimum full redemption value shall be deemed a partially-redeemed ~~food instrument FI~~ for purposes of calculating the Sstatewide Aaverage.

For example, food item number 6013 includes four (4) Market Basket items (one (1) gallon milk lower fat, one (1) dozen eggs, sixteen (16) ounces cheese, and sixteen (16) ounces dry beans) and one (1) quart of milk, which is not included in the Market Basket. If the lowest reported ~~non-sale~~ shelf prices for the identified vendor's items by Peer Group B or C vendors are as follows, then the MFRV minimum full redemption value for this food item number would be:

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

In this example, any redemption below \$7.00 would~~will~~ be considered a partially-redeemed FI.

Nature of the Regulation

Federal regulation title 7 Code of Federal Regulation part 246.12(g)(4)(i)(D) (2015) allows state WIC agencies to exclude partially-redeemed food instruments upon establishing an empirical methodology approved by the

United States Department of Agriculture Food and Nutrition Service. WIC Bulletin Regulations section 60300 created a methodology for identifying and excluding partially-redeemed food instruments across all peer groups. The Department proposes to modify this methodology to identify and exclude partially-redeemed food instruments on a peer group level. The Department proposes to establish minimum full redemption values (MFRVs) for eligible food item numbers using the lowest shelf prices submitted by a vendor in each peer group. This methodology will allow the Department to identify partially-redeemed food instruments from each peer group and exclude those instruments' redemptions from the calculation of the Statewide Average Redemption Value.

Reason for the Regulation

Attachment 1 of this notice provides the reasons for this proposed action.

Authority

Federal

The Child Nutrition Act of 1966, title 42 of the United States Code (U.S.C.), Section 1786 (Public law 89-645, section 17), as amended, establishes the federal authority under which states may administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) through local agencies. The WIC Program was established as a result of a Congressional finding that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children up to the age of 5 from families with eligible income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the WIC Program is to provide supplemental foods and nutrition education.

In fulfilling this objective, state WIC Programs are funded and administered by the United States Department of Agriculture (USDA), Food and Nutrition Service, pursuant to Title 7 of the Code of Federal Regulations, Part 246.

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

State:

In California, the Special Supplemental Nutrition Program for Women, Infants and Children was established under the authority of the California Health and Safety Code sections 123275 through 123355. The regulations for the State's administration of the WIC Program are contained in Title 22 of the California Code of Regulations, Chapter 6, sections 40601 through 40815, and in the WIC Regulatory Bulletins posted at: <http://www.cdph.ca.gov/programs/wicworks/Pages/WICRegulations.aspx>

Questions and Additional Information

If you have any questions, please contact the California WIC Program at WICRegulations@cdph.ca.gov.

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

Catherine Lopez, M. Ed.
Policy and Planning Branch Chief
Women, Infants, and Children Division
California Department of Public Health

II. Attachment 1

Statement of Reasons for Amendments to Sections 60300.

**California Special Supplemental Nutrition Program for Women, Infants, and Children
April 8, 2016**

California Health and Safety Code § 123322 authorizes the California Department of Public Health to adopt criteria used for vendor authorization for the California Special Supplemental Nutrition Program for Women, Infants, and Children using a bulletin process. The Department is utilizing this process to amend sections 70100 and 70500 of the WIC Bulletin Regulations. This document is intended to provide reasons for the Department's proposed action as required by the Health and Safety Code § 123322.

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III. 60300 Rules for Calculating the Maximum Allowable Department Reimbursement Rate (MADR)

A. PROPOSED AMENDMENTS TO REGULATION

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

(1) The MADR rate shall be calculated for all food item numbers for Peer Group Category A if there are at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period.

(2) The MADR rate shall be calculated for all food item numbers for Peer Group Category B if there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemption for that food item number.

(3) The MADR rate shall be calculated for all food item numbers for Peer Group Category C if there are at least thirty (30) unique vendors in Peer Group Category B, Register Count Subgroups 6-9 and 10+ with redemptions for that food item number.

b) The Department may manually adjust the MADR rates or the calculation methods, as specified below.

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

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

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

(2) When a food item number does not have at least thirty (30) unique vendors in Peer Group Categories B and C with redemptions for that food item number during the 12-week redemption period, the Department may manually adjust the MADR for Peer Group Category A to comply with federal requirements of

cost neutrality by comparing the simple averages of the prices at which the food item number was redeemed by Peer Group Category B and C vendors and those redeemed by vendors in Peer Group Category A.

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

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

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

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

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

(1) In order to identify a partially-redeemed FI, the Department will determine a minimum full redemption value (MFRV) at the peer group level for each food item number that meets the criteria in (c) above. The MFRV is a threshold dollar amount below which the Department will consider a food instrument to be partially-redeemed. Upon completion and Department verification of the prices submitted as part of the semi-annual shelf price collection, the Department shall sum the lowest reported shelf prices submitted by each vendor. The Department shall then identify the vendor in each Peer Group Category B subgroup and Peer Group Category C whose lowest reported prices have the lowest sum. Once the Department identifies the vendor within each peer group with the lowest sum, the Department shall use the low shelf prices submitted by those vendors to establish the MFRVs for eligible food item numbers at the peer group level. ~~will calculate a minimum full redemption value for each food item number that meets the criteria in (c) by determining the lowest shelf price for each Market Basket item reported by Peer Group B and C vendors in the most recent complete shelf price submission required by W.B.R. §70600. The minimum full redemption value is a threshold dollar amount below which the Department will consider a food instrument to be partially redeemed. The Department shall identify the minimum full redemption value for each food item number in one of two ways, dependent on the availability of reported shelf prices as follows:~~

(A) If the food item number meets the criteria in (c) above and all food types and container sizes that comprise the food item number are included in the Market Basket and consists only of Market Basket items, the Department will determine the minimum full redemption value MFRV for the food item number by adding summing the lowest reported non-sale shelf prices of the shelf prices submitted by a vendor identified through the process in (c)(1) for each of the food types included on the food item number ~~Market Basket items included in the food item number.~~ Any redemption amount below the MFRV ~~minimum full redemption value~~ shall be deemed a partially-redeemed FI for purposes of calculating the Sstatewide Average.

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

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

In this example, ~~a~~Any redemption below \$8.50 would be considered a

partially-redeemed FI.

(B) If a the food item number meets the criteria in (c) above, but less than 100% of the food types and container sizes ~~in the~~ that comprise the food item number are included in the Market Basket, the Department will determine the MFRV minimum full redemption value by ~~adding~~ summing the lowest ~~reported non-sale~~ shelf prices submitted by a vendor identified through the process in (c)(1) above for each of the food types of the ~~Market Basket items~~ included in the food item number. For purposes of this calculation, all non-Market Basket items will be treated as having a shelf price of zero. Any redemption amount below the MFRV minimum full redemption value shall be deemed a partially-redeemed ~~food instrument FI~~ for purposes of calculating the Statewide Aaverage.

For example, food item number 6013 includes four (4) Market Basket items (one (1) gallon milk lower fat, one (1) dozen eggs, sixteen (16) ounces cheese, and sixteen (16) ounces dry beans) and one (1) quart of milk, which is not included in the Market Basket. If the lowest reported ~~non-sale~~ shelf prices for the identified vendor's items by Peer Group B or C vendors are as follows, then the MFRV minimum full redemption value for this food item number would be:

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

In this example, any redemption below \$7.00 ~~would~~ will be considered a partially-redeemed FI.

B. AUTHORITY

1. Federal

7 Code of Federal Regulations part 246.2 (2015): *Partially-redeemed food instrument* means a paper food instrument which is redeemed for less than all of the supplemental foods authorized for that food instrument.

7 Code of Federal Regulations part 246.12(a)(1) (2015): *Management*. The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction. The State agency may permit only authorized vendors and farmers, home food delivery contractors, and direct distribution sites to accept food instruments and cash-value vouchers.

7 Code of Federal Regulations part 246.12(g)(4)(i)(D) (2015): *Vendors that meet the above-50-percent criterion*. State agencies must ensure that the prices of above-50-percent (A-50) vendors do not inflate the competitive price criteria and allowable reimbursement levels for peer groups or result in higher total food costs if participants transact their food instruments at A-50 vendors rather than non-A-50 vendors. To comply with this requirement, the State agency must compare the average cost of each type of food instrument redeemed by A-50 vendors against the average cost of the same type of food instrument redeemed by non-A-50 vendors. The state agency must compute statewide average costs per food instrument at least quarterly to monitor compliance with this requirement. If average payments per food instrument for A-50 vendors exceed average payments for non A-50 vendors, the State must take necessary action to ensure compliance, such as adjusting payment levels. A State agency may exclude partially-redeemed food instruments from a quarterly cost neutrality assessment based on an empirical methodology approved by FNS. A State agency may not exclude food instruments from the quarterly cost neutrality assessment based on a rate of partially-redeemed food instruments.

7 Code of Federal Regulations part 246.12(h)(3)(viii) (2015): *Food instrument and cash-value voucher redemption*. A state agency must establish and apply limits on the amount of reimbursement allowed for food instruments based on a vendor's peer group and competitive price criteria. In setting reimbursement levels, the State agency may include a factor to reflect fluctuations in wholesale prices.

2. State

Health and Safety Code section 123290, subdivision (e): The Department shall develop and maintain a system for the delivery of supplemental foods. Health and Safety Code section 123310: The Department shall authorize vendors to accept food instruments and develop a reimbursement system to compensate vendors for the delivery of WIC supplemental foods.

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

Health and Safety Code section 123322, subdivisions (a)(1) and (b): The Department is authorized to establish regulations regarding peer groups and a corresponding reimbursement

system using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations.

C. STATEMENT OF REASONS

60300 (a-b). The proposed changes make non-substantive changes to the requirements. The Department is also distinguishing between food item and food type to clarify the difference between the food item number and the food types in the food item number.

60300 (c). The proposed changes would exclude infant formula from the partially-redeemed FI identification and exclusion process. This change is necessary because infant formula FIs require participants to fully-redeem the instrument.

- (1) The Maximum Allowable Department Reimbursement (MADR) rate is the maximum reimbursement paid to WIC-authorized vendors in exchange for providing WIC supplemental foods to program participants according to the food item number. (WIC Bulletin Regulation section 60000(a)(7).) Federal regulation requires state agencies to limit the MADR for above-50-percent (Peer Group Category A) vendors to no more than the Statewide Average of redemptions charged by vendors in all other peer groups. (7 C.F.R. § 246.12(g)(4)(i)(D) (2015). The MADR for Peer Group Category A (the Statewide Average) is a 12-week average of food instrument redemption data from Peer Group Category B and C vendors. Redemptions identified as partially-redeemed are excluded from the calculation of the Statewide Average because their presence in the data used for these calculations artificially lowers the MADR applied to Peer Group Category A vendors.

On June 1, 2014, the Department enacted WIC Regulatory Bulletin 2014-01. In addition to making other regulatory changes, this bulletin also established a methodology to identify and exclude partially-redeemed FI from the calculation of the Statewide Average. Partially redeemed FI are identified by the calculation of a Minimum Full Redemption Value (MFRV) for each food item number. The MFRV is the lowest possible value for which an FI may be considered fully redeemed. Under the current methodology, the Department establishes these thresholds by identifying and summing the lowest price submitted for each market basket item in the food item number, regardless of peer groups.

The Department received stakeholder feedback regarding the impact of Regulatory Bulletin 2014-01 indicating that this methodology did not sufficiently exclude partially-redeemed FIs from the calculation of the Statewide Average. Specifically, stakeholders expressed concern regarding the calculation of MFRVs using the lowest price for a food type submitted by any vendor across all peer groups. Stakeholders claim that the current methodology does not create an adequate partial redemption threshold, and it fails to identify and exclude some partially-redeemed FI from the Statewide Average calculation. By using different prices from different vendors regardless of peer groups to calculate a MFRV, it is possible that the MFRVs do not represent real prices charged by any single authorized store.

The proposed changes in this section revise the partial redemption methodology to address stakeholder concerns while limiting the risk that fully redeemed FI will be incorrectly identified as partially redeemed. For each Peer Group Category B and C vendor, the Department is proposing to sum the lowest prices of all Market Basket items reported. The Department will then identify the vendor in Peer Group Category C and each Peer Group Category B subgroup with the lowest sum of low prices for Market Basket items. The Department will use the lowest prices submitted by these identified vendors to establish the MFRV for each food item number to which the partially-redeemed FI methodology will be applied. This methodology limits the

likelihood that a fully redeemed FI will be erroneously excluded from the calculation of the Statewide Average because it accounts for different pricing trends within each peer group.

The proposed changes address the extent to which stores with large economies of scale or below market pricing may disproportionately influence the prices used to create the MFRVs. By identifying and excluding partially-redeemed FI on a peer group level, this methodology ensures that more partially-redeemed FI are identified because the MFRVs for each peer group reflect the lowest prices actually charged by a vendor within that peer group.

The methodology change established by these amendments meets United States Department of Agriculture standards for an empirical methodology and will result in a more accurate Statewide Average redemption value without a significant impact on food or workload costs.

- A. The Department is removing the term “non-sale shelf prices” when discussing prices submitted by vendors because existing Vendor Authorization Criteria regulations prohibit vendors from submitting sale or promotional prices in the semi-annual shelf price submission. (WIC Bulletin Regulations section 70600(c)).