



California WIC Finalizes New Grocery Store Rules

On April 4, 2014, the California Department of Public Health (CDPH) issued final [WIC Vendor Peer Group and Reimbursement Regulations](#), originally proposed on December 13, 2013. The new rules will go into effect on June 1, 2014. A previous set of rules updating criteria that the CDPH WIC Division uses to approve or terminate grocery stores for WIC participation was proposed and finalized on October 17, 2013. Since [new authorization rules have already been implemented](#), this current package of regulations is the final and most critical step in the series of reforms that CDPH has undertaken in the past two years.

The California WIC Association (CWA) commends CDPH WIC Division staff for the progress made in undertaking these complex changes. The new rules update and strengthen existing federal and state regulations governing the approval of WIC vendors in California, and design a reimbursement system that reflects food prices that are driven by the overall competitive market. This should make it easier for California WIC to maintain overall program integrity by not allowing store owners to enter into or continue WIC Vendor Agreements unless they can show they are legitimate retailers who can consistently offer most WIC foods to WIC shoppers - at competitive prices.

CWA strongly supports the proposed restructuring of the existing WIC grocer peer groups, based primarily on number of registers and variety of stocked foods. We commend the Department for commissioning a thorough study of WIC and California grocery market dynamics by UC Davis experts, whose data and findings underlie much of this proposal. Not every grocery store in the state meets these criteria. The WIC program should only make exceptions to ensure reasonable participant access.

This Brief provides some historical and policy background on WIC food cost containment issues, and then summarizes both regulatory packages for non-WIC readers. CWA's comments on both packages are part of the public record.

Background

Higher food costs mean that fewer WIC participants can be served, unless Congress appropriates more funding for WIC, which is a 100% federally funded discretionary program. In a threatening federal budget environment, it is therefore important to insure overall WIC fiscal integrity, especially in the area of WIC food cost containment. WIC has a long history of rigorous food cost containment strategies, including the creation of infant formula rebates in 1989 and the regulation of "WIC-Only" stores in 2004-05. Allowing any WIC-authorized store, of any size,

to charge exorbitant prices for WIC foods risks undermining this record, and in so doing, threatens long term public and political support for the program.

In late 2011, CWA and other WIC stakeholders became concerned about the rapid proliferation of small (1-4 register) and marginal stores in the WIC system. We received increasing reports from our local agency members and WIC participants of high prices and questionable incentivizing being practiced by some of these stores. We [shared our concerns](#) with state and federal policymakers, and they were confirmed in early 2012 by federal data showing that California WIC's monthly food cost per participant had risen by almost 5%, while other Western states showed a decline of nearly 8%.

In response to the growing crisis, the U.S. Department of Agriculture (USDA) imposed a [moratorium on all new WIC vendor authorizations in California](#), except in cases where participant access would be compromised, as well as a temporary reimbursement rate of 15% and 11% for 1-3 and 3-4 register vendors, respectively. The fact that, as noted in [CDPH regulatory documents](#), CDPH was able to save over \$90 million in the first twelve months of this lower reimbursement rate shows how serious the problem had become, justifying prompt federal action.

The federal moratorium will be lifted when a new vendor authorization and peer group pricing system is in place that will ensure the California WIC state agency can properly monitor the total number of approved vendors in its system and carefully manage the prices they charge for WIC foods. The new regulations are part of a joint federal and state effort to improve program integrity and control food costs in the California WIC Program. State officials hope to begin rolling back the moratorium by mid-summer 2014.

In August 2012, Governor Brown signed [AB 2322](#) (Gatto), legislation sponsored by the California Grocers Association, authorizing CDPH to adopt WIC vendor authorization and food pricing regulations via regulatory bulletins, thus streamlining a process would otherwise have take many years. CDPH is using this authority, which requires a 120-day review period to allow for stakeholder consultation and comment, to promulgate new vendor rules.

Summary of New WIC Vendor Authorization Criteria (Effective 10/17/13)

In general, these new rules codify, update, modernize and strengthen existing federal and state regulations governing the approval of WIC vendors in California. Under the rules, the privilege of being a WIC Vendor will be granted only to stores who can comply with and maintain business functions such as basic cleanliness and honesty, business integrity and recordkeeping, transparency of transactions and pricing, adequate stocking and inventory, and basic 21st century technology. WIC vendors will also be expected to attend regular trainings in order to keep up with changes and maintain their approved status.

In many cases, the new criteria are more stringent, holding potential and existing WIC grocery stores to higher business operating standards than older rules. To protect the reputation and

bottom line of the California WIC program, only stores who are willing to comply with these rigorous criteria should be allowed to benefit from a WIC vendor agreement.

The 112-page regulatory package is very detailed, and includes federal and state legal citations and rationales. Twenty proposed Sections (70000-71900) are summarized below in plain English.

1. Overall Vendor Authorization Criteria

- The State shall set criteria to limit the number of retail vendors in the WIC system.
- The State will use the following vendor-limiting criteria: (1) prices charged are within peer group pricing limits; (2) ability of CDPH to ensure WIC foods are provided via compliance monitoring; (3) the adequacy of WIC foods stocked on store shelves; and (4) past vendor compliance with both WIC and CalFresh vendor laws.

2. Business Integrity

- The State shall not authorize or continue with any vendor if, in the *last six years*, the owners, officers, or managers have been convicted of a number of criminal or civil offenses including fraud, theft, bribery, etc. The proposal adds *directors* to the list of persons that must demonstrate business integrity.
- If this disqualification results in “inadequate participant access” it can be waived, so the new rule defines adequate access as: (A) another authorized WIC store is in “the *same geographic area*” and (B) no geographic barriers that prevent participants from shopping at other stores.
- “*Same geographic area*” is defined differently for rural and urban parts of the state. In rural areas, it’s within a *5-mile radius of either the vendor or the WIC site*. In urban areas, it’s within a *2-mile radius of the vendor or the WIC site closest to the vendor*.

3. Retail Food Facility Code

- Requires all WIC vendors to maintain health permits that comply with the California Retail Food Facility Code and to report suspensions or revocations to the State within 10 business days.
- Allows the State to terminate stores who fail to report Code violations or closures within 10 business days. Stores that are closed due to health code violations will be terminated.

4. Cash Registers

- Requires all WIC vendors to use cash registers that record and print a daily transaction summary and print an itemized receipt for each shopper. This must include identifying information and other details about the vendor, tax, price per item, etc.
- Detailed cash register receipts and daily must be maintained for 3 year for audits and verification.

5. Application is True and Correct

- Vendors applying for WIC approval cannot provide false information. If the State finds that information is not “true and correct” and that the false information could change their determination, the vendor agreement is denied or terminated.

6. Circumvention of WIC Sanction

- The State shall deny or terminate stores who try to get around a WIC sanction or claim (fine) by changing ownership or legal status in various and specified ways.
- The state can ask for additional information that will allow a thorough background check into any potential or existing vendor.

7. Competitive Price Criteria

- In Section 70000 (Item 1, above), the State establishes its authority to limit vendor authorization based partly on the prices the vendor charges for WIC-authorized foods in relation to other vendors in its peer group. The criteria used to judge whether a vendor's prices are competitive are spelled out here.
- The prices charged by the vendor must never exceed 120% of the Average Overall "Market Basket" price established by the Department for its peer group. The Market Basket is a specific list of ten most commonly purchased WIC foods such as eggs, milk, formula, etc.
- Every six months, upon request from the State, vendors must submit within 14 days a list of shelf prices for the Market Basket foods, including both the highest and the lowest price for each category.
- Non-competitive vendors are those whose submitted Market Basket average is over 20% higher than the Average Overall Market Basket price for their peer group, OR the sum of the regular Market Basket shelf prices observed by State monitors during a in-person store visit.
- Vendors who do not meet the competitive price criteria will be noticed in writing and have 30 days to correct prices. Subsequent violations within 24 months will be grounds for disqualification for one year. Likewise, vendors who do not submit their twice-yearly Market Basket prices will be noticed in writing and have 30 days to comply or face termination from the program.
- Slightly different compliance timeframes are laid out for new vendor applicants.

8. Compliance with Civil Rights Act, Title VI

- The State can terminate or not approve any vendor that has denied benefits to or discriminated against a WIC participant, as determined by a federal or state enforcement agency of Title VI of the Civil Rights Act.

9. Incentives

- The State can terminate Above-50-Percent ("WIC Only") vendors who provide--or *show intent to provide*--prohibited incentive items to customers. Prohibited items include free lottery tickets, free food beyond specified allowable food incentives, cash gifts, etc. Allowable incentives are specified healthy foods and must have a combined total value less than \$2.00.
- "Minor customer courtesies" like bagging and loading groceries into cars are allowable; delivering food to other locations is not.
- Stores that are not authorized as Above-50-Percent("WIC Only") will be terminated if they provide incentive items solely to WIC participant customers; they must offer the incentives to all customers.
- Non-WIC-Only stores can offer customer incentive items such as Buy One, Get One Free, discounts, sales on WIC foods, etc. – as long as they are universally offered.

- Non-WIC-Only stores who violate the incentive rules will be noticed in writing and have 30 days to comply. Subsequent violations within 24 months will be grounds for disqualification for one year.

10. Infant Formula

- Stores must show proof of purchase of WIC authorized formula from registered sources, as specified.
- Stores who violate formula purchasing requirements will be noticed in writing and have 30 days to comply. Subsequent violations within 24 months will be grounds for disqualification for one year.

11. Inventory Records

- Requires stores to maintain comprehensive and detailed purchase and transfer records (invoices, tax records, account books, etc) for all WIC foods, including records for separate or multiple stores under a Master Vendor Agreement, for 3 years. Failure to comply is grounds for termination.

12. Minimum Stocking Requirements (MSR)

- Requires all stores to stock a minimum set of WIC foods at all times to enable a variety and multiple numbers of WIC participants to purchase their full food prescriptions at one store.
- Stores who violate minimum stocking requirements will be noticed in writing and have 30 days to comply. Subsequent violations within 24 months will be grounds for disqualification for one year.
- Compared to the old list, the [new MSR](#) trims requirements to stock some foods, such as tofu and soy milk, making it easier for smaller stores to comply, while increasing required quantities for more commonly purchased items such as WIC cereals and milk.
- Keeping the requirement that WIC-authorized stores stock at least \$32 worth of 5 different fresh and frozen fruits and vegetables (3 different canned), will continue to improve healthy food access in both rural and urban areas where shoppers rely on small stores for more of their groceries.

13. Minimum Technology Requirements

- All WIC stores will be required to have access to a computer so they can send and receive official State communications, including vendor alerts and applications and electronic signatures, and shelf price surveys. They also need internet access for VWIX, the State's web-based vendor application, which they use to submit and track the serial numbers of their redeemed WIC prior to depositing them at the bank.

14. Conflicts of Interest

- The State shall not authorize any store applicant or continue existing vendor agreements in cases where it determines a conflict of interest exists with either the Department or a local agency. Conflicts of interest include having a local agency or CDPH employee who is a relative or agent of any vendor.

15. Use of the WIC Acronym

- This section sets out in exhaustive detail the only allowable uses of the WIC acronym, as well as the Federal and State WIC logos, including graphic styles and color schemes. Upon written pre-approval and within very specific graphic

parameters, the State will allow the logo to be used in printed newspaper advertising circulars.

- Stores who violate WIC logo and acronym requirements will be noticed in writing and have 30 days to comply. Subsequent violations within 24 months will be grounds for disqualification for one year

16. Store Location and Hours

- All WIC vendors must have a fixed location and remain open 8 hours a day, six days a week, including at least four hours during core business hours of 9AM to 5 PM.

17. CalFresh-Disqualified Vendors

- Vendors disqualified from SNAP (CalFresh, formerly food stamps) will not be WIC authorized unless denying them would result in inadequate participant access.
- The new rule defines adequate access as: (A) another authorized WIC store is in “the *same geographic area*” and (B) no geographic barriers that prevent participants from shopping at other stores.
- “*Same geographic area*” is defined differently for rural and urban parts of the state. In rural areas, it’s within a *5-mile radius of either the vendor or the WIC site*. In urban areas, it’s within a *2-mile radius of the vendor or the WIC site closest to the vendor*.

18. WIC Vendors Must be CalFresh-Authorized

- All WIC vendors must also be authorized for participation in the SNAP (CalFresh) program at the time of application and all through the vendor agreement period.
- SNAP/CalFresh authorization requires that stores sell a variety of qualifying staple foods, with some perishable foods available within four categories, or that more than 50% of total retail sales come from the sale of eligible foods.

19. Vendor Training Requirements

- Prior to authorization and at least once every 3 years, all vendor applicants and existing vendors must complete an interactive training and pass a test. They must also participate in, and certify completion of, a non-interactive annual training.
- Failure to certify completion of these required trainings within 30 days of being noticed by the State will result in termination of vendor’s agreement.

20. Visible Posted Prices

- All vendors must visibly post prices of all WIC authorized foods on (1) the food item itself; (2) on the shelf directly below the food item; or (3) posted directly on a display of the food item(s).
- Stores who fail to visibly post prices for WIC foods will be noticed in writing and have 30 days to comply. Subsequent violations within 24 months will be grounds for disqualification for one year.

Summary of New Vendor Peer Groups and Reimbursement Rates (Effective 6/1/14)

CWA strongly supports the proposed restructuring of the existing WIC grocer peer groups, based primarily on number of registers and variety of stocked foods. We commend the Department for commissioning a thorough study of WIC and California grocery market dynamics by UC Davis experts, whose data and findings underlie the new design.

Peer Group Criteria (Article 3, Sections 50000-50300)

- CDPH will use criteria listed in this section, including Board of Equalization sales tax data, to place a vendor in one of three categories listed below, based on an assessment of the store at authorization and at any time during the term of the vendor's WIC contract.
- Peer Group Category A: This is the "A50" or "WIC-Only" category. Category A Vendors derive more than 50 percent of their annual food sales revenue from WIC food instruments, or is a new vendor expected to meet this criterion.
- Peer Group Category B. These are "Full Line" Grocers. Category B Vendors receive less than equal to 50 percent of their annual food sales revenue from WIC food instruments and meet the definition of "full line" grocery store, below. Category B vendors are divided into Register Count subgroups based on the number of cash registers in the vendor location.
- A full-line grocery store is a vendor who stocks the following varieties and quantities of foods: 5 or more varieties of breakfast cereal with 5 units of each variety; 4 or more varieties of breads or tortillas with 5 units of each variety; 5 or more varieties of fresh dairy products with 5 units of each variety; 7 or more varieties of fresh fruits with 5 units of each variety; 7 or more varieties of fresh vegetables with 5 units of each variety; and 4 or more varieties of fresh meat, seafood, and/or poultry with 5 units of each variety.
- Peer Group Category C: Vendors who receive less than or equal to 50 percent of annual food sales revenue from WIC food instruments and do not meet the definition of full-line grocery store, above. The creation of Category C is an innovative way to allow a group of stores who are not A-50s (who must be cost-neutral to the program) and do not stock an ample variety of staple foods (Full-Line) to become WIC-authorized, but at the same time protect the WIC Program from negative fiscal impacts by limiting their WIC reimbursements in an even-handed way.

Reimbursement System for Vendors (Article 3, Sections 60000-60300)

- This section provides definitions for vendor reimbursement by category and subgroup, and continues the use of the Maximum Allowable Departmental Reimbursements (MADRs) based on prices set by relatively large and competitive vendors in the system.

- The rule creates the Competitive Average Redemption Value (CARV), using a 12-week average based on redemption data from the 6+ register subgroup of Peer Group B.
- Tolerance Factors. The proposed MADR rates for Peer Group B (full line, non-A50 stores) are calculated by adding a “tolerance factor” to the CARV, e.g., MADR = CARV + Tolerance Factors.
- The proposed tolerance factors for the subgroups with 1-2 and 3-5 registers, in particular, are higher than those imposed by USDA in April 2012. The Tolerance Factor is adjusted by a “Cost Differential Tolerance (CDT)” and a “Heterogeneity Differential Tolerance (HDT).” The CDT somehow captures the “cost of doing business” while the HDT accounts for a wider selection of brands, package sizes and types for a given Food Instrument.
- Category A (“WIC-Only”) vendors will receive reimbursements based on the Statewide Average, a 12-week average of food instrument redemption data from Peer Group Category B and C vendors, excluding food instruments that are identified as partially-redeemed (discussed below).
- Category C vendors will receive the CARV as their MADR, since by definition these stores do not stock a full line of groceries for WIC shoppers and tend towards higher prices. Exceptions should be made to ensure that all participants have access to a WIC-authorized vendor, with participant access already clearly defined in CDPH WIC regulations (Alert 2013-01) implemented on October 17, 2013.
- MADR Rates for Cash-Value Vouchers. CDPH will continue its policy of allowing participants to purchase produce using both the WIC CVV and additional cash, if needed. This “split tender” accommodation seems to be working well, since California CVV redemption rate is higher than many other states.
- Partial Redemptions. In calculating the MADR rate, CDPH must exclude partially redeemed WIC food instruments in order to more accurately capture the true prices of WIC foods. The final rule will allow identification and removal of FIs determined to be partially-redeemed from food items for which 75% of the food types and container sizes on the food instrument have shelf price information available and for which the FI’s redemption is at least 0.1% of overall food expenditures, less CVV redemptions.

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