



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

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



GAVIN NEWSOM
Governor

May 17, 2019

REGULATORY ALERT 2019-01

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Department of Public Health (CDPH) to inform stakeholders of the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) of CDPH's plan to amend WIC Bulletin Regulations section 82100, WIC Authorized Food List: Breakfast Cereal, pursuant to Health and Safety Code section 123322.

Stakeholder Workgroup Information

In accordance with Health and Safety Code section 123322, CDPH will meet with stakeholders by webinar on June 4, 2019 to receive input on the amendments to the WIC Authorized Food List regulations. If you are interested in participating in this stakeholder workgroup, please send an e-mail by close of business on May 24, 2019 with the subject line reading "WIC Authorized Food List Amendments 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 May 29, 2019 with details on how and when to attend a webinar workgroup meeting. Stakeholders participating in a meeting will be assigned to the first available meeting.



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



Comment Period

CDPH will accept written comments from stakeholders regarding the adoption of the proposed action. The comment period will be open for 28 calendar days, closing on June 14, 2019. Send your comments electronically, with the Regulatory Alert number in the subject line, 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 confidential information, including personal contact information or other private information, in your comments.

If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.

Proposed Regulation

The California Department of Public Health, which administers the California WIC Program, proposes to amend the following California regulation via regulatory bulletin.

Article 5. WIC Authorized Food List

82100 WIC Authorized Food List: Breakfast Cereal

(a) Breakfast Cereal Category

- (1) The following breakfast cereals are authorized by brand and product name in twelve (12) ounce to thirty-six (36) ounce boxes or bags in the Breakfast Cereal Category:
 - (A) B & G Foods — Cream of Wheat Whole Grain;¹
 - (B) General Mills — Cheerios;¹
 - (C) General Mills — MultiGrain Cheerios;¹
 - (D) General Mills — Honey Kix;¹
 - (E) General Mills — Kix;¹
 - (F) General Mills — Total Whole Grain;¹
 - (G) Kellogg's — Corn Flakes;
 - (H) Kellogg's — Frosted Mini Wheats Original;¹
 - (I) Kellogg's — Frosted Mini Wheats Little Bites;¹
 - (J) Kellogg's — Special K Original;
 - (K) Malt-O-Meal — Malt-O-Meal Hot Cereal Original;
 - ~~(L) Post — Bran Flakes;⁴~~
 - ~~(M)~~ (L) Post — Grape-Nuts;¹

- ~~(N)~~ (M) Post — Honey Bunches of Oats Honey Roasted;
- ~~(O)~~ (N) Quaker — Life Original;¹
- ~~(P)~~ (O) Quaker — Oatmeal Squares Brown Sugar;¹ and
- ~~(Q)~~ (P) Quaker — Oatmeal Squares Cinnamon.¹

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

- (A) Best Yet;
- (B) First Street;
- (C) Food Club;
- (D) Great Value;
- (E) Hospitality;
- (F) HY-TOP;
- (G) Hy-Vee;
- (H) IGA;
- (I) Kiggins;
- (J) Kroger;
- (K) Malt-O-Meal;
- (L) Market Pantry;
- (M) Mill Select Early On;¹
- (N) Parade;
- (O) Raley's;
- (P) Ralston Foods;
- (Q) Red & White;
- (R) Shurfine;
- (S) Signature Select;
- (T) Springfield;
- (U) Stater Bros.;
- (V) Sunny Select;
- (W) Valu Time;
- (X) Western Family; and
- (Y) WinCo Foods.

- (3) The following instant oatmeals in old-fashioned, classic, regular, or original flavors are authorized by brand in eleven and eight-tenths (11.8) ounce to twelve (12) ounce containers of individual serving packets in the Breakfast Cereal Category:
- (A) Best Yet;¹
 - (B) Early On;¹
 - (C) First Street;¹
 - (D) Food Club;¹
 - (E) Great Value;¹
 - (F) Hy-Vee;¹
 - ~~(G) IGA;¹~~
 - ~~(H)~~ (G) Kroger;¹
 - ~~(I)~~ (H) Raley's;¹
 - ~~(J)~~ (I) Ralston Foods;¹
 - ~~(K)~~ (J) Red & White;¹
 - ~~(L)~~ (K) Shurfine;¹
 - ~~(M)~~ (L) Signature Select;¹
 - ~~(N)~~ (M) Special Value;¹
 - ~~(O)~~ (N) Springfield;¹
 - ~~(P)~~ (O) Stater Bros;¹
 - ~~(Q)~~ (P) Sunny Select;¹
 - ~~(R)~~ (Q) Western Family;¹ and
 - ~~(S)~~ (R) WinCo Foods.¹
- (4) The following types of breakfast cereal are never authorized for purchase as part of the Breakfast Cereal Category:
- (A) Grits;
 - (B) Hot breakfast cereal with added fruits and nuts;
 - (C) Hot breakfast cereal with added sweeteners, including sugar, artificial sweeteners, reduced-calorie sweeteners, or no-calorie sweeteners; and
 - (D) Organic cereal.

¹ This cereal contains 51% or more whole grain by weight.

Nature of the Regulation

This proposed regulation would amend the existing list of authorized Breakfast Cereals to remove Post Bran Flakes and IGA Instant Oatmeal as authorized cereals.

Reason for the Regulation

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

Authority

Federal:

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

In fulfilling this objective, the WIC Program is funded and administered by the United States Department of Agriculture (USDA), Food and Nutrition Service, pursuant 7 Code of Federal Regulations, part 246.

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

State:

The WIC Program was established under the authority of Health and Safety Code section 123275 et seq. The regulations for CDPH's administration of the WIC Program are contained in the California Code of Regulations, title 22, sections 40601 through 40815, and in the [WIC Regulatory Bulletins](#) posted at: <https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/LawsandRegulations.aspx>.

Questions and Additional Information:

If you have any questions, please contact CDPH at WICregulations@cdph.ca.gov.



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

Attachment 1

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

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

May 17, 2019

Health and Safety Code section 123322 authorizes the California Department of Public Health to establish regulations regarding the authorized foods for the California Special Supplemental Nutrition Program for Women, Infants, and Children using a regulatory bulletin process. The Department is utilizing this process to adopt these regulations. This document is intended to provide reasons why the Department proposes to amend WIC Authorized Food List Bulletin Regulation section 82100 as specified in Regulatory Alert 2019-01.

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82100 WIC Authorized Food List: Breakfast Cereal

PROPOSED REGULATION

82100 WIC Authorized Food List: Breakfast Cereal

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- (D) Organic cereal.

¹ This cereal contains 51% or more whole grain by weight.

AUTHORITY

Federal:

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

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

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

Must contain a minimum of 28 mg iron per 100 g dry cereal.
Must contain ≤ 21.2 g sucrose and other sugars per 100 g dry cereal (≤ 6 g per dry oz). At least half of the cereals authorized on a State agency's food list must have whole grain as the primary ingredient by weight AND meet labeling requirements for making a health claim as a "whole grain food with moderate fat content".³

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

State:

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

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

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

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

STATEMENT OF REASONS

82100 WIC Authorized Food List: Breakfast Cereal

(a)(1)(~~L~~) The Department proposes to remove Post Bran Flakes as an authorized cereal. The manufacturer indicated this cereal was reformulated to reduce the

iron content to 25 mg of iron per 100 grams of dry cereal. The reformulated cereal no longer meets the federal requirement in 7 Code of Federal Regulations part 246.10(e)(12), table 4, that all authorized breakfast cereals contain a minimum of 28 mg of iron per 100 grams of dry cereal. As the reformulated cereal is ineligible for authorization, the Department must remove it from the list of WIC authorized cereals in order to remain in compliance with the federal criteria.

In light of the proposed change described above, the Department is proposing to remove current subsection (a)(1)(L) in its entirety and redesignate current subsections (a)(1)(M) through (a)(1)(Q) as subsections (a)(1)(L) through (a)(1)(P).

(a)(3)(G) The Department proposes to remove IGA Instant Oatmeal as an authorized cereal. This cereal was reformulated to reduce the iron content to 12.86 mg of iron per 100 grams of dry cereal, calculated as follows:

- According to the nutrition facts panel, the product contains 3.6 mg of iron in a 28 grams serving size of dry cereal.
- First, the Department divided 100 grams by the 28 grams serving size, which equals 3.5714.
- Next, the Department multiplied the 3.6 mg iron found in the cereal's 28 grams serving size by 3.5714 to determine the mg of iron per 100 grams of dry cereal.
- The result is that there are 12.86 mg of iron per 100 grams of dry cereal in this product.

The reformulated cereal no longer meets the federal requirement in 7 Code of Federal Regulations part 246.10(e)(12), table 4, that all authorized breakfast cereals contain a minimum of 28 mg of iron per 100 grams of dry cereal. As the reformulated cereal is ineligible for authorization, the Department must remove it from the list of WIC authorized cereals in order to remain in compliance with the federal criteria.

In light of the proposed change described above, the Department is proposing to remove current subsection (a)(3)(G) in its entirety and redesignate current subsections (a)(3)(H) through (a)(3)(S) as subsections (a)(3)(G) through (a)(3)(R).