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

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August 3, 2016

WIC REGULATORY BULLETIN 2016-01

NOTICE OF FINAL ACTION

Subject	Final Action on the Notice of Proposed Changes posted as Regulatory Alert 2016-01 on April 8th, 2016 at: http://www.cdph.ca.gov/programs/wicworks/Documents/Regulatory%20Alert/WICRegulatoryAlert2016-01.pdf
Date of Adoption	The Final Action will be effective September 7, 2016.
Stakeholder Comments and Responses	Please see Attachment 1 of this Regulatory Bulletin for the Stakeholder Comments and the Department Responses.

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 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+ 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 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 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, the Department will determine the MFRV for the food item number by summing the lowest 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. Any redemption amount below the MFRV shall be deemed a partially-redeemed FI for purposes of calculating the Statewide Average.

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

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

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

(B) If the food item number meets the criteria in (c) above, but less than 100% of the food types and container sizes that comprise the food item number are included in the Market Basket, the Department will determine the MFRV by summing the lowest shelf prices submitted by a vendor identified through the process in (c)(1) above for each of the food types 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 shall be deemed a partially-redeemed FI for purposes of calculating the Statewide Average.

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 shelf prices for the identified vendor's items are as follows, then the MFRV 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
1 (16 oz) dry beans, peas, or lentils		$0.50
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 be considered a partially-redeemed FI.

Feedback Stakeholders may provide feedback regarding the impact of this Final Action and any policy adjustments to be considered by the Department after implementation. Comments may be sent electronically with the Bulletin number in the subject line to WICRegulations@cdph.ca.gov.

Attachment 1

Amendments to Section 60300 Stakeholder Comments and Responses to Comments

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

August 3, 2016

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This Final Rule addresses public comments submitted in response to Regulatory Alert 2016-01 posted on April 8, 2016, regarding proposed changes to the methodology to identify and exclude partially-redeemed food instruments (FIs) from the calculation of the Statewide Average.

A stakeholder webinar consultation was held on May 5, 2016, and the public comment period was held from April 9, 2016, through May 13, 2016.

A total of two comment letters were received with the majority of the comments related to the selection of the methodology to identify and exclude partially-redeemed FIs from the calculation of the Statewide Average.

The Final Rule reflects the desire of the California Department of Public Health (the Department) to continue to work with the stakeholders to refine the methodology, while limiting the risk that fully-redeemed FIs will be incorrectly identified as partially-redeemed as the Department continues to progress towards the implementation of an electronic benefit transfer (EBT) system.

Selection of the Methodology

One commenter asked if the Department studied or considered the methodologies that other WIC agencies use to identify and exclude partially-redeemed FIs.

The Department examined the methodologies used by other WIC agencies prior to the original implementation of the methodology established in 2014. The Department developed the 2014 methodology with the approval of the United States Department of Agriculture (USDA) to meet the needs of California's large and unique vendor population. Additionally, the USDA, Economic Research Service report "The WIC Program: Background, Trends, and Economic Issues, 2015 Edition," [1] noted that few state agencies have developed methods to try to account for partial voucher redemptions and that the effectiveness of these methods is not known. The report also noted partial redemption will cease to be an issue upon implementation of EBT.

The Department is in the planning stages to convert the benefits delivery system from paper vouchers to EBT. The EBT system will collect redemption data based on Universal Product Codes (UPC) and Price Lookup Codes (PLU), which are unique to each food item and piece of produce, respectively. The purpose of the calculation to remove partially-redeemed FIs is only necessary for combination FIs where more than one item can be, but is not always, purchased. Using EBT, there will be no combination FIs and the calculation for cost neutrality and reimbursement of above-50-percent

[1] Oliveira, Victor and Elizabeth Frazão. The WIC Program: Background, Trends, and Economic Issues, 2015 Edition, EIB-134, U.S. Department of Agriculture, Economic Research Service, January 2015. Page 50.

vendors will be performed by individual food item. As such, there will no longer be an issue of partial redemption. The Department anticipates completing EBT implementation before October 2020.

Stakeholder feedback to WIC Regulatory Bulletin 2014-01 led the Department to propose this revised methodology to identify and exclude partially-redeemed FIs from the Statewide Average. Regarding the methodology established in 2014, stakeholders pointed to pricing differences between peer groups and the use of these prices from different vendors to calculate the minimum full redemption value (MFRV). 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.

Two commenters asked what other methodologies were considered by the Department and the factors that led to the selection of the Department's proposed methodology. Additionally, one of the commenters asked for the estimated food cost impacts and administrative costs for each methodology considered.

The Department considered several methodologies to address stakeholder concerns and the changes to the methodology reflect the Department's desire to address these concerns. Updating the methodology to calculate the MFRVs by peer group is consistent with the state's vendor authorization criteria which determine competitively priced vendors within each peer group using shelf price submission data. The proposed methodology allows the Department to more accurately identify FIs as partially-redeemed without requiring management information system (MIS) changes that would divert resources from EBT planning and implementation. Cost containment must be considered by the Department anytime a methodology that affects reimbursement rates is adjusted; however, cost containment is not the motivation for updating the methodology. The estimated increase of food costs due to the proposed methodology will not jeopardize cost containment.

The options the Department considered, including the proposed change, for revising the current methodology are listed below with cost estimates, when available:

1. Calculating the MFRV by peer group. 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 FIs methodology will be applied. This methodology will increase the number of FIs identified and excluded from the Statewide Average, raise the Statewide Average, and address stakeholder feedback that more partially-redeemed FIs should be

excluded from the Statewide Average. This methodology will calculate the MFRV separately for each peer group to acknowledge stakeholder feedback that there are pricing differences between peer groups. Determining MFRV for each peer group is consistent with the state's vendor authorization criteria that determine competitively priced vendors within each peer group using shelf price submission data.

The Department estimates increased annual administrative costs of $277 to calculate MFRVs and no increase in costs to validate prices. The Department estimates increased annual food costs of $800,000. This methodology does not require MIS changes. This is the methodology the Department selected.

2. Calculating the MFRV by identifying the lowest price for each food type within each peer group. This methodology does not address stakeholder feedback regarding the use of different prices from different vendors to calculate a MFRV, which could possibly result in MFRVs that do not represent real prices charged by any single authorized store.

   The Department estimates increased annual administrative costs of $277 to calculate MFRVs and $2,467 to complete the validation of additional vendor prices. The Department estimates increased annual food costs of $423,000.

3. Calculating the MFRV by averaging all low and high prices. The Department rejected this methodology as it would inappropriately exclude fully-redeemed FIs from the calculation of the Statewide Average. Accordingly, the Department did not make any cost estimates when evaluating this methodology.

4. Calculating the MFRV by averaging all low prices by peer group. The Department rejected this methodology as it would inappropriately exclude fully-redeemed FIs from the calculation of the Statewide Average. Accordingly, the Department did not make any cost estimates when evaluating this methodology.

5. Calculating the MFRV for each vendor. The Department must validate the prices that are used to calculate MFRVs to ensure that prices are for WIC authorized foods and not sale prices. This methodology would require the Department to validate prices submitted by all 3,600 authorized vendors that submit prices in the shelf price submission. MFRVs cannot be calculated until prices are verified and the shelf price submission period is closed. The Department estimates that this process could take up to four months to complete each time a survey is conducted. Additionally, the suggested

methodology cannot be automated using the current MIS structure. Planning for a replacement MIS is underway in order to implement EBT, which will eliminate partially-redeemed FIs as an issue. Significantly modifying the existing MIS to validate prices from all vendors and translate that data into calculating MFRVs would delay implementation of the EBT system. Lastly, due to the time required to complete this level of programming, the usefulness of performing significant modification to the current MIS as a tool would be nullified after EBT implementation.

Two commenters asked the Department to adopt a methodology that identifies and excludes partially-redeemed FIs at the individual vendor level and whether the Department has the resources available to implement such a methodology.

As noted above, the suggested methodology cannot be automated using the current MIS structure. Partial redemption will cease to be an issue upon implementation of EBT. The Department anticipates completing EBT implementation before October 2020. As part of EBT implementation, the Department must also implement a new MIS for California. Building an interim MIS solution would divert resources necessary to meet USDA EBT implementation deadlines. Failing to meet the mandated deadline imposed by USDA will increase costs for CDPH, and may affect federal funding to the WIC Program.

One commenter asked if CDPH had considered removing partially-redeemed FIs from all maximum allowable department reimbursement (MADR) rates.

If the Department were to remove partially-redeemed FIs from the calculation of the competitive average redemption value (CARV), it would result in a re-calculation of the tolerance factors applied to the CARV and used to assign MADR rates for Peer Group Category B subgroups and Peer Group Category C, because the current tolerance factors assume the presence of partially-redeemed FIs in CARVs. This would lower MADR rates for the majority of FIs, which do not meet the criteria to have partially-redeemed FIs identified and removed from the CARV, as tolerance factors apply to all CARVs within a peer group. Such a change may also result in little increase to the MADR for FIs that do meet the criteria to have partially-redeemed FIs identified and removed since the existing tolerance factors already assume presence of partially-redeemed FIs.

Food Costs

One commenter asked if the Department has been directed to reduce food costs and if a dollar amount was specified. A commenter asked if the USDA set any kind of upper limit on food costs that would require additional cost containment measures. A commenter also asked if the Department anticipates a shortage of food funds that would require additional cost containment measures.

The Department is not under a USDA directive to reduce food costs by a specific dollar amount nor has the Department been given upper limit on food costs. The Department does not anticipate a shortage of food funds.

Written Comment Letters Received

The Department received comment letters in regard to amendments to amend article 3, sections 60300 of the WIC Bulletin Regulations (W.B.R.), proposed in Regulatory Alert 2016-01 from the following two individuals/organizations:

Letter 1: Keri Askew Bailey, California Grocers Association, May 13, 2016
Letter 2: Clyde R. Steele, Nutritional Grocers Association of California, May 13, 2016

May 13, 2016

Ms. Catherine Lopez, M. Ed. Policy & Planning Branch Chief WIC Division, CDPH
PO Box 997377, MS 0500
Sacramento, CA 95899-7377
Sent Via e-mail to: WICRegulations@cdph.ca.gov

Dear Ms. Lopez,

Thank you for the opportunity to submit comments regarding proposed changes to the California WIC Program incorporated in Regulatory Alert 2016-01. The California Grocers Association (CGA) is a non- profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail members operating over 6,000 food stores in California and Nevada, including traditional supermarkets, specialty food stores, club stores, and A-50 WIC stores. Our membership represents a significant percentage of authorized WIC vendors in California.

As you are aware, our association and many of our member companies, have been working for several years with the WIC Division to ensure objectives of cost containment and program integrity are met without undue burden on vendors participating in the program. As the “private” piece of this “public- private partnership” we always hope we are able to work in collaboration with the WIC Division in identifying solutions and resolving legitimate challenges. We have long expressed concerns with reimbursement rates and the extent to which vendors have been forced to subsidize program costs through artificially depressed reimbursement calculations intended to hold program costs down.

One of the biggest challenges has been attempts to exclude partial redemptions from the calculation. It is certainly an appropriate public policy objective to exclude from MADR calculations those vouchers that are not fully redeemed as they do not accurately reflect the cost of goods. However, both in the current methodology and in the proposal contained in Regulatory Alert 2016-01 we must disagree with the Division’s approach. A better course of action for the Division would be to evaluate its calculation of partial redemptions individually for each vendor, recognizing the extreme diversity in business models and customer bases for vendors.

For some vendor categories, including A-50 vendors, partial redemptions occur at a much lower rate than at other formats. We would argue that a more appropriate course of action would be to utilize data the department already collects and develop partial redemption information on a per-vendor basis. That method is the best and most accurate available and as we understand it was in place in the State of Florida before their recent transition to eWIC.

With vendor-specific information already collected on shelf prices for the most commonly redeemed food items, the Department is already equipped with the data required implement a more fair and responsible methodology for excluding partial redemptions on a vendor basis. Admittedly, programming and other “back office” requirements would likely be needed but the difference in those needs between peer group and vendor calculations would seem to be minimal.

Again, we are supportive of efforts to contain costs with the California WIC program, but do not believe that should be accomplished by simply shifting program costs on to vendors – especially when shifted in a disproportionate manner onto any one vendor category. Questions remain regarding the Division’s proposal that need to be addressed:

Has the Division studied or considered the experience of any other state(s) utilizing (either currently or prior to implementation of eWIC) an individual vendor methodology for exclusion of partial redemption? If so, was that compared to the experience in states utilizing other methodologies? Did it compare favorably?

Is the methodology proposed in Regulatory Alert 2016-01 in use in any other state(s) (or was it prior to implementation of eWIC) and if so, has the Division studied or considered the experience of that state(s)?

What other methodologies did the Division consider in preparing the current proposal and what factors led the Division to favor this methodology? Does it provide significant benefit from a program or participant perspective?

Has the Division considered removing partial redemptions from all MADRs?

Has the Division explored whether resources would be available to implement an individual vendor methodology for excluding partial redemptions?

Has the Division been directed to further reduce food costs through the program and if so, by how much?

Again, thank you for the opportunity to comment on the proposal contained in Regulatory Alert 2016-01 and we look forward to continuing to work with you on this and other important issues for the vendor community.

Thank you,

Keri Askew Bailey

Keri Askew Bailey
Senior Vice President, Government Relations & Public Policy

Nutritional Grocers Association of California
Comments on California Department of Public Health Regulatory Alert 2016-01

The Nutritional Grocers Association of California (NGAC) represents the interests of several hundred A-50 stores in the State. Our mission is to ensure that every customer, whether a WIC participant or a member of the general public, is treated with dignity and respect while providing a clean, friendly, stigma-free environment for WIC families to shop for nutritious supplemental foods.

We are pleased that the Department has revisited the partial redemption identification and exclusion methodology in W.B.R. Section 60300. However, we are gravely disappointed that the proposed change to the methodology still falls far short of the more accurate methodology of identifying and excluding partial redemptions by individual vendors. We are also very concerned that the Department is unfairly and inappropriately using food cost containment as a rationale to continue the historic underpayment of A-50 vendors for foods received by WIC families. We urge you to reconsider and adopt an individual-vendor based partial redemption identification and exclusion methodology.

WIC participants shopping at A-50 stores fully redeem combination FIs at a far higher rate than participants shopping at other types of stores; our members with point-of-sale equipment capable of tracking partial redemptions report that more than 99% of the most common combination FIs are fully redeemed in their stores. This fact is the basis of the federal provision for the exclusion of partial redemptions from the calculation of the statewide average redemption rate used to establish the maximum reimbursements for A-50 stores. When partially redeemed FIs from non-A-50 stores are included in the calculation of the statewide average redemption rate the statewide average is artificially reduced. As a result, A-50 stores are being less than fully reimbursed for the food provided to participants.

The most accurate and the fairest way currently available of identifying and excluding partial redemptions from the calculation of the statewide average is to do so by individual vendor. The Department already collects and tabulates shelf-prices for the most common food items from all authorized vendors; all information necessary to identify and exclude partial redemptions from the statewide average by vendor already exists in the Department's WIC management information system. While some programing would be necessary to automate the partial redemption identification and exclusion process, approximately one-third of the California WIC program's food budget is spent by WIC families at A-50 stores; the difference in programing and administrative costs between excluding partial redemptions by peer group or by individual vendors is insignificant when compared to the total reimbursements to A-50 stores.

The Statement of Reasons in the Regulatory Alert states “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.” By stating that the methodology change will not have a significant impact of food costs, the Department appears to be saying that an inferior partial redemption calculation and exclusion methodology was selected because it would save money at the expense of reimbursements to A-50 stores. If true, this is appalling. A-50 stores provide a superior shopping experience for WIC families, and are already cost contained by the limitation of reimbursements to the statewide average of reimbursements to all other vendors. If the Department believes it is necessary to reduce food costs then it should explore doing so by changes to the food package or modifying the process used to set maximum reimbursements for all vendors, not by singling out and underpaying one group of stores.

As the Department responds to our concerns about the proposed regulation during the comment process, we request that the following questions be addressed:

1. What partial redemption identification and exclusion methodologies were considered?
2. What are the estimated administrative costs for each methodology considered?
3. What are the estimated food cost impacts for each methodology considered?
4. What was the basis for choosing the proposed methodology over the others?
5. Does the Department anticipate any shortage of food funds during the next few years that would require additional cost containment measures?
6. Has USDA-FNS set any kind of upper limit on food spending that would require any additional cost containment measures be implemented by the Department?

On behalf of California’s A-50 stores and the WIC families we serve, we urge you to reconsider this proposal and replace it with a methodology that identifies and excludes partial redemptions at the individual vendor level.