



May 26, 2017

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

EDMUND G. BROWN JR.
Governor

REGULATORY ALERT 2017-02

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 California WIC Authorized Food List WIC Bulletin Regulations Section 82100, 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 the morning of June 7, 2017 to receive input on the amendments to the WIC Authorized Food List. If you are interested in participating in this stakeholder workgroup, please send an e-mail by close of business on June 2, 2017 with the subject line reading “Breakfast Cereal 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 June 5, 2017 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 adoption of the proposed action. The comment period will be open for 20 calendar days, from May 27, 2017 through June 15, 2017. 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If this proposed action is not withdrawn, CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment period.



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Proposed Regulation The California Department of Public Health, which administers the California WIC Program, proposes to amend the following rules in 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) Malt-O-Meal — Oat Blenders with Honey;~~
- (ML) Mill Select Early On — Puffed Wheat;¹
- ~~(NM)~~ Post — Bran Flakes;¹
- ~~(ON)~~ Post — Grape-Nuts;¹
- ~~(PO)~~ Post — Honey Bunches of Oats Honey Roasted;
- ~~(QP)~~ Quaker — Corn Bran Crunch;
- ~~(RQ)~~ Quaker — Life Original;¹
- ~~(SR)~~ Quaker — Oatmeal Squares Brown Sugar;¹ and
- ~~(TS)~~ 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 Kitchens;
- (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) Kroger;¹
- (I) Raley's;¹
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- (K) Red & White;¹
- (L) Shurfine;¹
- (M) Signature Kitchens;¹
- (N) Special Value;¹
- (O) Springfield;¹
- (P) Stater Bros;¹
- (Q) Sunny Select;¹
- (R) Western Family;¹ and
- (S) 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**

CDPH proposes amendment of the WIC Authorized Food List Bulletin Regulations for Breakfast Cereal as set forth in Attachment 1 of this notice. This proposed regulation would amend the existing list of authorized Breakfast Cereals to remove Malt-o-Meal Oat Blenders with Honey as an authorized cereal.

**Reason for
the
Regulation**

The reasons for this amendment are 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.
Policy and Planning Branch Chief
Women, Infants and Children Division
California Department of Public Health

Attachment 1

WIC Authorized Food List Breakfast Cereal Amendments and Statement of Reasons

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

May 26, 2017

Health & Safety Code § 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 Regulations for Breakfast Cereal as specified in Regulatory Alert 2017-02.

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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) (2017): *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) (2017): *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 (2017): *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

³ FDA 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, subdivisions (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)(~~E~~) The Department proposes to remove Malt-O-Meal Oat Blenders with Honey as an authorized cereal as of August 1, 2017 (official effective date to be

released via future WIC Regulatory Bulletin). The manufacturer's representative notified the Department that, as of August 2017, the product will be reformulated, to reduce the iron content to 13.85 mg of iron per 100 grams of cereal. The reformulated product will not meet 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 cereal. As the reformulated product will be ineligible for authorization, the Department is proposing to remove it from the list of WIC authorized cereals in order to remain in compliance with the federal criteria.