



April 15, 2016

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Director and State Health Officer

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REGULATORY ALERT 2016-02

NOTICE OF PROPOSED CHANGES TO THE CALIFORNIA WIC PROGRAM

Purpose

For the California Department of Public Health (CDPH) and California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) to inform stakeholders of CDPH’s plan to amend article 4, sections 70100 and 70500 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 May 9, and May 13, 2016, to receive input on the proposed amendments to W.B.R. sections 70100 and 70500. If you are interested in participating in the stakeholder workgroup, please send an e-mail by close of business on April 27, 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 May 4, 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 amendments to W.B.R. sections 70100 and 70500. The comment period will be open for 49 calendar days, from April 18, 2016, through June 3, 2016. Send your comments electronically to the following e-mail address: WICRegulations@cdph.ca.gov.

If this proposed action is not withdrawn, the CDPH will publish its final action, including responses to the comments received, on its website no later than 120 days after the end of the comment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

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

70100 Business Integrity. (a) The Department shall consider the business integrity of vendors and vendor applicants for participation in the WIC program.

(b) Unless denial of authorization of a vendor or vendor applicant would result in inadequate participant access as defined in ~~Title 22~~, California Code of Regulations, title 22, sSection 40740, subdivision (h), the Department shall not authorize or continue authorization of a vendor if during the last six (6) years the vendor or vendor applicant's current owners, officers, directors, or managers, have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. These activities ~~are~~ include:

(1) ~~These~~ Activities set forth in ~~Title 7~~, Code of Federal Regulations, part Section 246.12(g)(3)(ii);

(2) Computer crimes, also known as cybercrimes, including online banking fraud, credit card fraud, identify theft, phishing and other computer or internet crimes set forth in Penal Code sections 484(e-j), 502, 530.5 and Business and Professions Code section 22948;

(3) Misprision of a felony when the felony concealed is one of the crimes set forth in 7 Code of Federal Regulations part 246.12(g)(3)(ii); and

(4) Violations of Business and Professions Code section 17533.6.

(c) Corporations, limited liability companies, and limited partnerships shall at all times maintain active status with the California Secretary of State's office while participating in the WIC program.

(d) The Department shall deny authorization to a vendor applicant if the vendor applicant ownership owns, previously owned, or has a legal interest in one or more store locations that are currently serving a sanction, and the amount of stores actively serving a sanction on the contract exceeds five percent (5%) of the total number of stores under the contract. This provision shall not apply to vendors at reauthorization.

70500 Circumvention of WIC Sanction. (a) The Department shall deny authorization or reauthorization if it determines that a vendor is attempting to circumvent a WIC sanction or vendor claim.

(b) The Department will deny authorization to a vendor applicant for any of the following actions indicating an attempt to circumvent a WIC sanction or vendor claim:

(1) The vendor applicant purchased or obtained any legal interest in the store from a relative by blood or marriage and the store or business has a WIC sanction currently in effect, or a vendor claim that is still outstanding at that store location.

(2) The vendor applicant purchased or obtained any legal interest in the store or business for less than fair market value and there is a WIC sanction currently in effect or a vendor claim is still outstanding at that

location.

(3) The vendor applicant owns, previously owned, or has a legal interest in a store or business that has a WIC sanction currently in effect within the same geographic area as the one for which the vendor has submitted an application, if the vendor applicant was the owner at the time the sanction was noticed or made effective by the Department.

(A) For the purposes of this subsection, "the same geographic area" is defined in California Code of Regulations, title 22, section 40740, subdivisions (h)(2)(A-B).

(4) The vendor applicant owns, previously owned, or has a legal interest in a store or business, including the applicant location that has an outstanding vendor claim, and the vendor applicant was the owner at the time the vendor claim was noticed or made effective by the Department. Failure to make payments as agreed via stipulation will be considered an outstanding vendor claim.

(5) The vendor applicant purchased or obtained any legal interest in the store or business pursuant to (1) or (2) above and allows the previous owner to retain a role in the operation of the business such as a manager, director, officer or shareholder.

(6) The vendor applicant retained legal interest in the store after a change of business type and there is a WIC sanction currently in effect or a vendor claim that is still outstanding at that location. Business type includes corporation, general partnership, limited partnership, sole proprietorship, and limited liability company.

(c) The Department may, in its sole discretion, request the following additional information from the vendor applicant: ~~which may include, but is not limited to, tax identification number, or other identifying information from the applicant and/or previous owner(s) to enable the Department to conduct a thorough background check, and a bill of sale, lease agreement, bank statements or other information verifying the change in ownership of the store.~~

(1) Information, which may include, but is not limited to the following, to determine a vendor applicant's ability to meet authorization criteria:

(A) Tax identification number;

(B) Articles of incorporation for corporations or limited liability corporations (LLCs), including the list of designated officers and shareholders;

(C) For partnerships and sole proprietorships, copies of any available business documents previously filed with a municipality, city, county or state, such as a fictitious business name statement or partnership agreement;

(D) All available business licenses and/or permits (local health department, liquor, sales tax, etc.);

(E) A notarized affidavit from the new owner(s) stating that they are not connected with the previously disqualified owner(s) through blood or by marriage;

(F) A letter from the retailer's financial institution identifying the

authorized signers for the business on any accounts relating to the business;

(G) Store lease or property deed;

(H) Personal federal tax returns for the most recent filing year for all owners; and

(I) Business federal tax returns (if available) for the most recent filing year for all owners.

(2) Information, which may include, but is not limited to the following, to verify the ownership of the store and the value of the store:

(A) A bill of sale;

(B) Lease agreement;

(C) Escrow documents;

(D) An appraisal;

(E) Bank statements; and

(F) Other information verifying the change in ownership of the store.

(3) The vendor applicant shall not be required to provide information if the vendor can demonstrate to the Department that the release of that information is prohibited by federal or California state laws or regulations regarding confidentiality.

Nature of the Regulation

The Department proposes the amendments to W.B.R. sections 70100 and 70500 in regulatory text as set forth in Attachment 1 of this notice. These amendments broaden business integrity regulations and clarify what constitutes an attempt to circumvent a WIC sanction. W.B.R. sections 70100 and 70500 are a part of the Vendor Authorization Criteria. To become or continue as an authorized vendor, vendors must meet and maintain compliance with the authorization criteria, including vendor selection criteria, throughout the agreement period. Federal regulations require the State to authorize stores in compliance with federal requirements, establish vendor agreements, and to develop selection criteria that the state agency will use for authorization and apply consistently throughout its jurisdiction. States have the authority to reassess a vendor at any time and terminate vendor agreements for vendors who fail to meet the criteria. (7 C.F.R. § 246.12(g)(h) and § 246.12(g)(3)) The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of reassessment and must terminate the agreements with vendors who do not meet the criteria (7 C.F.R. § 246.12(h)(3)(xxv)).

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, section 1786 (Public law 89-645, Section 17), as amended, establishes the federal authority under which states may administer the 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 five (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 7 Code of Federal Regulations part 246.

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

State:

The California WIC Program was established under the authority of Health and Safety Code section 123275 et seq. The regulations for the 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:

<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.



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

Attachment 1

Statement of Reasons for Amendments to Sections 70100 and 70500.

**California Special Supplemental Nutrition Program for Women, Infants, and Children
April 15, 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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70100 Business Integrity

PROPOSED AMENDMENTS TO REGULATION

70100 Business Integrity. (a) The Department shall consider the business integrity of vendors and vendor applicants for participation in the WIC program.

(b) Unless denial of authorization of a vendor or vendor applicant would result in inadequate participant access as defined in ~~Title 22~~, California Code of Regulations, title 22, §Section 40740 subdivision (h), the Department shall not authorize or continue authorization of a vendor if during the last six (6) years the vendor or vendor applicant's current owners, officers, directors, or managers, have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. These activities ~~are~~ include:

(1) ~~These Activities set forth in Title 7, Code of Federal Regulations, part Section 246.12(g)(3)(ii);~~

(2) Computer crimes, also known as cybercrimes, including online banking fraud, credit card fraud, identify theft, phishing and other computer or internet crimes set forth in California Penal Code sections 484(e-j), 502, 530.5 and California Business and Professions Code section 22948;

(3) Misprision of a felony when the felony concealed is one of the crimes set forth in 7 Code of Federal Regulations part 246.12(g)(3)(ii); and

(4) Violations of California Business and Professions Code section 17533.6.

(c) Corporations, limited liability companies, and limited partnerships shall at all times maintain active status with the California Secretary of State's office while participating in the WIC program.

(d) The Department shall deny authorization to a vendor applicant if the vendor applicant ownership owns, previously owned, or has a legal interest in one or more store locations that are currently serving a sanction, and the amount of stores actively serving a sanction on the contract exceeds five percent (5%) of the total number of stores under the contract. This provision shall not apply to vendors at reauthorization.

AUTHORITY

Federal

7 Code of Federal Regulations part 246.12(g)(3): *Vendor selection criteria*. The State agency must develop and implement criteria to select stores for authorization.

7 Code of Federal Regulations part 246.12(g)(3)(ii): *Business integrity*. The State agency must consider the business integrity of a vendor applicant. In determining the business integrity of a vendor applicant, the State agency may rely solely on facts already known to it and representations made by the vendor applicant on its vendor application. The State agency is not required to establish a formal system of background checks for vendor applicants. Unless denying authorization of a vendor applicant would result in inadequate participant access, the State agency may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. The State agency may add other types of convictions or civil judgments to this list.

7 Code of Federal Regulations part 246.12(h)(1)(i): *Vendor agreements*. The State agency must enter into written agreements with all authorized vendors.

7 Code of Federal Regulations part 246.12(h)(3)(xxv): *Compliance with vendor selection criteria*. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. The Department may reassess a vendor at any time and will terminate the vendor if the vendor fails to meet the current vendor selection criteria.

State

Health and Safety Code section 123280(c): Enacted in 2012 through Assembly Bill No. 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and regulation for the WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health and Safety Code section 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with WIC Program governing statutes and with CalFresh.

Health and Safety Code section 123322: Enacted in 2012 through Assem. Bill No. 2322, this statute authorizes the Department to establish regulations regarding WIC Vendor Authorization Criteria using a regulatory bulletin process. The Department is using this process to adopt these regulations.

STATEMENT OF REASONS

70100(b): The Department is amending this subsection to broaden existing regulations regarding the business integrity of vendors and vendor applicants. Federal regulation (7 C.F.R. § 246.12(g)(3)(ii)) requires that the State agency consider the business integrity of a vendor applicant. When evaluating the business integrity of a vendor or vendor applicant, the Department relies upon facts known to it as well as representations made by the vendor applicant on its initial application to the program. The Department also considers the business integrity of existing vendors eligible for reauthorization. Federal regulations specify that unless denial of authorization would result in inadequate participant access, State agencies may not authorize a vendor or vendor applicant, if the vendor applicant, or its owners, officers, managers or directors have been convicted of and/or had a civil judgment entered against them for activities indicating a lack of business integrity. Federal regulation (7 C.F.R. § 246.12(g)(3)(ii)) lists specific activities that may indicate a lack of business of integrity including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. This regulation (7 C.F.R. § 246.12(g)(3)(ii)) also gives state agencies the authority to add other types of convictions or civil judgments to the existing list.

Section 70100(b)(2) adds certain types of computer crimes, also known as cybercrimes, as activities that may demonstrate a lack of business integrity by the vendor, vendor applicant, or its owners, officers, managers or directors. Computer crimes involve the unauthorized use of a computer, a computer network or the internet for personal or corporate gain. The Department is adding these crimes to the list of activities that may demonstrate a lack of business integrity because of the increased use of computers and the internet in conducting business operations. Additionally, the Department will be transitioning towards an electronic-based payment system in the next five years. Ensuring that vendors and vendor applicants have not fraudulently used electronic resources may help reduce the risk of future losses to the Department. Section 70100(b)(2) references existing California statutes specific to computer crimes or cybercrimes. The statutes are sections 484(e-j), 502, and 530.5 of the Penal Code, and sections 22948 of the Business and Professions Code. Penal Code sections 484(e-j) describe penalties associated with fraudulent use of credit or debit cards. Penal Code section 502 details computer-related crimes that affect the privacy of individuals or the well-being of financial institutions, governmental agencies and business, as well applicable penalties for violations. Penal Code section 530.5 details identity-theft and crimes related to illegal use of an individual's personal or private information and applicable penalties. Business and Professions Code section 22948 is the Anti-Phishing Act of 2005. This section describes violations that occur when identifying information is obtained illegally through the internet or electronic mail and associated penalties. Identifying information includes such as a person's social security number, credit card number or driver's license number with the intention of using the information fraudulently.

Section 70100(b)(3) adds misprision of a felony conviction of the activities listed in federal regulation (7 C.F.R. § 246.12(g)(3)(ii)) as having demonstrated a lack of business integrity. Misprision is the deliberate concealment of one's knowledge of a treasonable act or felony. The Department is adding conviction for misprision to the existing regulations specific to business

integrity as willful failure to notify authorities or concealment of crimes may indicate a lack of business integrity on behalf of the applicant.

Section 70100(b)(4) adds convictions for violating Business and Professions Code section 17533.6 to the list of activities indicating a lack of business integrity. This section of statute prohibits persons, firms and corporations from using any content that could imply that the person, firm or corporation is authorized by a governmental organization when it does not have this authorization. By posting the WIC logo, WIC acronym or close facsimiles thereof at an unauthorized location, the vendor ownership is encouraging WIC participants to redeem their benefits through unauthorized channels and is engaging in behavior that may negatively impact redemption integrity. Under section 70100(c)(4) the Department shall not authorize or continue authorization of a vendor if during the last six (6) years, the vendor or vendor applicant's current owners, officers, directors, or managers, have been convicted of violating Business and Professions Code section 17533.6.

Section 70100(c) requires that domestic and foreign corporations, limited liability companies (LLCs) and limited partnerships (LPs) are in active status with the California Secretary of State (SOS) when applying for authorization as a WIC vendor, and that the entity remains in active status at all times while participating in the Program. SOS defines an active domestic entity as one that subject to any other requirements imposed by law, has filed its formation document in California and it authorized to carry out its business activities within the state. SOS defines a foreign entity as a business entity formed in a state other than California or outside of the United States. An active foreign entity is one that has registered with the SOS and been authorized to transact intrastate business within California. The Department is adding this section because contracts entered into by non-active corporations, LLCs and LPs are voidable by the other party. Corporations, LLCs and LPs that are suspended, canceled or in a status other than active may not legally transact business in California.

Section 70100(d) specifies that the Department will only authorize additional store locations for contracts where the number of disqualified stores on the contract is at or below five percent of the total number of stores on the contract. This provision is needed to ensure that vendor ownerships address existing compliance issues before authorizing additional stores. This section also supports the integrity of the WIC food delivery system for participants. Vendor ownerships may authorize additional store locations while owning a location that is disqualified as long as the percentage of disqualified stores on the ownership's contract is at or below the five percent threshold. This five percent threshold will enable the Department to authorize additional store locations for contracts that own disqualified stores without impacting redemption integrity and cost-containment.

This section also specifies that this criterion does not apply at reauthorization and would not prevent a vendor ownership from reauthorizing stores on its vendor agreement as long as those stores continue to meet the other provisions of the Vendor Authorization Criteria and the requirements listed in the vendor agreement.

70500 Circumvention of WIC Sanction

PROPOSED AMENDMENTS TO REGULATIONS

70500 Circumvention of WIC Sanction. (a) The Department shall deny authorization or reauthorization if it determines that a vendor is attempting to circumvent a WIC sanction or vendor claim.

(b) The Department will deny authorization to a vendor applicant for any of the following actions indicating an attempt to circumvent a WIC sanction or vendor claim:

(1) The vendor applicant purchased or obtained any legal interest in the store from a relative by blood or marriage and the store or business has a WIC sanction currently in effect, or a vendor claim that is still outstanding at that store location.

(2) The vendor applicant purchased or obtained any legal interest in the store or business for less than fair market value and there is a WIC sanction currently in effect or a vendor claim is still outstanding at that location.

(3) The vendor applicant owns, previously owned, or has a legal interest in a store or business that has a WIC sanction currently in effect within the same geographic area as the one for which the vendor has submitted an application, if the vendor applicant was the owner at the time the sanction was noticed or made effective by the Department.

(A) For the purposes of this subsection, “the same geographic area” is defined in California Code of Regulations, title 22, section 40740, subdivisions (h)(2)(A-B).

(4) The vendor applicant owns, previously owned, or has a legal interest in a store or business, including the applicant location that has an outstanding vendor claim, and the vendor applicant was the owner at the time the vendor claim was noticed or made effective by the Department. Failure to make payments as agreed via stipulation will be considered an outstanding vendor claim.

(5) The vendor applicant purchased or obtained any legal interest in the store or business pursuant to (1) or (2) above and allows the previous owner to retain a role in the operation of the business such as a manager, director, officer or shareholder.

(6) The vendor applicant retained legal interest in the store after a change of business type and there is a WIC sanction currently in effect or a vendor claim that is still outstanding at that location. Business type includes corporation, general partnership, limited partnership, sole proprietorship, and limited liability company.

(c) The Department may, in its sole discretion, request the following additional information from the vendor applicant: ~~which may include, but is not limited to, tax identification number, or other identifying information from the applicant and/or previous owner(s) to enable the Department to conduct a thorough background check, and a bill of sale, lease agreement, bank statements or other information verifying the change in ownership of the store.~~

(1) Information, which may include, but is not limited to the following, to determine a vendor applicant's ability to meet authorization criteria:

(A) Tax identification number;

(B) Articles of incorporation for corporations or limited liability corporations (LLCs), including the list of designated officers and shareholders;

(C) For partnerships and sole proprietorships, copies of any available business documents previously filed with a municipality, city, county or state, such as a fictitious business name statement or partnership agreement;

(D) All available business licenses and/or permits (local health department, liquor, sales tax, etc.);

(E) A notarized affidavit from the new owner(s) stating that they are not connected with the previously disqualified owner(s) through blood or by marriage;

(F) A letter from the retailer's financial institution identifying the authorized signers for the business on any accounts relating to the business;

(G) Store lease or property deed;

(H) Personal federal tax returns for the most recent filing year for all owners; and

(I) Business federal tax returns (if available) for the most recent filing year for all owners.

(2) Information, which may include, but is not limited to the following, to verify the ownership of the store and the value of the store:

(A) A bill of sale;

(B) Lease agreement;

(C) Escrow documents;

(D) An appraisal;

(E) Bank statements; and

(F) Other information verifying the change in ownership of the store.

(3) The vendor applicant shall not be required to provide information if the vendor can demonstrate to the Department that the release of that information is prohibited by federal or California state laws or regulations regarding confidentiality.

AUTHORITY

Federal

7 Code of Federal Regulations part 246.12(g)(7): Sale of store to circumvent WIC sanction. The State agency may not authorize a vendor applicant if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a sanction of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The State agency may consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

State

Health and Safety Code section 123280(c): Enacted in 2012 through Assem. Bill No. 2322, this section states that in order to be in conformity with federal law and to remain in compliance with federal funding, the Department shall adopt all mandatory requirements and guidelines set forth in federal law and regulation for the federal WIC Program. The Department may adopt these requirements and guidelines by bulletin or similar instruction.

Health and Safety Code section 123310: This section provides authority for the Department, under the California WIC Program to authorize retail vendors, by written agreement, to accept food instruments and reimbursement according to the system developed by the Department. The Department shall establish criteria to limit the number of retail vendors with which the Department enters into agreements. The criteria, at a minimum, shall include: (a) the prices the vendor charges for foods in relation to other vendors in its peer group, (b) the ability of the Department to ensure that authorized supplemental foods will be provided through in-store compliance purchases, (c) the adequacy of the shelf stock of the authorized supplemental foods, and (d) past performance of the vendor in compliance with WIC Program governing statutes and with CalFresh.

STATEMENT OF REASONS

70500(b)(3): The Department is amending this subsection to address stakeholder comments regarding the impact of a single disqualification on a vendor ownership's long-term ability to authorize store locations. These amendments are needed because, as currently written W.B.R. section 70500(b)(3) has an overly broad unintended impact that is preventing vendor ownerships from obtaining authorization of additional store locations under circumstances that do not indicate an intent to circumvent a WIC sanction, as described by 7 Code of Federal Regulations part 246.12(g)(7). To ensure that vendors and vendor applicants cannot circumvent a WIC sanction by

obtaining authorization for a store closely located to a location currently serving a sanction, the Department is establishing a geographic range within which vendors and vendor applicants may not authorize additional store locations. The Department is using the definition of “the same geographic area” contained in California Code of Regulations, title 22, section 40740, subdivisions (h)(2)(A-B) to ensure consistency with existing regulations. Under this rule, vendors and vendor applicants will not be able to obtain authorization for additional store locations within two (2) miles (in an urban environment) or five (5) miles (in a rural environment) of a store the vendor or vendor applicant owns that is currently serving a WIC sanction.

70500(c): The Department is amending this section to expand the type of additional background information that may be requested from the vendor applicant to determine whether a store currently under a WIC sanction is purchased or obtained for less than a fair market value. These amendments clarify what type of information may be requested from the vendor for the purpose of determining whether a vendor is attempting to circumvent a WIC sanction.

70500(c)(1): The following lists additional types of identifying information the Department may request from vendor applicants to allow the Department to conduct a thorough background check to determine if a vendor applicant meets the authorization criteria.

(B) Articles of incorporation for all corporations and limited liability companies (LLCs), including the list of designated officers and shareholders may be necessary for background check purposes to make a determination whether a vendor is attempting to circumvent a sanction or vendor claim. Articles of incorporation disclose information mandated by California Corporations Code, including the purposes of the corporation and the rights and liabilities of the shareholders and directors.

(C) For partnerships and sole proprietorships, copies of business documents previously filed with a municipality, city, county or state, such as a fictitious business name statement, partnership agreement or other required business filing may be necessary for background check purposes to make a determination that a vendor is attempting to circumvent a sanction or vendor claim. These business filings disclose the annual income, losses, and deductions the partnership or sole proprietorship reports for the previous tax year.

(D) All available business licenses, permits (local health department, liquor, sales tax, etc.), and/or Board of Equalization returns may be necessary for background check purposes to make a determination that a vendor is attempting to circumvent a sanction or vendor claim. Business licenses and permits, such as a health or seller’s permit, establish that the store can legally operate in California. Health permits ensure that the store has been inspected by its county health inspector and that it meets all established standards to sell food for human consumption. Seller’s permits ensure that the store can sell goods in California that are subject to sales tax.

(E) A notarized affidavit from the new owner stating that he or she is not connected with the previously disqualified owners may be necessary for background check purposes to make a determination that a vendor is attempting to circumvent a sanction or vendor claim. The signed affidavit attests that the vendor is not a relative of the previously disqualified owners through blood or by marriage.

(F) A letter from the retailer’s financial institution identifying the authorized signers for the business on any accounts relating to the business may be necessary for background

check purposes to make a determination that a vendor is attempting to circumvent a sanction or vendor claim. The letter attests that the authorized signers are the same business entity and/or individuals who are identified as owners for the store or contract.

(G) Store leases or property deeds may be necessary for background check purposes to make a determination of whether a vendor is attempting to circumvent a sanction or vendor claim because leases and deeds provide proof that the vendor leases or owns the store property.

(H) Personal federal tax returns for the most recent filing year for all owners may be necessary for background check purposes to make a determination that a vendor is attempting to circumvent a sanction or vendor claim because they provide income generated by the individual or household, credits, and taxes paid within the reported tax year.

(I) Business federal tax returns (if available) for the most recent filing year for all owners may be necessary for background check purposes to make a determination that a vendor is attempting to circumvent a sanction or vendor claim because they provide information such as income generated, rent and other business expenses, the value of the business, and gains and losses within the reported tax year.

(2) The following lists additional types of information the Department may ask from vendor applicants to allow the Department to clarify a store's ownership and evaluate whether or not a store was purchased at a fair market value.

(C) Escrow documents may be necessary to evaluate the market value of a store. This information may be used make a determination that a vendor is attempting to circumvent a sanction or vendor claim. Escrow documents provide the financial terms and the purchase price agreed upon by the owner and the buyer.

(D) An appraisal may be necessary to evaluate the true market value of a store. This information may be used make a determination that a vendor is attempting to circumvent a sanction or vendor claim. The appraised value can be compared to the purchase price.