

**Fiscal Impact Analysis of Permanent Rules  
10A NCAC 43D – WIC/Nutrition**

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**Agency:** NC Commission for Public Health  
Department of Health and Human Services, Division of Public Health  
Women’s and Children’s Health Section, Nutrition Services Branch

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**Rule Citations:**

10A NCAC 43D .0202	Definitions (Amendment)
10A NCAC 43D .0408	Waiting List (Amendment)
10A NCAC 43D .0501	WIC Program Food Package (Amendment)
10A NCAC 43D .0701	WIC Program Food Delivery System (Amendment)
10A NCAC 43D .0702	Issuance of Food Instruments and Cash-value Vouchers (Amendment)
10A NCAC 43D .0703	Use of Food Instruments and Cash-value Vouchers (Amendment)
10A NCAC 43D .0704	Validity of Food Instruments and Cash-value Vouchers (Repeal)
10A NCAC 43D .0705	Payment of Food Instruments and Cash-value Vouchers (Amendment)
10A NCAC 43D .0706	Vendor Peer Groups (Amendment)
10A NCAC 43D .0707	Vendor Applicants (Amendment)
10A NCAC 43D .0708	Authorized Vendors (Amendment)
10A NCAC 43D .0710	Vendor Violations and Sanctions (Amendment)
10A NCAC 43D .0908	Fair Hearings (Amendment)

**State Government Impact:** Yes  
**Local Government Impact:** Minimal Impact  
**Private Sector Impact:** Yes  
**Substantial Impact:** Unknown, substantial impact possible

**Relevant Statutes:** N.C.G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

**Purpose of Rule Change**

In 2017 the North Carolina WIC Program amended its rules to include policies and procedures related to implementation of an electronic benefit transfer (EBT) system mandated by Federal regulations. Per 7 CFR 246.12 (a): “*By October 1, 2020, each State agency shall implement EBT statewide.*” The WIC EBT system was piloted in October 2017 and implemented statewide by May 2018. Prior to this change, WIC participants were issued paper food instruments and cash value vouchers that they redeemed at grocery stores for infant formula and medical nutritionals as well as nutritious foods, fruits, and vegetables. During the transition from the old paper-based system to EBT, paper WIC benefits were still in circulation. As a result, when the rules were changed in 2017 to update for EBT, all policies and procedures regarding the paper-based system were maintained in the rules. There are no longer any paper food instruments/cash-

value vouchers in circulation. Consequently, the rules are now being amended to remove language associated with paper food instrument/cash-value voucher issuance and redemption.

The Program is proposing several other rule changes to streamline operations. The changes are: (1) expanding the number of supplemental foods approved for issuance to WIC participants; (2) aligning the peer group structure with Federal regulations; and (3) updating the fair hearing procedures to allow 72 hours for hearing staff to reschedule a hearing date when an appellant has a conflict and to otherwise conform with federal fair hearing requirements.

The funding level for the Women, Infants, and Children (WIC) Program will not change as a result of adopting the proposed amendments. The State receives money from the federal government for administration of the WIC Program according to a federal funding formula. Program administration is outlined annually via a State Plan. By letter dated July 8, 2019, the United States Department of Agriculture (USDA) stated that final approval of the upcoming FY 2020 State Plan and Procedure Manual cannot be granted until the peer group system criteria are changed to include a measure of geography. As noted in 7 CFR 246.4(a), approval of the State Plan is a pre-requisite to receiving funding. The grant to the State for FY 2020 is expected to be \$183,225,818.00. However, USDA has indicated that it will provide contingent approval of the fiscal year 2020 WIC State Plan and release FY 2020 funding pending the imminent redesign of the peer group structure. The USDA expects to see progress toward compliance with the regulation, in the form of initiation of permanent rulemaking, by the end of September 2019. To ensure compliance, it is anticipated that the NC Commission for Public Health will take this rule package and fiscal note up at its August 7, 2019 meeting. This will allow a possible effective date by early 2020. WIC Program staff plan to implement the new peer group system no later than February 1, 2020.

### **Proposed Rule Changes and Anticipated Fiscal Impact**

The proposed rule changes perform the following actions:

#### **1. Eliminate language for the paper-based system from the rules:**

- a. Add or amend the following definitions to rule .0202:
  - i. Food Benefits
  - ii. Food Benefit Balance
  - iii. Redeemed Food Benefits
  - iv. Redemption
  - v. Transaction
  - vi. WIC Customer

These definitions have been added or amended due to the federally required implementation of EBT for all state agencies and removal of language regarding paper food instruments and cash-value vouchers.

#### **b. Change the Term Food Instruments and Cash-value Vouchers to Food Benefits**

Due to EBT implementation, the term food instruments and cash-value vouchers, which referred to the paper vouchers that were issued to and redeemed by WIC participants, will be changed to food benefits, the term used for WIC benefits in an EBT system. This change was made in the following rules: 10A NCAC 43D .0408, .0701, .0702, .0703, .0705, .0706, .0707, .0708, and .0710.

#### **c. Repeal 10A NCAC .0704**

Rule 10A NCAC .0704 is being repealed because it details information which solely addresses the processing of paper-based WIC benefits. As a result, it is no longer necessary.

d. Remove WIC Program Processes and Procedures for the Paper System Listed in .0708

The transaction processing procedure and associated processes for the paper-based system of issuance and redemption of WIC benefits required many steps. All processes and procedures exclusive to successfully processing paper food instruments and cash-value vouchers were removed as the system is no longer utilized in the state.

e. Amend WIC Program Vendor Violations and Sanctions in .0710

As a result of EBT implementation in 2017, retailers either upgraded their cash register systems or obtained a stand-beside device from the EBT contractor to transact benefits for WIC participants using EBT cards. The processes and procedures for using WIC benefits with an EBT card are considerably different from transacting benefits in a paper-based system. As a result, vendor violations of new EBT processes and procedures are different from the vendor violations for the paper-based system that are currently listed in 10A NCAC 43D .0710. Therefore, the rule has been updated to reflect the change in vendor violations and sanctions due to the required EBT implementation. New violations include insufficient EBT point-of-sale (POS) equipment necessary to comply with Federal minimum lane coverage criteria and failure to make EBT POS equipment accessible to the participant. Also, the definition of improper transaction was revised to remove paper-based benefit violations and include EBT-related violations indicative of incorrect transaction processing.

State Impact

The elimination of the paper-based system will result in a small cost savings to the State. Paper food instruments and cash-value vouchers were printed using magnetic ink character recognition (MICR) printers that were provided and serviced by an independent contractor. The annual cost to maintain all the printers at the local WIC agencies was \$21,240.00. Additionally, the cost to purchase toner for the printers was \$23,596.65 annually. In sum, the State will save \$44,836.65 on an annual basis because the paper system is no longer utilized.

The State may also benefit from changes to vendor violations, depending on the nature of the violation. For example, State staff may save time due to the change in the violation definition for failure to properly transact. The change in definition removes all reference to incorrect processing of paper food instruments/cash-value vouchers. In its place, language has been incorporated which details incorrect redemption procedures for EBT. When vendors commit a violation, they are sent a notice by State staff that informs them of the violation and resulting sanction, if they establish a pattern of non-compliance. Over the past two years, the State Agency has sent 630 notices of violation to vendors, 60 of which cited failure to properly transact as the violation committed. While notices have been sent to warn vendors of the penalty if they continue to improperly transact, no vendors have been sanctioned (disqualified from participation in the program) for this violation in the past two years. This is because the notice they received served as a tool to encourage compliance. As the policy regarding incorrect paper-based processing has been replaced with language for incorrect EBT processing, the State expects the number of notices sent for this violation to decrease because the paper-based system no longer exists. In the event that some vendors do not adhere to the processing procedures for EBT transaction, the number of notices sent may remain about the same, but an increase is not anticipated. As before, the number of vendors sanctioned using the new definition is expected to be zero.

In addition, the amended rule details new sanctions for EBT-related violations. These sanctions and the pattern necessary to be sanctioned have been created to ensure that vendors remain compliant with policies established in the previous rule change. Though fewer notices will be sent for the newly established violations, the number cannot be quantified. However, it is expected to be minimal because vendors are already required to comply under the current rule.

#### Local Impact

Staff at local WIC agencies will encounter minimal cost savings since the paper system is no longer used. They will save the time necessary to print paper vouchers for all WIC participants that they served on a daily basis. Furthermore, staff no longer need to track inventory for the paper check stock used to issue paper benefits.

There will be no cost to Local staff due to the revision of vendor violations. While these are violations that must now be monitored by staff, they replace violations for the paper-based system that were previously investigated. Hence, investigation of the violations will not result in a greater compliance cost (increased amount of time or other resources) to monitor vendors. The time taken to determine if the vendor has committed the new violations is expected to be equal to or less than the time taken to monitor the paper-based violations. The benefit to the Program of including these violations/sanctions is appropriate use of grant funds because of measures used to reinforce compliance.

#### Private Impact

WIC participants will no longer need to pick up benefits issued on paper four or more times per year. Issuance onto an EBT card can result in a face-to-face visit at the local WIC agency as little as twice per year, as long as all other clinical/nutrition-based requirements are met.

WIC authorized retailers do not need to make additional investments to comply with the proposed rules because they have already implemented the EBT system in each of their store locations under the prior rule change. As a result, they have already invested in the infrastructure. No infrastructure changes are required for this rule change, and authorized retailers should already be in compliance due to previous amendments. The modified violation rules do place restrictions on vendor behavior in order to ensure equitable access to food benefits and encourage participation in the WIC program. However, past experience under the paper-based system suggests that non-compliance with the requirements is infrequent. In addition, these regulatory restrictions may have been offset to some extent by the recent elimination of paper food instruments/cash-value vouchers. Retailers may have experienced a small cost savings as staff no longer need to manually process paper vouchers received from WIC participants.

Violations and sanctions added to the rules to reinforce vendor compliance may also be beneficial to participants because adherence to transaction policies would result in better overall customer service when they purchase WIC items.

## **2. Remove Foods from the List of WIC Food Package Exclusions in .0501**

The proposed rule change will remove the following foods from the list of exclusions: shredded, diced, grated and organic cheese; eggs other than white, fresh, grade A large; and organic foods other than fruits and vegetables obtained with cash-value vouchers. During Hurricane Florence, retailers ran out of WIC supplemental foods because customers (WIC and non-WIC) were stocking up on food. This created food shortages that were further compounded by the inability of retailers to receive regular shipments from distributors due to flooded

and otherwise blocked and damaged roads/bridges. WIC food package exclusions, listed in 10A NCAC 43D .0501, created further hardship for WIC families because there were foods available that were specifically excluded for purchase with WIC food benefits. WIC State agencies have the option to exclude certain food items from their food package. North Carolina chooses to continue to exclude some foods for purchase, specifically mackerel and sardines; goat milk; and dried fruits and vegetables.

#### State and Local Impact

There is no economic impact to State and Local governments due to this change. The Program is 100% federally funded and reverts unused food dollars back to the USDA every federal fiscal year. Subsequently, though more funds are likely to be spent on newly included items, this change will not result in an increase in funding, but a decrease in funds returned to the Federal government at the end of the year. These changes will result in better utilization of federal funds currently appropriated to North Carolina.

#### Private Impact

There is a benefit to the WIC participant if specified foods currently excluded are allowed for purchase. Added foods will allow for greater flexibility in food selections. It is anticipated that this may increase compliance with the prescribed food package redemption thereby improving the nutritional benefit received and improving participant shopping experiences. WIC-authorized retailers will also benefit from the new foods added to the food package, particularly organic foods, because there will likely be an increase in revenue generated by their stores. Though this positively impacts retailers, it cannot be quantified given the diversity in size of the various retailers and food options offered statewide.

### **3. Align the Peer Group Structure in .0706 With Federal Requirements**

The North Carolina WIC Program is required by 7 CFR 246.12(g)(4) to establish a vendor peer group system with distinct competitive price criteria and allowable reimbursement levels for each peer group. The criteria for each peer group within the existing peer group system is currently listed in 10A NCAC .0706. Per 7 CFR 246.12, *“The State agency’s methodology for establishing a vendor peer group system must include the following: (A) At least two criteria for establishing peer groups, one of which must be a measure of geography, such as metropolitan or other statistical areas that form distinct labor and products markets, unless the State agency receives FNS approval to use a single criterion.”* The current peer group system does not include a measure of geography.

A federal Management Evaluation (ME) conducted in 2015 found the state to lack compliance with the measure of geography requirement. As the State Agency was in the process of completing Crossroads implementation serving as the lead state for a multi-state initiative and planning for an electronic benefits transfer (EBT) system, the USDA agreed to delay restructuring of the peer group system until EBT was fully implemented. The USDA has recently informed the agency that they must implement a revised peer group system that includes a measure of geography so that the ME finding can be closed. In the past, the North Carolina WIC Program was granted an exception to the requirement. The most recent exception request was denied by USDA, and they mandated that the peer group system be restructured to include geography as a criterion.

In their letter to the agency on July 8, 2019, USDA stated that final approval of the upcoming FY 2020 State Plan and Procedure Manual cannot be granted until the peer group system criteria are changed to include a measure of geography, thus putting in jeopardy more than \$183.2 million in federal funding the State has

requested to receive for next fiscal year. However, the USDA has indicated that it will provide contingent approval of the FY 2020 WIC State Plan and release FY 2020 funding pending the imminent redesign of the peer group structure. The USDA expects to see progress toward compliance with the regulation, in the form of initiation of permanent rulemaking, by the end of September 2019.

As a result, North Carolina WIC Program staff are revising the peer group system utilized in North Carolina to come into compliance with the geographical component required by federal regulation. The agency is amending the rule by removing current peer group language and incorporating the federal regulation by reference with subsequent changes and amendments. This will allow for the rule to automatically adjust to any change in federal regulation so that federal funding to the state would not be jeopardized in the future. Note, impacts that might be created by potential future changes in the federal regulation are not captured by this analysis.

Following this rule change, the revised peer group structure will be set out in detail in the WIC Vendor Agreement, which each vendor signs and agrees to comply with when they are authorized to accept WIC benefits. The WIC program will assess the effectiveness of the revised peer group structure every three years by performing an analysis of redemption data. If the analysis reveals that the peer group system is no longer effective according to statistical methods recommended by the USDA, then the system will be altered to comply with WIC program requirements.

Current analysis of pricing data is still under review; however, preliminary analysis has led to several conclusions regarding the revised peer group structure:

- There will continue to be peer groups solely for free-standing pharmacies under the following store types<sup>1</sup>:
  - National Drug Chain, and
  - Regional or Local Drug;
- Mass merchandisers<sup>2</sup> like Wal-Mart and Target will be in one peer group that will also include military commissaries; and
- Other store types represented in North Carolina that may be grouped geographically (i.e. by urban, rural, or isolated) are:
  - Regional Grocery Chain,
  - Independent Grocery, and
  - Convenience, Liquor, Gas Stations.

Due to the rule change, vendors will be placed in peer groups with other vendors that submit similar prices for approved food items. Since the majority of the vendors are large retail grocery chains that charge less than the maximum price established for their existing peer group, it is very likely that the majority of vendors will remain in a peer group with vendors that are in their existing peer group, once analysis of redemption data is complete and geography is considered. For instance, all corporate contract chains, e.g. Food Lion and Publix stores, are now in peer group 4. Once the peer group structure is revised to incorporate geography and prices are evaluated,

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<sup>1</sup> The State WIC Agency utilized the same store types used in the *State Agency Toolkit: WIC Vendor Peer Group Assessment/Development* published by the USDA. The store types are based on business model classifications.

<sup>2</sup> Per the *State Agency Toolkit: WIC Vendor Peer Group Assessment/Development* published by the USDA, Wal-Mart and Target are considered mass merchandisers. The mass merchandiser store type is defined as a retailer that sells a wide variety of merchandise, but also carries groceries and has outlets in most or all States.

there may be peer groups regionally that consist of corporate vendors from the same chains, e.g., Regional Grocery Chain-Urban PG 4A and Regional Grocery Chain-Non-urban PG 4B. Both peer groups would still consist of Food Lion and Publix stores, but the maximum price would be different due to the assigned geographic region. While some vendors may be in different peer groups based on store type once the rule is implemented (independent grocery stores and convenience stores were typically in the same peer group), this will likely represent approximately 4% of vendors statewide.

Once the peer group system is updated, the agency will assess how the change impacted competitive pricing, cost containment, and vendor behavior. A survey will be drafted and provided to WIC vendors during the next annual vendor training which will specifically ask questions about the new peer group structure e.g., does it work well with their business model, are they charging more or less due to the new peer group they are in, can they service more participants, etc. Additionally, 7 CFR 246 12(g)(4)(ii)(C) requires State WIC agencies to evaluate the effectiveness of peer groupings and competitive price criteria every three years. Through this process, the agency will examine the redemption data from the different peer groups to determine if competitive price and cost containment regulations are adhered to and amend the peer group system, if necessary, to enhance system performance.

State Impact

Staff time is required for the State to develop a new peer group structure, which will include meetings with stakeholders, review of relevant research, system programming, data analysis, and final determination of the peer group structure. No new staff will be hired. Therefore, these tasks represent opportunity costs to complete the peer group change process for existing staff. Three staff members will work together to create the new peer group system. The estimated number of hours necessary to complete this process is 520 which includes 30 hours to develop and provide training to local staff regarding the new peer group structure once it is developed.

Consequently, the total estimated cost to develop the new system as well as create and provide training is indicated in the table below:

<b>Staff Member</b>	<b>Estimated Hours of Work</b>	<b>Estimated Hourly Compensation<sup>3</sup></b>	<b>Total Cost Per Staff Member</b>
Program Manager/Trainer	180	\$57.26	\$10,307
Epidemiologist	300	\$46.05	\$13,816
Data Analyst	40	\$49.67	\$1,987
<b>Total</b>	<b>520 hours</b>		<b>\$26,110</b>

Once the new peer group system is established, the State agency must analyze its effectiveness every 3 years. This represents a delayed administrative cost to the Program. This evaluation is estimated to take approximately 145 hours every three years. The cost to reassess the effectiveness of the peer group system on a 3-year cycle is:

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<sup>3</sup> The estimated hourly wage utilized is the midpoint of the salary range for each employee’s job classification, including benefits, which was obtained at <https://oshr.nc.gov/state-employee-resources/classification-compensation/compensation>.

Staff Member	Estimated Hours of Work	Estimated Hourly Compensation	Total Cost Per Staff Member
Program Manager/Trainer	40	\$57.26	\$2,290
Epidemiologist	80	\$46.05	\$3,684
Data Analyst	25	\$49.67	\$ 1,242
<b>Total</b>	<b>145 hours</b>		<b>\$7,216</b>

In summary, the total State impact for system development and training is approximately \$26,110 for the first year and \$7,216 in the following 3 years.

Local Impact

Time would be required to train local staff regarding changes to the peer group structure and location of amended criteria. Training for staff will not require a significant amount of time. It will be approximately one hour per staff member and will not have a great impact on their standard work schedule. There are approximately 150 local staff to be trained, which will result in a total of 150 training hours for all local staff that complete vendor activities across the state. The estimated average annual salary for local agency WIC staff is approximately \$40,000 annually plus benefits, i.e. \$31.27 per hour, including benefits.<sup>4</sup> As a result, the estimated total opportunity cost for local staff training would be  $\$31.27 * 150 = \$4,691$ .

Private Impact

The amendment of the peer group structure will have some impact on payment to vendors because of peer group reassignment due to new criteria, but this impact is expected to be relatively small because, as mentioned above, most vendors are currently charging under the maximum price for WIC-approved items in their peer group. The agency is in the process of determining how vendors will fall into the new peer group structure, but, even with this information, it would be difficult to estimate the magnitude and the direction of the potential impact due to several factors.

The first factor is the dynamic nature of how maximum prices are calculated. The maximum price a vendor can charge is two standard deviations above the mean for each item. This price is calculated using prices submitted for that item within a set timeframe by all vendors in the same peer group. Prices submitted by vendors are captured in the EBT system daily, making recalculation of maximum prices very simple, but dynamic. If vendors increase or decrease prices, that change will automatically be reflected in the maximum prices that can be charged. The agency cannot reliably determine what the impact will be because of uncertainty in pricing patterns from day to day. In the absence of static pricing, a meaningful financial impact estimate cannot be ascertained.

The second factor is the inability to determine impact due to not knowing how many vendors will be reimbursed the maximum price calculated and for how many times versus the vendors that will be paid under the maximum price for an item. Vendors are paid up to the maximum price calculated for each food item, even when they request more than that maximum price. Currently, a small percentage of vendors (approximately 6%) request over the maximum price for at least one item in a transaction. In the future these vendors will be placed in a new

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<sup>4</sup> The compensation estimate used data from the UNC School of Government County Salary Survey to approximate wages and Bureau of Labor Statistics data to determine total compensation, respectively available at <https://www.sog.unc.edu/publications/reports/county-salaries-north-carolina-2019> and <https://www.bls.gov/news.release/ecec.t03.htm>.

peer group with other vendors that charge similar prices. That may result in a higher maximum price that those vendors can charge. While the agency can calculate the number of vendors that typically charge over the maximum price now, it is not possible to reliably determine if all the same vendors will continue to request more once they are reimbursed a larger amount. If paid more, some vendors may be satisfied with their level of payment and stop charging over the maximum price while others may charge more to continue to drive up the amount they are reimbursed. In addition, vendors may charge over the maximum on some items and under on other items. The variability in this factor makes it difficult to calculate the estimated impact.

A third factor that inhibits correct calculation of the impact of this change on the private sector is fluctuation in prices due to external forces and local market conditions. While it is possible to take inflation into account, it is harder to account for things like natural disasters or other weather events, which create scarcity and cause prices to increase. Typically, these changes in pricing are restricted to areas of the state effected by a specific weather event. Market conditions and pricing strategies can also vary based on location and vendor. Lastly, new players in the market may cause prices to decrease because of an overabundance of supply. Collectively, all the factors mentioned preclude a reliable assessment of total estimated costs/benefits to vendors.

A final factor is the expected dynamic nature of the vendors within the peer groups. The state will review data to determine if vendors continue to remain in the correct peer group annually and vendors may move between peer groups over time. This adds further difficulty in quantifying how the revised structure may impact any particular vendor.

The revised peer group structure could result in different maximum allowable reimbursement thresholds per item that are received by retailers getting reimbursed a different amount per item, based on the peer group they are placed in. As vendors with similar pricing patterns will be grouped together to calculate a price per item per peer group, the change in reimbursement will likely be minimal, but, due to the factors described above, cannot be quantified. However, it is anticipated that there will be a difference in reimbursement levels for vendors in urban versus non-urban areas. As evidenced in the *WIC Vendor Peer Group Study*<sup>5</sup> conducted by Altarum Institute, food basket costs were found to be significantly higher in urban areas than non-urban areas. Moreover, in revising their peer group structure, the Tennessee WIC Program analyzed prices submitted by vendors across the state and also concluded that costs were higher in urban areas<sup>6</sup>. Based on these findings, although exact magnitude cannot be estimated, it can be concluded that vendors in urban areas may experience an increase in reimbursement levels, while vendors in non-urban areas may experience a decrease in reimbursement.

#### **4. Amend Fair Hearing Procedures in .0908**

10A NCAC 43D. 0908 will be amended to increase the time for notice required to confirm or cancel a fair hearing date from 24 to 72 hours. When cancelling a hearing date, 24 hours is a very short amount of time to communicate the cancellation to all stakeholders. The rule is being changed to allow more time to cancel and reschedule hearings.

#### **State, Local, and Private Impact**

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<sup>5</sup> <https://fns-prod.azureedge.net/sites/default/files/ops/WICVendorPeerGroup.pdf>

<sup>6</sup> Mullen, *Sierra Developing Tennessee's Vendor Peer Group System: A Voucher State Using USDA Guidance* Jun 2018 PowerPoint presentation

This rule does not impact the amount of time allotted to schedule or hold the hearing. It is simply an administrative change. This is not expected to have an impact on State government, local government, or the private sector. There are very few participant fair hearings requested (two within the past five years, both of which were eventually withdrawn by the WIC participant).

## Alternatives

As the peer group rule change may result in a substantial impact, the WIC program considered the following two alternatives:

- **Making No Changes to Rule .0706**

Federal regulations require that WIC state agencies establish a peer group system for their WIC vendors in compliance with federal regulations. USDA has concluded that the State is out of compliance with the federally mandated requirement to incorporate geography as a criterion for its WIC vendor peer group system. One alternative to amending the rule would be to leave the rule language as is. However, this would jeopardize the approval of the FY 2020 WIC State Plan and more than \$183.2 million in FY 2020 funding. This would be extremely detrimental to the families served by WIC and is not a viable option.

- **Using a Different Statistical Methodology to Revise the Peer Group System**

The strategy and methods used to develop the new peer group system are based on guidance provided by the USDA because they must approve the new system before it is implemented. To ensure approval of the new system at the Federal level, NC staff are utilizing the following documents:

- *WIC Vendor Peer Group Study* completed by Altarum Institute, May 2017
- *State Agency Toolkit: WIC Vendor Peer Group Assessment/Development* published by the USDA, September 2018

The State Agency Toolkit was developed using results from The Altarum Study of vendor peer group systems. The USDA contracted with Altarum Institute to study peer group structures across the country and endorses their methodology for creating effective peer group systems as it resulted from comparison of a wide variety of peer groupings developed in different states. This is the study USDA staff refer states to for information regarding peer group systems. As a result, North Carolina staff followed step-by-step guidance in the toolkit that mirrored concepts, principles and statistical methods detailed in The Altarum Study to ensure that the most effective system is developed. The methodology was also used because it is sanctioned by the USDA and therefore, would speed up the approval process. Using other methods to create a new system that are unfamiliar to the USDA would likely result in delays in approval because more staff would be incorporated into the process to evaluate the accuracy and validity of the methods used. To avoid delays and avoid punitive action, the agency chose to use the method which resulted in USDA approval for other states.

## Summary

In summary, the proposed rules will: (1) remove language associated with paper food instrument/cash-value voucher issuance and redemption, (2) expand the number of supplemental foods approved for issuance to WIC participants; (3) align the peer group structure with Federal regulations; and (4) update the fair hearing procedures to allow 72 hours for

hearing staff to reschedule a hearing date when an appellant has a conflict and to otherwise conform with federal fair hearing requirements. It is expected that these rule changes will have limited impact on State funds, minimal impact on Local funds, and some impact on the private sector. It is unlikely that this impact amounts to a substantial economic impact due to the small portion of current vendors that charge above maximum reimbursable levels and that are likely to be in a different peer group than their current peers; but, due to uncertainty, this fiscal note conforms to the requirements of G.S. 150B-21.4.

10A NCAC 43D .0202 is proposed for amendment as follows:

**10A NCAC 43D .0202 DEFINITIONS**

(a) For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and editions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R 246.12(h)(3).
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency for the implementation, maintenance, and operation of the State WIC agency's WIC EBT system that acts as the agent of the State WIC agency to process and settle EBT transactions.
- (6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a State or local agency action that results in a claim against the individual for repayment of the cash value of issued benefits by which the individual is not eligible or results in the individual's denial of participation or disqualification from the WIC Program, as set forth in Rule .0410 of this Subchapter. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7 CFR 246.9.
- (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (8) "Food benefits" are the prescribed amounts of WIC authorized foods and formulas or a fixed dollar amount prescribed to WIC customers to receive fruits and vegetables.
- (9) "Food benefit balance" means the unspent food benefits for the current month that are available to use by the cardholder.
- ~~(8)~~(10) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- ~~(9)~~(11) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- ~~(10)~~(12) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.
- ~~(11)~~(13) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.

~~(12)~~(14) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.

~~(13)~~(15) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.

~~(14)~~(16) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.

(17) "Redeemed food benefits" means the benefits that have been used by the WIC customer.

~~(15)~~(18) "Redemption" is the process by which a vendor ~~deposits for~~ receives payment from the State agency (or its financial agent) for food benefits ~~a food instrument or cash value voucher~~ transacted at that vendor location, ~~and the State agency (or its financial agent) makes payment to the vendor for the food instrument or cash value voucher.~~

~~(16)~~(19) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.

~~(17)~~(20) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.

~~(18)~~(21) The "State agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.

~~(19)~~(22) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.

~~(20)~~(23) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.

~~(21)~~(24) " Support costs" are clinic costs, administrative costs, and nutrition education costs.

~~(22)~~(25) "Transaction" is the process by which a WIC customer tenders ~~a food instrument or a cash value voucher to a food~~ benefits at an authorized vendor in exchange for authorized supplemental foods.

~~(23)~~(26) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.

~~(24)~~(27) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.

~~(25)~~(28) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.

~~(26)~~(29) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.

~~(27)~~(30) "WIC customer" means a WIC participant, parent, or caretaker of an infant or child participant, proxy for the eligible participant, or compliance investigator who ~~tenders a food instrument or a cash value voucher to~~ transacts food benefits at a vendor in exchange for WIC supplemental food.

~~(28)~~(31) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

(b) A copy of 7 C.F.R. Part 246 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina 27609. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park

Center Drive, Room 540, Alexandria, Virginia 22302, by calling (703) 305-2730 or online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a42889f84f99d56ec18d77c9b463c613&node=7:4.1.1.1.10&rgn=div5>.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;  
Temporary Amendment Eff. May 17, 2000;  
Amended Eff. April 1, 2001;  
Temporary Amendment Eff. July 1, 2002;  
Amended Eff. August 1, 2004;  
Temporary Amendment Eff. July 1, 2006;  
Amended Eff. October 1, 2019; October 1, 2017; February 1, 2013; October 1, 2009; April 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

10A NCAC 43D .0408 is proposed for amendment as follows:

**10A NCAC 43D .0408 WAITING LIST**

- (a) If a local WIC agency is serving its maximum caseload or spending its maximum food money and additional participants cannot be issued food ~~instruments,~~benefits, a waiting list must be established in accordance with 7 C.F.R. 246.7.
- (b) Local WIC agencies maintaining a waiting list shall continue to provide WIC program benefits to all individuals enrolled in the program until the expiration of their certification period.
- (c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority group are first given an opportunity to receive food ~~instruments,~~benefits in accordance with 7 C.F.R. 246.7(e)(4) which is incorporated by reference with all subsequent amendments and editions.

*History Note: Authority G.S. 130A-361;*

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2019; October 1, 2009; November 1, 1990; July 1, 1989;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0501 is proposed for amendment as follows:

**SECTION .0500 – WIC PROGRAM FOOD PACKAGE**

**10A NCAC 43D .0501 SUPPLEMENTAL FOODS**

(a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Health and Human Services, Division of Public Health, 5601 Six Forks Road, Raleigh, North Carolina 27609 and may be obtained from Nutrition Services at no cost.

(b) The following exclusions from the food package have been adopted by the North Carolina WIC ~~program~~Program and approved by the United States Department of Agriculture, Food and Nutrition Service:

- (1) ~~shredded, diced, grated and organic cheese;~~
- (2) ~~eggs other than white, fresh, grade A large;~~
- (3)(1) ~~mackerel and sardines;~~
- (4) ~~organic foods other than fruits and vegetables obtained with cash value vouchers;~~
- (5)(2) ~~goat milk; and~~
- (6)(3) ~~dried fruits and vegetables.~~

(c) The state agency may exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC ~~program~~Program as a result of their cost, nutritional composition, packaging, statewide availability, participant acceptance, or promotion in a manner which is contrary to the purpose of the program as contained in 7 C.F.R. 246.1.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2019; October 1, 1993; October 1, 1990; July 1, 1989; October 1, 1988;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. October 1, 2009; August 1, 2004;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0701 is proposed for amendment as follows:

**SECTION .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

**10A NCAC 43D .0701 THE NORTH CAROLINA AUTOMATED WIC SYSTEM**

The WIC program shall provide supplemental foods through a uniform retail distribution system in accordance with 7 C.F.R. 246.12. An automated data processing system shall be utilized to promote the provision of and accounting for food ~~instruments and cash-value vouchers~~ benefits issued to participants.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2019; October 1, 2009; April 1, 2001;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0702 is proposed for amendment as follows:

**10A NCAC 43D .0702 ISSUANCE OF FOOD INSTRUMENTS AND CASH VALUE VOUCHERS BENEFITS**

- (a) Local WIC agencies shall issue WIC program food ~~instruments and cash value vouchers~~ benefits to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.
- (b) Local WIC agencies shall issue food ~~instruments and cash value vouchers~~ benefits in a manner which prevents theft and shall retain documentation of ~~the disposition of the food instruments and cash value vouchers~~ issuance. The documentation of issuance shall include the dated signature of the authorized individual receiving the food ~~instruments or cash value vouchers~~ benefits, ~~unless the food instruments or cash value vouchers are mailed.~~
- (c) Participants shall be given appointments to receive food ~~instruments or cash value vouchers~~ benefits in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members.
- (d) Food ~~instruments and cash value vouchers~~ benefits shall be issued only to the participant, the participant's parent, the participant's caretaker, a proxy, or a compliance investigator.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. April 1, 2001;  
Temporary Amendment Eff. July 1, 2002;  
Amended Eff. October 1, 2019; October 1, 2009; August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0703 is proposed for amendment as follows:

**10A NCAC 43D .0703 USE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS BENEFITS**

(a) Participants may transact food ~~instruments and cash value vouchers~~ benefits on any day on or between the "First Date to Spend" and "Last Date to Spend" ~~printed on the food instrument or cash value voucher for their certification period.~~

(b) Food ~~instruments and cash value vouchers~~ benefits shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC program rules, regulations, and statutes. Authorized WIC vendors shall not be reimbursed for food ~~instruments and cash value vouchers~~ benefits that are not properly transacted as set forth in Rule .0708 of this Section. ~~Stores that are not authorized WIC vendors shall not be reimbursed for food instruments and cash value vouchers transacted at their store.~~

(c) ~~Printed food instruments and cash value vouchers shall be deposited at the vendor's bank. Authorized WIC Vendors~~ vendors that use EBT shall have their bank account credited with payments for completed EBT transactions. Food ~~instruments and cash value vouchers~~ benefits shall not be assigned, transferred, sold, or otherwise negotiated.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2019; April 1, 2001; November 1, 1990; July 1, 1989;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. October 1, 2017; October 1, 2009; August 1, 2004;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0704 is proposed for repeal as follows:

**10A NCAC 43D .0704    VALIDITY OF WIC FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

*History Note:    Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. July 1, 1989; July 1, 1985;  
Temporary Amendment Eff. May 17, 2000;  
Amended Eff. April 1, 2001;  
Temporary Amendment Eff. July 1, 2002;  
Amended Eff. October 1, 2009; August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0705 is proposed for amendment as follows:

**10A NCAC 43D .0705 PAYMENT OF WIC FOOD INSTRUMENTS AND CASH VALUE VOUCHERS BENEFITS**

The State of North Carolina shall:

- (1) accept EBT transactions for North Carolina WIC food ~~instruments and cash value vouchers~~benefits through the Federal Reserve and commercial banking systems;
- ~~(2) ensure that WIC food instruments and cash value vouchers are valid in accordance with Rule .0704 of this Subchapter;~~
- ~~(3)~~(2) provide payment for all valid WIC food ~~instruments and cash value vouchers~~benefits. To the extent that sufficient funds are available in the WIC disbursing account, payment shall be provided according to established Department of Health and Human Services procedures for payment of WIC food ~~instruments and cash value vouchers~~benefits.
- ~~(4) ensure that every invalid WIC food instrument or cash value voucher is stamped to indicate the reason for invalidity;~~
- ~~(5) ensure that invalid WIC food instruments and cash value vouchers are returned to the banks from which they were received, according to established banking procedures.~~

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2019; October 1, 2009; April 1, 2001;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0706 is proposed for amendment as follows:

**10A NCAC 43D .0706 VENDOR PEER GROUPS**

Vendor applicants and authorized vendors shall be placed into peer groups in accordance with as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store and the geographic location of the store until annual WIC supplemental food sales become available. ~~The following are the peer groups based on the number of cash registers in the store:~~

- ~~Peer Group I — zero to two cash registers;~~
- ~~Peer Group II — three to five cash registers; and~~
- ~~Peer Group III — six or more cash registers.~~

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group ~~in accordance with the dollar thresholds of Item (2) of this Rule.~~ based on redemption.

- (2) Authorized vendors for which annual WIC supplemental food sales are available, ~~excluding~~ including chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer ~~groups~~ groups, as follows, ~~except as provided in Item (9) of this Rule:~~

~~Peer Group I — two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;~~

- ~~Peer Group II — greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;~~
- ~~Peer Group III — greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and~~
- ~~Peer Group IV — greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store.~~

as set forth in 7 CFR 246.12(g)(4) and 7 CFR 246.12(h)(3), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

- ~~(3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and free standing pharmacies, including free standing pharmacy chain stores and free standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:~~

- ~~Peer Group IV — chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), and military commissaries; and~~
- ~~Peer Group V — free standing pharmacies, including free standing pharmacy chain stores and free standing pharmacies participating under a WIC corporate agreement.~~

- ~~(4)~~(3) "Annual WIC supplemental food sales" is the dollar amount an authorized vendor redeems in WIC ~~food instruments and cash value vouchers~~ food benefits within a 12-month period.

- ~~(5)~~(4) In determining a vendor's peer group designation based on annual WIC supplemental food sales sales, ~~under Item (2) of this Rule~~, the state agency shall look at the most recent 12-month period of redemption data.
- ~~(6)~~(5) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.
- ~~(7)~~(6) If the state agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.
- ~~(8)~~(7) If at any time during a vendor's authorization the state agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.
- ~~(9)~~(8) A vendor applicant previously authorized in a peer group ~~under Item (2) of this Rule~~ based on annual WIC supplemental food sales that is being reauthorized following the nonrenewal or termination of its agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously ~~in in, under Item (2) of this Rule~~, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group ~~in accordance with Item (1) of this Rule~~ using criteria for new vendor applicants as set forth in Subparagraph (1) of this Rule.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
 Eff. July 1, 1981;  
 Amended Eff. October 1, 2019; August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990;  
 Temporary Amendment Eff. June 23, 2000; May 17, 2000;  
 Amended Eff. April 1, 2001;  
 Temporary Amendment Eff. September 1, 2002; July 1, 2002;  
 Amended Eff. November 1, 2005; August 1, 2004;  
 Temporary Amendment Eff. July 1, 2006;  
 Amended Eff. February 1, 2013; October 1, 2009; February 1, 2008; April 1, 2007;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0707 is proposed for amendment as follows:

**10A NCAC 43D .0707 VENDOR APPLICANTS**

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall complete a WIC Vendor Application, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible nutritionals directly from:
  - (a) The sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
  - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
  - (c) A source on another state's list of approved infant formula sources as verified by that state's agency.A vendor applicant shall make available to the State or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals. Receipts and invoices shall satisfy the requirements of Sub-items (32)(a) through (32)(c) of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in this Item.
- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:
  - (a) The most recent ~~WIC Price Lists~~ prices submitted through the EBT system by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be ~~the 97th percentile of two standard deviations above the average~~ current highest shelf prices for price of each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year. ~~For two of its price~~

~~assessments, the State agency shall use the WIC Price Lists which shall be submitted by all vendors by April 1 and October 1 each year in accordance with Item (34) of Rule .0708 of this Section. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.~~

- (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the State agency for that applicant's peer group, the agency shall send the applicant written notice. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the agency shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.
- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (25) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.
- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name under which the business is registered or in the name under which it does business.
- (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.

- (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who ~~handles, transacts, deposits, or stores WIC food instruments or cash value vouchers~~ handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
- (14) WIC vendor authorization shall be denied if in the last six years 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, 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, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
- (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
  - (c) a plea of no contest, nolo contendere, or the equivalent; or
  - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
- (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
- (a) a SNAP vendor that is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
  - (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a third party processor certified according to criteria established by the State WIC Program's EBT processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the State agency. If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786;  
Eff. February 1, 2013;  
Amended Eff. October 1, 2019; October 1, 2017;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

10A NCAC 43D .0708 is proposed for amendment as follows:

#### **10A NCAC 43D .0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC Program food ~~instruments and cash value vouchers~~ benefits in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;
- (2) Accept WIC Program food ~~instruments and cash value vouchers~~ benefits in exchange for WIC supplemental foods. Supplemental foods are those foods that satisfy the requirements of 10A NCAC 43D .0501;
- (3) ~~Provide only the authorized supplemental foods listed on the printed food instrument, or authorized fruits and vegetables with a printed cash value voucher. Determine the charges to the WIC Program and complete the "Pay Exactly" box on the printed food instrument, or printed cash value voucher, as set forth in Item (4) of this Rule, prior to obtaining the signature of the WIC customer. When transacting EBT, the vendor shall provide~~ Provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on ~~the printed food instrument or the full dollar value of the printed cash value voucher,~~ his or her food benefit balance. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of ~~a cash value voucher~~ his or her cash-value benefit if the WIC customer pays the difference, as set forth in 7 C.F.R. 246.12(h)(3)(xi);
- (4) ~~Enter in the "Pay Exactly" box on the printed food instrument or printed cash value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food provided and shall not charge or collect sales taxes for the supplemental food provided. Vendors that utilize EBT shall only transmit~~ Transmit only the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities, and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT system and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the State WIC Program only up to the maximum price set by the State agency for each supplemental food within that vendor's peer group. The maximum price for each supplemental food shall be based on the maximum prices set by the State agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707 of this Section, ~~listed on the food instrument.~~ Section. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;
- (7) Accept payment from the State WIC Program only up to the full dollar value of the cash-value ~~voucher~~ benefit;
- (8) Not charge the State WIC Program more than the maximum price set by the State agency under Item (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible nutritionals purchased only from the sources specified in Item (3) of Rule .0707 of this Section. Providing infant formula, exempt infant

formula, or WIC eligible nutritionals that has not been purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in termination of the WIC Vendor Agreement;

- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- ~~(12)~~ Accept WIC Program food instruments and cash value vouchers only on or between the "First Date to Spend" and the "Last Date to Spend" dates;
- ~~(13)~~ Prior to obtaining the WIC customer's signature on the printed food instrument and cash value voucher, enter in the "Date Transacted" box the month, day, and year the WIC food instrument or cash value voucher is exchanged for supplemental food;
- ~~(14)~~(12) Ensure that the WIC customer signs the food instrument or cash value voucher in the presence of the cashier. Vendors that utilize EBT shall ensure Ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- ~~(15)~~(13) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;
- ~~(16)~~ Refuse to transact any food instrument or cash value voucher that has been altered;
- ~~(17)~~(14) Not transact food instruments or cash value vouchers benefits in whole or in part for cash, credit, unauthorized foods, or non-food items;
- ~~(18)~~(15) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash value vouchers, benefits, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- ~~(19)~~ Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the printed food instrument or cash value voucher to enable the vendor number to be read during the WIC Program's editing process;
- ~~(20)~~ Imprint the vendor's bank deposit stamp or the vendor's name, address, and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement on the printed food instrument or cash value voucher;
- ~~(21)~~ Deposit WIC program printed food instruments and cash value vouchers in the vendor's bank. All North Carolina WIC program printed food instruments and cash value vouchers must be deposited in the vendor's bank within 60 days of the "First Date to Spend" on the printed food instrument or cash value voucher;
- ~~(22)~~ Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;
- ~~(23)~~ Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;

~~(24)(16)~~ Notify the local WIC agency of misuse (attempted or actual) of WIC Program food ~~instruments or cash value vouchers; benefits;~~

~~(25)(17)~~ Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. Free-standing pharmacies are not required to maintain a minimum inventory of supplemental foods. The following items and sizes constitute the minimum inventory of supplemental foods for ~~vendors in Peer Groups I through III of Item (1), vendors in Vendor Peer Groups I through IV of Item (2), and vendors in Vendor Peer Group IV of Item (3) of Rule .0706 of this Section;~~vendors:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	2 gallons
	-and- Skim/lowfat fluid: gallon	6 gallons
Cheese	1 pound package	2 packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: 1 dozen size carton	2 dozen
Juices	Single strength: 48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Tuna	5 to 6 ounce can	6 cans
Bread/Tortillas	16 ounce loaf of bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package
Rice	14 to 16 ounce package	2 packages
Infant Cereal	8 ounce box	6 boxes
Infant Fruits and Vegetables	3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable	64 ounces
Infant Formula	milk-based powder; 11.0 to 14.0 ounce -and-	8 cans
	soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	4 cans

Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	10 cans total

All ~~vendors~~ vendors, except free-standing pharmacies, in ~~Vendor Peer Groups I through III of Item (1), Peer Groups I through IV of Item (2), and Vendor Peer Groups IV and V of Item (3) of Rule .0706 of this Section~~ shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the State or local WIC ~~agency~~; agency. Free-standing pharmacies shall only supply exempt infant formula or WIC-eligible nutritionals within 48 hours of request;

~~(26)~~(18) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;

~~(27)~~(19) Permit the purchase of supplemental food without requiring other purchases;

~~(28)~~(20) Comply with the following EBT provisions:

- (a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program or a third-party processor that has been certified according to criteria established by the EBT Processor selected by the State WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within 24 hours of any periods of time during which they do not maintain an Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor;
- (b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program State Rules, federal regulations, and statutes;
- (c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);
- (d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;
- (e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed;
- (f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements;

- (g) Require an owner, manager or other authorized store representative to complete training on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are fully trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;
  - (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendor's staff does not approve the WIC transactions for WIC customers under any circumstances;
  - (i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt, and updated balance of the WIC customer's account;
  - (j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the types, sizes and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;
  - (k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;
  - (l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.
- ~~(29)~~(21) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
- ~~(30)~~(22) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- ~~(31)~~(23) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- ~~(32)~~(24) Allow monitoring and inspection by State and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and State, and federal WIC Program rules, regulations, and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710 of this Section, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
- (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;

- (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
  - (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- ~~(33)~~(25) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents or other verifiable documentation;
- ~~(34)~~(26) Submit a current completed WIC Price List when signing this agreement, and ~~by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List~~ within two weeks of any written request by the State or local WIC agency;
- ~~(35)~~(27) Reimburse the State agency in full or agree to a repayment schedule with the State agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the ~~vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp.~~ vendor. Failure to reimburse the State agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. ~~The State agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the State agency or payment~~ Payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);
- ~~(36)~~(28) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food ~~instruments or cash value vouchers~~ benefits not paid or partially paid by the State agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food ~~instruments or cash value vouchers~~ benefits;
- ~~(37)~~(29) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food ~~instruments or cash value vouchers~~ benefits;
- ~~(38)~~(30) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- ~~(39)~~ ~~Return the authorized WIC vendor stamp to the local WIC agency upon termination of the WIC Vendor Agreement or disqualification from the WIC Program;~~
- ~~(40)~~(31) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(g)(3)(iii), offered to other customers or requiring separate WIC lines;

~~(41)~~(32) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria ~~of Rule .0706 of this Section~~ set forth in 7 CFR 246.12(g)(4), 7 CFR 246.12(h)(3), and the vendor selection criteria of Rule .0707 of this Section; and

~~(42)~~(33) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), (15), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. March 1, 2013;  
Amended Eff. October 1, 2019; October 1, 2017;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;*

10A NCAC 43D .0710 is proposed for amendment as follows:

**10A NCAC 43D .0710 VENDOR VIOLATIONS AND SANCTIONS**

(a) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv)(A), shall be established as follows:

- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item (32) of Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
- (2) two occurrences of vendor overcharging within a 12-month period;
- (3) two occurrences of receiving, transacting or redeeming food ~~instruments or cash value vouchers~~ benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
- (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~ benefits within a 12-month period; or
- (6) three occurrences of providing unauthorized food items in exchange for food ~~instruments or cash value vouchers~~, benefits, including charging for supplemental food provided in excess of those listed on the food ~~instrument~~ benefit balance within a 12-month period.

(b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the number of occurrences and sanctions set forth below:

- (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in Item (40) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (2) One year for three occurrences within a 12-month period of failure to properly transact ~~a WIC food instrument or cash value voucher by not completing the date and purchase price on the WIC food instrument or cash value voucher before obtaining the WIC customer's signature, by not obtaining the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument or cash value voucher prior to the "Issue Date" or after the "Participant Must Use By" dates on the food instrument or cash value voucher.~~ benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance. Except as provided in 7 C.F.R.

246.12(1)(3)(iv), each ~~improperly transacted food instrument or cash value voucher~~ improper transaction is a separate occurrence;

- (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact ~~a WIC food instrument or cash value voucher~~ benefits. Except as provided in 7 C.F.R. 246.12(1)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring a cash purchase is a separate occurrence;
- (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for a food ~~instrument or cash value voucher~~ benefits or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food ~~instrument or cash value voucher~~ benefits. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;
- (5) 180 days for three occurrences within a 12-month period of failure to provide program-related records referenced in Item (32) of Rule .0708 when requested by WIC staff, except as provided in Item (32) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;
- (6) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item (33) of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;
- (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item (25) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;
- (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;
- (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item (34) of Rule .0708. Each written request by the state or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;
- (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence; ~~and~~
- (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(1)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate ~~occurrence~~ occurrence;
- (13) 180 days for three occurrences of failure to make EBT point of sale equipment accessible to WIC customers to ensure that EBT transactions are completed in accordance with Rule .0708; and
- (14) 90 days for three occurrences within a 12-month period of failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Subparagraph (20)(c) of Rule .0708;

If during the course of a single investigation the state agency determines that a vendor has committed multiple state-established violations, the disqualification periods shall be cumulative, provided that the total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (c) of this Rule.

(c) For investigations pursuant to this Section, a single investigation is:

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
  - (A) buying or selling food ~~instruments or cash value vouchers~~ benefits for cash (trafficking);
  - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~; benefits;
  - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food ~~instruments or cash value vouchers~~; benefits;
  - (D) vendor overcharging;
  - (E) receiving, transacting, or redeeming food ~~instruments or cash value vouchers~~ benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
  - (F) charging for supplemental food not received by the WIC customer;
  - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~; benefits;
  - (H) providing unauthorized food items in exchange for food ~~instruments or cash value vouchers~~; benefits, including charging for supplemental food provided in excess of those listed on the food ~~instrument~~; benefit balance;
  - (I) failure to properly transact ~~a WIC food instrument or cash value voucher~~; benefits;
  - (J) requiring a cash purchase to transact ~~a WIC food instrument or cash value voucher~~ benefits; or
  - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
  - (A) failure to stock the minimum inventory specified in Item (25) of Rule .0708;
  - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
  - (C) failure to allow monitoring of a store by WIC staff;
  - (D) failure to provide program-related records referenced in Item (32) of Rule .0708 when requested by WIC staff;
  - (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; ~~or~~
  - (F) unauthorized use of the "WIC" acronym or the ~~logo~~; logo;
  - (G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
  - (H) failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Subparagraph (20)(c) of Rule .0708.

- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
  - (B) failure to submit a WIC Price List as required by Item (34) of Rule .0708;
  - (C) discrimination on the basis of WIC participation as referenced in Item (40) of Rule .0708.
  - (D) contacting a WIC customer in an attempt to recoup funds for food ~~instruments or cash value vouchers~~ benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food ~~instruments or cash value vouchers~~ benefits;
  - (E) nonpayment of a claim assessed by the state agency;
  - (F) providing false, erroneous, or misleading information to the state or local WIC agency;
  - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item (32) of Rule .0708 for an inventory audit;
  - (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or
  - (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.

(d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or (f)(3)(C) of this Rule shall show adequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The state agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (b) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (f)(3) of this Paragraph.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which show lack of hardship, are found to exist:

- (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
- (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
- (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants ~~pick up their food instruments or cash value vouchers~~ are certified to receive WIC food benefits.

(4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions. These provisions also apply to a vendor that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).

(g) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(h) The provisions of 42 USC 1786 (f)(26) and 7 CFR 246.12(l)(3) regarding vendor notification of violations are incorporated by reference with all subsequent amendments and editions.

(i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Item (35) of Rule .0708.

(j) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.

~~(k) Notwithstanding other provisions of this Rule and Rules .0707 and .0708, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments or cash value vouchers accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash value vouchers. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash value vouchers accepted thereafter.~~

~~(k)~~ Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

*Eff. February 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;*

*Amended Eff. October 1, 2019; January 1, 2018.*

10A NCAC 43D .0908 is proposed for amendment as follows:

**10A NCAC 43D .0908 NOTICE OF HEARING**

(a) The agency official shall notify the ~~aggrieved party, appellant, or his or her representative,~~ the local WIC agency and the Nutrition Services Branch in writing that a request for a hearing has been received. ~~received and shall appoint a time, date, and place for the hearing within 10 days of receipt of the request.~~

(b) Notice of the date, time, and place of the hearing shall be given to all parties at least 10 days in advance of the hearing.

(c) The notice to the aggrieved party shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the date, time-time, and place for the hearing is satisfactory. If a response is not received at least 2472 hours prior to the time proposed for the hearing, it shall be assumed that the date, time-time, and place are satisfactory.

(d) The notice shall contain:

- (1) a simplified explanation of the procedure for the hearing;
- (2) a statement of the date, hour, place and nature of the hearing;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual allegations.

(e) If the ~~aggrieved party appellant, or his or her representative,~~ indicates that ~~he she~~ he or she desires another time and date, the agency official shall set a new time and date for the hearing. The hearing shall be accessible to the ~~aggrieved party appellant, or his or her representative.~~ appellant, appellant, or his or her representative.

(f) The hearing shall be held within ~~three weeks~~ 21 days from the date of ~~the receipt of the agency official receives~~ the request.

*History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2019; November 1, 1990;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. July 1, 2004;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

**ROY COOPER** • Governor  
**MANDY COHEN, MD, MPH** • Secretary  
**MARK T. BENTON** • Assistant Secretary for Public Health  
Division of Public Health

**MEMORANDUM**

**TO:** Office of State Budget and Management  
**FROM:** Virginia Niehaus, CPH Rulemaking Coordinator  
**DATE:** July 23, 2019  
**RE:** Federal Certification for NC Commission for Public Health (CPH)  
Rule Amendments in Subchapter 43D – WIC/Nutrition

**Rulemaking Coordinator's Certificate**

As Required by GS 150B-19.1(g)  
For Proposed Amendments to Rules Adopted to Implement a Federal Regulation  
or Upon Which Receipt of Federal Funds is Conditioned

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10A NCAC 43D .0202, .0408, .0501, .0701, .0702, .0703, .0705, .0706, .0707, .0708, .0710, and .0908 are proposed for amendment in compliance with federal law governing the Women, Infants, and Children (WIC) Program. The receipt of federal funds is conditioned on compliance with these federal requirements.

Specifically, regulation by the NC Commission for Public Health of WIC requirements for issuance and redemption of food benefits, vendor sanctions, coverage of supplemental foods, the vendor peer group structure, and fair hearings are subject to the provisions of 42 U.S.C. 1786 (Special Supplemental Nutrition Program for Women, Infants, and Children) and 7 C.F.R. Part 246 (Special Supplemental Nutrition Program for Women, Infants, and Children). The proposed rule amendments are necessary to comply with and implement this federal statute and regulations.

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH**

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