

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D, All Rules Submitted

DEADLINE FOR RECEIPT: Friday, September 8, 2017

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In the Submission for Permanent Filing Form, please make the following changes:

In Box 2, the citation will be to 43D, not 41D.

In Box 6, please properly spell "June"

In Box 8, when you published the Rules in the Register, you stated that these rules affected state and local funds, produced a substantive economic impact, and that the note was approved by OSBM. I understand that perhaps not every rule had the same impact, but some of them did require a fiscal note. Please properly complete Box 8 for each Rule.

In Box 11, please sign the form.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 24, 2017

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0202

DEADLINE FOR RECEIPT: Friday, September 8, 2017

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, you have changed existing language without showing the change. For example, in (a)(6), line 21, the "that" was initially a "which" You need to show all changes to the existing language. So, here, you will state "~~which~~that"

I also noted this issue of changing existing language without showing it in (a)(1), lines 7-8, several places in (a)(6), (a)(9), line 30, (a)(10) on lines 34-35, and (a)(21), Page 2, line 15. Please note, it is fine if you want to remove the existing language, but you need to show that you did it.

In (a)(1), line 7, do you need to retain "potential" before "WIC vendor applicant"? I ask because in (a)(24), you define the term "vendor applicant" and so it seems unnecessary here.

In (a)(3), are the contents of this agreement governed by 7 CFR 4246.12(h)(3)?

In (a)(5) and elsewhere the term is used, I think "State" in "State agency" should be capitalized, since "State" stands for NC here. Can you make this change without disrupting the use of the other rules that use the term?

In (a)(5), please be consistent with how you define other terms in the Rule. "Electronic Benefit Transfer (EBT) Processor" means..."

In (a)(6), you have added and deleted a significant amount of language without showing it as a change. Please use what is currently in the Code and show the changes to lines 21, 23-24, and 25.

On line 22, what does "improperly" mean? Does your regulated public know?

On line 24, please state "Rule .0410 of this Subchapter."

When you make the change to line 25, please insert a comma after 150B.

Beginning with current (a)(16) on Page 2, line 6, the numbering is incorrect. On line 6, "Redemption" should be (a)(15), and the remaining definitions renumbered accordingly. It

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Commission Counsel

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appears that the numbering was published correctly, so you do not need to highlight these as changes.

Also on line 6, please strike (11) and remove the underlining from it. So, “~~(11)~~ (15)”

For (a)(21), line 15, please remove the extra indent and make sure this is properly numbered. In the current rule, it is (a)(16), so show the change in numbering.

In (a)(23), to be clear – the WIC approval and authorization is pursuant to the rules of this Subchapter and the Federal Regulations?

In (a)(25), do you need to retain “intentionally or unintentionally” here?

In (a)(27), line 29, please insert a comma after “parent”

Also on line 29, a proxy for whom? The participant, parent, or caretaker? And please insert a comma after “proxy”

In (b), Page 2, line 34, are you intending to apply to all of 7 CFR Part 246, or just 7 CFR 246.2?

On line 35, please insert the zip code.

In (b), Page 3, insert a comma after “23302”

line 2, consider stating “or access online at”

In (b), Page 3, line 2, it appears the url is now: <https://www.fns.usda.gov/wic/wic-laws-and-regulations>

In the History Note, did you intend to cite to all of 7 CFR 246?

Also in the History Note, when you published the Rule, you proposed to add several more federal citations. Do you not want to add those now?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 43D .0202 is amended as published in 31:23 NCR 2325-2333 as follows:

2
3 **10A NCAC 43D .0202 DEFINITIONS**

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

6 (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through
7 which a local WIC agency, potential local WIC agency, authorized WIC ~~vendor~~ vendor, or potential
8 WIC vendor applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii),
9 and (a)(3)(i).

10 (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier,
11 or chief fiscal officer.

12 (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a
13 currently effective North Carolina WIC Vendor Agreement.

14 (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative
15 association, or other business entity that has 20 or more stores owned or operated by the business
16 entity.

17 (5) Electronic Benefit Transfer (EBT) Processor: An entity contracted by a government agency for the
18 implementation, maintenance, and operation of the state WIC agency's WIC EBT system that acts
19 as the agent of the state WIC agency to process and settle EBT transactions.

20 ~~(5)(6)~~ A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter
21 through which any individual may appeal a state or local agency action that results in a claim against
22 the individual for repayment of the cash value of improperly issued benefits or results in the
23 individual's denial of participation or disqualification from the WIC Program as set forth in Rule
24 .0410 of this Section. This process must be complied with prior to requesting a contested case
25 hearing in accordance with G.S. 150B as set forth in 7 CFR 246.9.

26 ~~(6)(7)~~ "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

27 ~~(7)(8)~~ "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-
28 standing pharmacy includes free-standing pharmacies that are chain stores and free-standing
29 pharmacies participating under a WIC corporate agreement.

30 ~~(8)(9)~~ The "local WIC agency" is the local agency that enters into an agreement with the Division of Public
31 Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.

32 ~~(9)(10)~~ A "local WIC program plan" is a written compilation of information on the local WIC agency policies
33 concerning program operation, including administration, nutrition education, personnel functions,
34 costs and other information prepared by the local WIC agency and submitted to the Nutrition
35 Services Branch.

36 (11) A "personal identification number" (PIN) is a numeric password selected and used by a WIC
37 participant to authenticate the participant to the EBT system.

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

3 ~~(10)~~(13) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.

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

6 ~~(11)~~(16) "Redemption" is the process by which a vendor deposits for payment a food instrument or cash-
7 value voucher transacted at that vendor and the state agency (or its financial agent) makes payment
8 to the vendor for the food instrument or cash-value voucher.

9 ~~(12)~~(17) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.

10 ~~(13)~~(18) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods
11 that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.

12 ~~(14)~~(19) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section,
13 Division of Public Health, North Carolina Department of Health and Human Services.

14 ~~(15)~~(20) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.

15 (21) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of
16 10A NCAC 43D .0501.

17 ~~(16)~~(21) "Support costs" are clinic costs, administrative costs, and nutrition education costs.

18 ~~(17)~~(22) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value
19 voucher to a vendor in exchange for authorized supplemental foods.

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

22 ~~(19)~~(24) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor
23 but is not yet authorized.

24 ~~(20)~~(25) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food
25 provided to a WIC customer than to a non-WIC customer or charging more than the current shelf
26 price for supplemental food provided to a WIC customer.

27 ~~(21)~~(26) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has
28 20 or more stores authorized as WIC vendors under the Agreement.

29 ~~(22)~~(27) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy
30 or compliance investigator who tenders a food instrument or a cash-value voucher to a vendor in
31 exchange for WIC supplemental food.

32 ~~(23)~~(28) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and
33 Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

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

1 Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730
2 or access <http://www.fns.usda.gov/wic/lawsandregulations/WICRegulations-7CFR246.pdf>.

3

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

5 *Eff. July 1, 1981;*

6 *Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;*

7 *Temporary Amendment Eff. May 17, 2000;*

8 *Amended Eff. April 1, 2001;*

9 *Temporary Amendment Eff. July 1, 2002;*

10 *Amended Eff. August 1, 2004;*

11 *Temporary Amendment Eff. July 1, 2006;*

12 *Amended Eff. October 1, 2017; February 1, 2013; October 1, 2009; April 1, 2007.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0203

DEADLINE FOR RECEIPT: Friday, September 8, 2017

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Consider incorporating the regulations in (a)(2) here instead, using the language in Rule .0202(b) here. If you did that, you can delete all incorporation by reference in language in Rule .0202.

In (b), what are "regular business hours"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 24, 2017

1 10A NCAC 43D .0203 is amended as published in 31:23 NCR 2325-2333 as follows:

2

3 **10A NCAC 43D .0203 REFERENCES**

4 (a) The state agency shall administer the WIC program in accordance with:

5 (1) 42 U.S.C. 1786; and

6 (2) 7 C.F.R. 246.1 through 246.28, United States Department of Agriculture, Food and Nutrition
7 Service, Special Supplemental Nutrition Program for Women, Infants and Children.

8 (b) The documents listed in Paragraph (a) of this Rule are available for inspection at the Division of Public Health,
9 Women's and Children's Section, Nutrition Services Branch at 5601 Six Forks Road, Raleigh, NC 27609 ~~the state~~
10 ~~agency~~ during regular business hours.

11

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

13 *Eff. July 1, 1981;*

14 *Amended Eff. , October 1, 2017, October 1, 2009; April 1, 1984; April 1, 1982.*

15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0703

DEADLINE FOR RECEIPT: Friday, September 8, 2017

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In the name of the Rule on line 3, please insert the Subchapter. Therefore, please state "10A NCAC 43D .0703"

In the History Note, please replace the period after "July 1" in "July 1. 1989" with a comma.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 24, 2017

1 10A NCAC 43D .0703 is amended as published in 31:23 NCR 2325-2333 as follows:

2

3 **10A NCAC .0703 USE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

4 (a) Participants may transact food instruments and cash-value vouchers on any day on or between the ~~“date of issue”~~
5 “First Date to Spend” and ~~“participant must use by date”~~ “Last Date to Spend” printed on the food instrument or cash-
6 value voucher. ~~The “participant must use by date” “shall be 30 days from the “date of issue”~~

7 (b) ~~North Carolina WIC program food~~ Food instruments and cash-value vouchers shall be transacted only at
8 authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC program rules,
9 regulations, and statutes. ~~Vendors are responsible for food instruments and cash value vouchers not properly~~
10 ~~transacted.~~ Authorized WIC vendors shall not be reimbursed for food instruments and cash-value vouchers that are
11 not properly transacted as set forth in Rule .0708 of this Section. Stores that are not authorized WIC vendors shall not
12 be reimbursed for food instruments and cash-value vouchers transacted at their store. Neither an agency of the United
13 States government, the State of North Carolina, the local WIC agency nor a past or present WIC participant, parent or
14 caretaker of an infant or child participant, or proxy is under any obligation to pay for food instruments or cash value
15 vouchers accepted by a store that was not an authorized WIC vendor on the date of transaction of the food instrument
16 or cash value voucher.

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

20

21 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*
22 *Eff. July 1, 1981;*
23 *Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989;*
24 *Temporary Amendment Eff. July 1, 2002;*
25 *Amended Eff. October 1, 2017, October 1, 2009; August 1, 2004.*

26

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0707

DEADLINE FOR RECEIPT: Friday, September 8, 2017

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Again, consider capitalizing "State agency" wherever it is used in this Rule, unless it will create confusion with the other Rules.

In Item (3), you replaced "medical food" with "nutritional." Do you want to do that on lines 25, 29, and 30?

On line 32, should "WIC-eligible" be hyphenated to be consistent with the usage elsewhere in the Item?

In Sub-Item (3)(b), line 20, I take it that your regulated public knows what "directly" means in this context?

On line 26, replace "must" with "shall"

Also on line 26, I believe the cross-reference is now 32

On line 30, consider state "in this Item or for providing infant formula..."

In Sub-Item (4)(a), Page 2, line 1, what is a "peer group"? Is it the term as used in Rule .0706 of this Section? And on line 4, you refer to a "vendor peer group" - is this the same thing? If so, shouldn't they be called the same thing both places?

Line 6, replace "must" with "that"

On line 7, I believe the correct cross-reference is now 34.

On line 8, state "Rule .0708 of this Section." to be consistent with Item 3, line 27.

Also on line 8, who will request the list? The state agency?

In Sub-Item (4)(b), is the "state WIC program" the same as the "state agency"?

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Commission Counsel
Date submitted to agency: August 24, 2017

Should the sentence on lines 20 – 21 use the same language as the end of the sentence in Item (5), lines 26-27?

In Item (5), line 23, the cross-reference is now 25.

On line 24, you are deleting language without showing it. Please properly delete “.0708.” and replace it with “.0708 of this Section.”

In Item (9), line 37, replace “which” with “that”

In Item (11), Page 3, line 4, replace “in” before “which the business” with “under”

In Item (13), do you need the last sentence on line 16?

In Item (14), line 22, please show the deletion of existing language “means and includes” with “means:”

In Sub-Item (14)(b), what is “duly constituted”? Does your regulated public know?

In Sub-Item (14)(d), can’t you end the sentence after “conviction” on line 31? What does the extra language do?

Delete the blank line space on line 33.

In Sub-Item (16)(a), Page 4, line 4, replace “which” with “that”

In Sub-Item (16)(b), line 8, delete “which”

On line 15, show you changed the existing language of (15)(a) to (16)(a).

In Item (19), is the “state WIC Program’s EBT processor” different from the state agency?

On line 28, how does this certification occur?

Line 29, what are “applicable” requirements?

So that I’m clear – since what was formerly Item 19 is not really a criterion, are you moving it to the left margin? If so, you can simply state ~~(19)~~

In the History Note, do you intend to cite to all of 7 CFR 246, and then individual sections of 7 CFR 246.12? Do you need all of them?

Also in the History Note, state:

Eff. February 1, 2013;
Amended Eff. October 1, 2017.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 24, 2017

1 10A NCAC 43D .0707 is amended as published in 31:23 NCR 2325-2333 as follows:

2

3 **10A NCAC 43D .0707 VENDOR APPLICANTS**

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

5 (1) A vendor applicant shall ~~accurately~~ complete a WIC Vendor Application, a WIC Price ~~List List~~, as
6 set forth in Item (4) of this Rule, and a WIC Vendor ~~Agreement~~, Agreement as set forth in 7 C.F.R.
7 § 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC
8 supplemental food listed on the WIC Price ~~List List~~, as set forth in Item (4) of this Rule.

9 (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit
10 all completed forms to the local WIC agency, except that a corporate entity operating under a WIC
11 corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists
12 to the state agency and a separate WIC Vendor Application for each store to the local WIC agency.
13 A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List
14 for those stores that have the same prices for WIC supplemental foods in each store, rather than
15 submitting a separate WIC Price List for each store.

16 (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible
17 ~~medical food~~ nutritionals directly from:

- 18 (a) the sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference
19 with all subsequent amendments and editions;
- 20 (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of
21 this Item; or
- 22 (c) A source on another state's list of approved infant formula sources as verified by that state's
23 agency.

24 A vendor applicant shall make available to the state or local WIC agency invoices or receipts
25 documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical
26 foods. Receipts and invoices must satisfy the requirements of Sub-items (30)(a) through (30)(c) of
27 Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the
28 vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant
29 formula, exempt infant formula, or WIC-eligible medical food from the sources specified in this
30 Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a
31 previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula,
32 or WIC eligible medical food to WIC customers that was not purchased from the sources specified
33 in this Item.

34 (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC
35 Price List ~~must~~ shall not exceed the maximum price set by the state agency for each supplemental
36 food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item.
37 The maximum price for each supplemental food shall be established as follows:

- 1 (a) The most recent WIC Price Lists submitted by authorized vendors within the same peer
2 group shall be used to determine the maximum price for each supplemental food. The
3 maximum price shall be the 97th percentile of the current highest shelf prices for each
4 supplemental food within a vendor peer group. The state agency shall reassess the
5 maximum price set for each supplemental food at least four times a year. For two of its
6 price assessments, the state agency shall use the WIC Price Lists which must be submitted
7 by all vendors by April 1 and October 1 each year in accordance with Item (32) of Rule
8 .0708. The other two price assessments shall be based on WIC Price Lists requested from
9 a sample of vendors within each peer group in January and July of each year.
- 10 (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s)
11 set by the state agency for that applicant's peer group, the agency shall send the applicant
12 written notice. ~~applicant shall be notified in writing.~~ Within 30 days of the date of the
13 written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC
14 Program for those foods that exceeded the maximum price(s). If none of the vendor
15 applicant's resubmitted prices exceed the maximum prices set by the state agency, the
16 vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If
17 any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the
18 state agency, or the vendor applicant does not resubmit prices within 30 days of the date of
19 written notice, ~~the application shall be denied in writing.~~ the agency shall send the applicant
20 a written notice of denial. The vendor applicant ~~must~~ shall wait 90 days from the date of
21 receipt of the written denial to reapply for authorization.
- 22 (5) ~~At~~ A vendor applicant shall pass ~~a~~ an announced monitoring review by the local WIC agency to
23 determine whether the store has minimum inventory of supplemental foods as specified in Item (24)
24 of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second
25 opportunity for an unannounced monitoring review within 14 days. If the applicant fails both
26 reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date
27 of the second monitoring review before submitting a new application.
- 28 (6) A vendor applicant shall either attend, or cause a manager or ~~other~~ another authorized store
29 representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor
30 authorization and ensure that the vendor applicant's employees receive instruction in WIC program
31 procedures and requirements.
- 32 (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have
33 the prices posted on the shelf or display case at all times.
- 34 (8) The store shall be at a single, fixed location within ~~the State of~~ North Carolina. The store shall be
35 located at the address indicated on the WIC vendor application and shall be the site ~~at which~~ where
36 WIC supplemental foods are selected by the WIC customer.
- 37 (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program which are
38 deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. § 246.12(z)(2)(ii).

1 ~~(9)~~(10) The store shall be open throughout the year for business with the public at least six days a week for
2 at least 40 hours per week between 8:00 a.m. and 11:00 p.m.

3 ~~(10)~~(11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part,
4 in the official name in which the business is registered or in the name under which it does business.

5 ~~(11)~~(12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to
6 become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC
7 agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had
8 a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading
9 information.

10 ~~(12)~~(13) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse,
11 child, or parent who is employed by the state WIC program, or the local WIC program serving the
12 county where in which the vendor applicant conducts business. A vendor applicant shall not have
13 an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value
14 vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC
15 program or the local WIC program serving the county where in which the vendor applicant conducts
16 business. Such situations present a conflict of interest.

17 ~~(13)~~(14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current
18 owners, officers, or managers have been convicted of or had a civil judgment entered against them
19 for any activity indicating a lack of business integrity, including fraud, antitrust violations,
20 embezzlement, theft, forgery, bribery, falsification or destruction of records, making false
21 statements, receiving stolen property, making false claims, and obstruction of ~~justice.~~ justice, as set
22 out in 7 C.F.R § 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" means:
23 ~~includes plea of guilty; a verdict or finding of guilt by a jury, judge, magistrate, or other duly~~
24 ~~constituted, established, adjudicating body, tribunal, or official, either civilian or military; or a plea~~
25 ~~of no contest, nolo contendere, or the equivalent.~~

26 (a) a plea of guilty;

27 (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly
28 constituted, established, adjudicating body, tribunal, or official, either civilian or military;

29 (c) a plea of no contest, nolo contendere, or the equivalent;

30 or;

31 (d) entry of a prayer for judgment continued following a conviction as defined in
32 this Item is the same as a conviction for purposes of this Item.

34 ~~(14)~~(15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental
35 Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for
36 hardship and the disqualification period that otherwise would have been imposed has not expired.

1 ~~(15)~~(16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a
2 separate manager on site for each store, shall not have an owner who holds a financial interest in
3 any of the following:

- 4 (a) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed
5 a civil money penalty for hardship in lieu of disqualification and the time period during
6 which the disqualification would have run, had a penalty not been paid, is continuing; or
7 (b) another WIC vendor ~~that which~~ is disqualified from participation in the WIC Program or
8 which has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1),
9 Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of
10 Paragraphs (a) or (b) of Rule ~~.0710~~, .0710 of this Section and if assessed a penalty, the time
11 during which the disqualification would have run, had a penalty not been assessed, is
12 continuing.

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

19 ~~(16)~~(17) A vendor applicant, excluding free-standing pharmacies, ~~must~~ shall have SNAP authorization for
20 the store as a prerequisite for WIC vendor authorization and ~~must~~ shall provide its SNAP
21 authorization number to the state agency.

22 ~~(17)~~(18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified
23 from participation in the WIC Program and the disqualification period has not expired. A vendor
24 applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s),
25 officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that
26 was assessed a claim by the WIC Program and the claim has not been paid in full.

27 ~~(18)~~(19) A vendor applicant shall enter into contract with the state WIC Program's EBT processor or a third
28 party processor certified by the state WIC Program's EBT processor prior to WIC authorization and
29 comply with all applicable requirements detailed in the EBT or third party processor's Vendor
30 Agreement.

31 ~~(19)~~(20) For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC
32 Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.

33 ~~(19)~~(21) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an
34 administrative appeal as described in Section .0800 of this Subchapter.

35
36 *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.
37 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786;

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2
3

Eff. October 1, 2017, February 1, 2013.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 43D .0708

DEADLINE FOR RECEIPT: Friday, September 8, 2017

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (1), you refer to "Program food instruments" and "cash-value instruments" but in Item (3), it's printed food and cash-value instruments. Should these terms be consistent throughout the Rule?

On line 7, state "and the rules of this Subchapter"

I take it your regulated public knows what "other applicable law" is?

In Item (2), line 11, make sure you properly delete ".0501." and insert ".0501 of this Section."

In Item (4), line 25, when will the vendor enter less than the current shelf prices?

On line 28, insert a comma after "quantities"

End Item (6), line 37, with a semicolon

In Item (9), Page 2, line 6, please state "Rule .0707 of this Section." to be consistent with line 8.

In Item (13), line 18, please remove the comma after "signature"

On line 19, insert a comma after "day"

In Item 18, please remove the strikethrough of "(18)" on line 29.

On lines 32-33, please put "identical authorized supplemental food" in quotes since you are defining it here.

In Item (20) on Page 3, line 1, please insert a comma after "address"

In Item (21), lines 4-5, what is the intent with the underlined and struck language? This is existing language and it seems to be needed for the sentence. If you intend to delete it, please remove the underlining and also properly begin the sentence with a capital letter.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: August 24, 2017

In Item (25), lines 19-20, state “Peer Groups I through III of Item (1), vendors in Peer Groups I through IV of Item (2), and vendors in Peer Group IV of Item (3) of Rule .0706 of this Section.” And please make the same change on Page 4, lines 1-2.

In the Table, Page 4, please do not strike and underline the same language. Also, remove parenthesis around the quantities required of Infant Formula and Fruits.

And please be sure you are showing all changes to existing rules. For example, in Vegetables, the quantify was 6 cans.

On line 4, is the request due a customer need?

In Sub-Item (28)(a), line 9, is the “state WIC program” the same as the state agency?

On line 10, how does this certification occur?

On Page 5, line 1, does this 24 hours exclude holidays or weekends, or is it any 24-hour period? Please note the same question for Sub-Item (28)(k).

Please end Sub-Items (28)(a), (e), and (f) with semicolons to be consistent.

In Sub-Item (28)(b), line 5, what is the difference between “WIC Program rules” “state rules” and “federal regulations”?

In Sub-Item (28)(g), how is this approved?

In Sub-Item (28)(h), line 21, I believe the term is “vendor’s”

In Sub-Item (28)(i), line 25, please insert a comma after “receipt”

And to be clear – is the updated balance the balance of the customer’s account?

In Sub-Item (28)(j), is the “approved” food from the approved product list?

In Item (29), Page 6, how does this notification occur? And will this be in addition to the annual training required by September 30 annually?

In Item (31), what are “vendor violations”? Does your regulated public know?

In Item (32), line 7 please capitalize “State”

On line 9, insert a comma after “regulations”

On line 13, is “pertinent” known to your regulated public?

In Item (33), line 27, please note you have capitalized “State agency” If you cannot do that elsewhere in the Rule, please make this lowercase for consistency.

In Item (35), line 34, please remove the underline from ~~(33)~~

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 24, 2017

Also in Item (35), Page 7, line 1, "Agreement" is not new and should not be underlined.

In Item (38), lines 16 and 18, insert a comma after "Program"

In Item (39), line 21, should this read "WIC Vendor Agreement" to be consistent with the rest of the Rule? (See Item (38))

In Item (41), what does the first sentence mean? Does the authorization have to end before a vendor can reapply?

Please insert a semicolon after "Section" on line 29.

In Item (42), please properly delete "(4)" and insert "(4), and"

To be clear – this Item holds that a failure to comply with only some parts of Rule .0707 will terminate the agreement?

Line 37, simply insert a space between "(17)," and "or" You do not need to show it as change – simply do it.

In the History Note, do you intend to cite to all of 7 CFR 246, and then individual sections of 7 CFR 246.12? Do you need all of them?

Also in the History Note, state:

*Eff. February 1, 2013;
Amended Eff. October 1, 2017.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 24, 2017

1 10A NCAC 43D .0708 is amended as published in 31:23 NCR 2325-2333 as follows:

2
3 **10A NCAC 43D .0708 AUTHORIZED VENDORS**

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

- 5 (1) Process WIC ~~program~~ Program food instruments and cash-value vouchers in accordance with the
6 terms of the Vendor Agreement and ~~state and federal WIC program, regulations and applicable law;~~
7 as set forth 42 U.S.C. § 1786, 7 C.F.R. §§ 246.1-246.28, and 10A NCAC. 43D .0101-0911 and other
8 applicable law;
- 9 (2) Accept WIC ~~program~~ Program food instruments and printed cash-value vouchers in exchange for
10 WIC supplemental foods. Supplemental foods are those foods ~~which~~ that satisfy the requirements
11 of 10A NCAC 43D ~~.0501;~~ 0501 of this Section;
- 12 (3) Provide only the authorized supplemental foods listed on the printed food instrument, or authorized
13 fruits and vegetables with a printed cash-value ~~voucher,~~ voucher. ~~accurately determine~~ Determine
14 the charges to the WIC ~~program~~ Program and complete the "Pay Exactly" box on the printed food
15 ~~instrument~~ instrument, or printed cash-value voucher, as set forth in Item 4 of this Rule, prior to
16 obtaining the signature of the WIC customer. When transacting EBT, the vendor shall provide to
17 the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the
18 authorized product list (APL) after it has been determined that the WIC customer has an available
19 balance on the date of the transaction. The WIC customer is not required to get all of the
20 supplemental foods listed on the printed food instrument or the full dollar value of the printed cash-
21 value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar
22 value of a cash-value voucher if the WIC customer pays the difference, as set forth in 7 C.F.R.
23 246.12(h)(3)(xi);
- 24 (4) Enter in the "Pay Exactly" box on the printed food instrument or printed cash-value voucher only
25 the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental
26 food ~~actually~~ provided and shall not charge or collect sales taxes for the supplemental food ~~provided;~~
27 provided. Vendors that utilize EBT shall only transmit the current shelf price of all WIC-approved
28 supplemental foods purchased in the correct sizes, quantities and the total dollar amount of all WIC-
29 approved supplemental foods purchased in the EBT system;
- 30 (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or
31 no more than the current shelf price, whichever is less;
- 32 (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency
33 for each supplemental food ~~instrument~~ within that vendor's peer group. The maximum price for
34 each supplemental food ~~instrument~~ shall be based on the maximum prices set by the state agency
35 for each supplemental food, as described in Sub-item (4)(a) of Rule .0707, of this Section, listed on
36 the food instrument. A request for payment submitted over the maximum price allowed by the State
37 agency will only be paid up to the maximum price for that supplemental food'

- 1 (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value
2 voucher;
- 3 (8) Not charge the state WIC Program more than the maximum price set by the state agency under Item
4 (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- 5 (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible ~~medical food~~
6 nutritionals purchased only from the sources specified in Item (3) of Rule .0707. Providing infant
7 formula, exempt infant formula, or WIC eligible ~~medical food~~ nutritionals that has not been
8 purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in
9 termination of the WIC Vendor Agreement;
- 10 (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible ~~medical foods~~;
11 nutritionals;
- 12 (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC
13 supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC
14 supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must
15 wait 180 days to reapply for authorization;
- 16 (12) Accept WIC ~~program~~ Program food instruments and cash-value vouchers only on or between the
17 "~~Issue Date~~" "First Date to Spend" and the "~~Participant Must Use By~~" "Last Date to Spend" dates;
- 18 (13) Prior to obtaining the WIC customer's signature, on the printed food instrument and cash-value
19 voucher, enter in the "Date Transacted" box the month, day and year the WIC food instrument or
20 cash-value voucher is exchanged for supplemental food;
- 21 (14) Ensure that the WIC customer signs the food instrument or cash-value voucher in the presence of
22 the ~~cashier~~; cashier. Vendors that utilize EBT shall ensure that a personal identification number
23 (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- 24 ~~(15)~~ Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not
25 enter the PIN for the WIC customer;
- 26 ~~(15)(16)~~ Refuse to transact any food instrument or cash-value voucher that has been altered;
- 27 ~~(16)(17)~~ Not transact food instruments or cash-value vouchers in whole or in part for cash, credit,
28 unauthorized foods, or non-food items;
- 29 ~~(17)(18)~~ Not provide refunds or permit exchanges for authorized supplemental foods obtained with food
30 instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental
31 food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell
32 by," "best if used by," or other date limiting the sale or use of the food. An identical authorized
33 supplemental food means the exact brand, type and size as the original authorized supplemental
34 food obtained and returned by the WIC customer;
- 35 ~~(18)(19)~~ Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here"
36 box on the face of the printed food instrument or cash-value voucher to enable the vendor number
37 to be read during the ~~Program~~ WIC Program's editing process;

- 1 ~~(19)~~(20) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in
2 the "Authorized WIC Vendor Stamp" box in the ~~endorsement~~; endorsement on the printed food
3 instrument or cash-value voucher;
- 4 ~~(20)~~(21) Deposit WIC ~~program~~ printed food instruments and cash-value vouchers in the vendor's bank. ~~All~~
5 North Carolina WIC program food instruments and cash-value vouchers must be deposited in the
6 vendor's bank within 60 days of the "~~Issue Date~~" "First Date to Spend" on the printed food instrument
7 or cash-value voucher;
- 8 ~~(21)~~(22) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner
9 authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC
10 vendor stamp;
- 11 ~~(22)~~(23) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor
12 owner or manager have access to the stamp and report loss of this stamp within two business days
13 to the local WIC agency;
- 14 ~~(23)~~(24) Notify the local WIC agency of misuse (attempted or actual) of WIC ~~program~~ Program food
15 instruments or cash-value vouchers;
- 16 ~~(24)~~(25) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods
17 that are outside of the manufacturer's expiration date do not count towards meeting the minimum
18 inventory requirement. The following items and sizes constitute the minimum inventory of
19 supplemental foods for vendors in Peer Groups I through III of Item (1) of Rule .0706, vendors in
20 Peer Groups I through IV of Item (2) of Rule .0706 and vendors in Peer Group IV of Item (3) of
21 Rule ~~.0706~~; .0706 of this Section;

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	2 gallons
	-and- Skim/lowfat fluid: gallon	4 gallons
Cheese	1 pound package	2 pounds -packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: one 1 dozen size carton	2 dozen
Juices	Single strength: 48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	one 1 pound package	2 packages

Peanut Butter	16 to 18 ounce container	2 containers
<u>Tuna</u>	<u>5 to 6 ounce can</u>	<u>6 cans</u>
<u>Bread/Tortillas</u>	<u>16 ounce loaf of bread or package of tortillas</u>	<u>2 loaves and/or or 2 packages OR 1 loaf and 1 package</u>
<u>Rice</u>	<u>14 to 16 ounce package</u>	<u>2 packages</u>
Infant Cereal	8 ounce box	6 boxes
<u>Infant Fruits and Vegetables</u>	<u>3.5 to 4 ounce container</u> <u>1 type of fruit and 1 type of vegetable</u>	<u>64 ounces</u>
Infant Formula	milk-based concentrate; 12 to 13 ounce -and- soy-based concentrate; 12.0 to 13 ounce -and- milk-based powder; 11.0 to 14.0 ounce -and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	34 cans 17 cans (10) (8) cans (4) cans
Fruits	14 to 16 ounce can: 2 varieties	(6) (10) cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	(10) cans total

- 1 All vendors in Peer Groups I through III of Item (1) of Rule .0706, Peer Groups I through IV of
2 Item (2) of Rule .0706 of this Section and Peer Groups IV and V of Item (3) of Rule .0706 of this
3 Section shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or
4 lactose-free powder within 48 hours of request by the state or local WIC agency;
- 5 ~~(25)(26)~~ Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration
6 date;
- 7 ~~(26)(27)~~ Permit the purchase of supplemental food without requiring other purchases;
- 8 ~~(28)~~ Comply with the following EBT provisions:
- 9 (a) Sign the WIC Vendor Agreement of the EBT Processor selected by the state WIC Program or a
10 third-party processor that has been certified by the EBT Processor selected by the state WIC
11 Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the state WIC
12 Program's EBT Processor or a third-party processor that has been certified by the state WIC
13 Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall

1 notify the WIC Program within 24 hours of any periods of time during which they do not maintain
2 an Agreement with the state WIC Program’s EBT Processor or a third-party processor that has been
3 certified by the state WIC Program’s EBT Processor.

4 (b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor
5 Agreement, WIC Program Rules, and state and federal regulations, and statutes;

6 (c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance
7 with the minimum lane provisions of 7 C.F.R. § 246.12(z)(2);

8 (d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available
9 for WIC redemption processing during all hours the store is open;

10 (e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters
11 or revises the system in any manner that impacts the EBT redemption or claims processing
12 system after initial certification is completed.

13 (f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions
14 within their store(s). The vendor shall ensure that the EBT card readers they obtain meets
15 all EBT and North Carolina EBT Processor requirements.

16 (g) Require an owner, manager or other authorized store representative to complete training
17 approved by the state WIC Program on EBT procedures. The vendor shall ensure that all
18 cashiers and staff are fully trained on EBT requirements, including training in the
19 acceptance and processing of EBT transactions;

20 (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the
21 vendors’ staff does not approve the WIC transactions for WIC customers under any
22 circumstances;

23 (i) Release supplemental food to WIC customers when the transaction has been completed to
24 include receipt of transaction approval by the EBT processing system, printing of the
25 receipt and updated balance;

26 (j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental
27 foods being purchased by the WIC customer in the types, sizes and quantities available on
28 the WIC customer’s EBT account. The vendor shall not scan codes from UPC codebooks
29 or reference sheets;

30 (k) Return any EBT card found on the vendor’s property and unclaimed for 24 hours to the
31 WIC Program. The vendor shall not hold or use a WIC customer’s EBT card and PIN for
32 any purpose whatsoever;

33 (l) Connect the vendor’s in-store system for each outlet covered by the WIC Vendor
34 agreement to the State’s WIC EBT system at least once each 24-hour period to download
35 reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.

- 1 ~~(27)~~(29) Attend, or cause a manager or other authorized store representative to attend, annual vendor training
2 upon notification by the local WIC agency. Failure to attend annual vendor training by September
3 30 of each year shall result in termination of the WIC Vendor Agreement;
- 4 ~~(28)~~(30) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- 5 ~~(29)~~(31) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit
6 vendor violations;
- 7 ~~(30)~~(32) Allow monitoring and inspection by state and local WIC Program staff of the store premises and
8 procedures to ensure compliance with the agreement and state and federal WIC Program rules,
9 regulations and applicable law. This includes providing access to all program-related records,
10 including access to all WIC food instruments and cash-value vouchers at the store; vendor records
11 pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies
12 of purchase orders, and any other proofs of purchase; federal and state corporate and individual
13 income tax and sales and use tax returns and all records pertinent to these returns; and books and
14 records of all financial and business transactions. These records must be retained by the vendor for
15 a period of three years or until any audit pertaining to these records is resolved, whichever is later.
16 Notwithstanding any other provision of this Rule and Rules .0707 and ~~.0710~~, .0710 of this Section,
17 failure or inability to provide these records for an inventory audit or providing false records for an
18 inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1)
19 of Rule ~~.0710~~, .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of
20 purchase for WIC supplemental foods shall include:
- 21 (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor
22 or on the seller's business letterhead;
- 23 (b) the date of purchase and the date the authorized vendor received the WIC supplemental
24 food at the store if different from the date of purchase; and
- 25 (c) a description of each WIC supplemental food item purchased, including brand name, unit
26 size, type or form, and quantity;
- 27 ~~(31)~~(33) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a
28 statement of the total amount of revenue derived from SNAP-eligible food sales and written
29 documentation to support the amount of sales claimed by the vendor, such as sales records, financial
30 statements, reports, tax documents or other verifiable documentation;
- 31 ~~(32)~~(34) Submit a current ~~accurately~~-completed WIC Price List when signing this agreement, and by April 1
32 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of
33 any written request by the state or local WIC agency;
- 34 ~~(33)~~(35) Reimburse the state agency in full or agree to a repayment schedule with the state agency within 30
35 days of written notification of a claim assessed due to a vendor violation that affects payment to the
36 vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. Failure to
37 reimburse the state agency in full or agree to a repayment schedule within 30 days of written

1 notification of a claim shall result in termination of the WIC Vendor Agreement. The state agency
2 shall deny payment or assess a claim in the amount of the full purchase price of each food instrument
3 or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of
4 this Section. Denial of payment by the state agency or payment of a claim by the vendor for a
5 vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject
6 to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);
7 ~~(34)~~(36) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state
8 agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state
9 agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental
10 foods obtained with food instruments or cash-value vouchers;
11 ~~(35)~~(37) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food
12 instruments or cash-value vouchers;
13 ~~(36)~~(38) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in
14 store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership,
15 change in store location of more than three miles from the store's previous location, cessation of
16 operations, withdrawal from the WIC Program or disqualification from the WIC Program shall
17 result in termination of the WIC Vendor Agreement by the state agency. Change of ownership,
18 change in store location, ceasing operations, withdrawal from the WIC Program or nonrenewal of
19 the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
20 ~~(37)~~(39) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the
21 Agreement or disqualification from the WIC Program;
22 ~~(38)~~(40) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same
23 ~~courtesies~~ courtesies, as set forth in 7 C.F.R. §246.12(g)(3)(iii), offered to other customers or
24 requiring separate WIC lines;
25 ~~(39)~~(41) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement.
26 Additionally, a store ~~must~~ shall reapply to become authorized following the expiration of a
27 disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject
28 to the vendor peer group criteria of Rule .0706 of this Section and the vendor selection criteria of
29 Rule ~~.0707~~; .0707 of this Section and
30 ~~(40)~~(42) Comply with all the requirements for vendor applicants of Items (3), (4) ~~and~~ (7) through ~~(46)~~ (17)
31 and (19) of Rule .0707 of this Section throughout the term of authorization. The state agency may
32 reassess a vendor at any time during the vendor's period of authorization to determine compliance
33 with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor
34 that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), ~~(13)~~ (13), ~~or (14)~~, ~~(15)~~ (16), (17) or
35 (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the
36 agreement of or sanction or both any vendor that fails to comply with Items (7), ~~(14)~~, (15), ~~(16)~~,
37 (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.

1

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

3 Eff. October 1, 2017, March 1, 2013.