

1 10A NCAC 43D .0202 is proposed for amendment as follows:

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

4 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, with the following additions and modifications:

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

10 (2) An "authorized store representative" includes an owner, manager, assistant manager, head
11 cashier, 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) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter
18 through which any individual may appeal a state or local agency action which results in a claim
19 against the individual for repayment of the cash value of improperly issued benefits or results in
20 the individual's denial of participation or disqualification from the WIC Program. This process
21 must be complied with prior to requesting a contested case hearing in accordance with G.S.
22 150B.

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

24 (7) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store.
25 Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing
26 pharmacies participating under a WIC corporate agreement.

27 (8) The "local WIC agency" is the local agency which enters into an agreement with the Division of
28 Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and
29 Children.

30 (9) A "local WIC program plan" is a written compilation of information on the local WIC agency
31 policies concerning program operation, including administration, nutrition education, personnel
32 functions, costs and other information prepared by the local WIC agency and submitted to the
33 Nutrition Services Branch in accordance with instructions issued by the Branch.

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

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

- 1 (12) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- 2 (13) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those
- 3 foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
- 4 (13) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section,
- 5 Division of Public Health, Department of Health and Human Services.
- 6 (14) "Store" means the physical building located at a permanent and fixed site that operates as a food
- 7 retailer or free-standing pharmacy.
- 8 (15) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of
- 9 10A NCAC 43D .0501.
- 10 (16) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- 11 (17) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value
- 12 voucher to a vendor in exchange for authorized supplemental foods.
- 13 (18) "Vendor applicant" is a store that has submitted an application to become an authorized WIC
- 14 vendor but is not yet authorized as a WIC vendor. authorized.
- 15 (19) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food
- 16 provided to a WIC customer than to a non-WIC customer or charging more than the current shelf
- 17 price for supplemental food provided to a WIC customer.
- 18 (20) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has
- 19 20 or more stores authorized as WIC vendors under the Agreement.
- 20 (21) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant,
- 21 proxy or compliance investigator who tenders a food instrument or a cash-value voucher to a
- 22 vendor in exchange for WIC supplemental food.
- 23 (22) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and
- 24 Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

25 A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human
26 Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six
27 Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs
28 Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by
29 calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

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

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1 10A NCAC 43D.0706 is proposed for amendment as follows:

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3 **10A NCAC 43D.0706 ~~AUTHORIZED WIC VENDORS~~ VENDOR PEER GROUPS**

4 (a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

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

11 Peer Group I - - zero to two cash registers;

12 Peer Group II - - three to five cash registers; and

13 Peer Group III - - six or more cash registers.

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

18 (2) Authorized vendors for which annual WIC supplemental food sales ~~is~~ are available, excluding
19 chain stores, stores under a WIC corporate agreement, military commissaries, ~~predominantly WIC~~
20 ~~vendors~~, and free-standing pharmacies, shall be placed into peer groups as follows, except as
21 provided in ~~Subparagraph (a)(8)~~ Item (9) of this ~~Rule~~. Rule:

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

24 Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding
25 seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the
26 store;

27 Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding
28 three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at
29 the store; and

30 Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in
31 WIC supplemental food sales at the ~~store~~; store.

32 (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one
33 agreement), military commissaries, ~~predominantly WIC vendors~~, and free-standing pharmacies,
34 including free-standing pharmacy chain stores and free-standing pharmacies participating under a
35 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, commissaries; and predominantly WIC vendors;~~ and

Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate ~~agreement;~~ agreement.

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

(5) In determining a vendor's peer group designation based on annual WIC supplemental food sales under ~~Subparagraph (a)(2) Item (2)~~ Item (2) of this Rule, the state agency shall look at the most recent 12-month period of ~~sales~~ redemption data.

~~(6) All stores held under common ownership shall be placed in the highest peer group among those commonly held. Common ownership is ownership of 30 percent or more in each of the stores commonly held.~~

~~(7)(6)~~ The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's ~~agreement~~ 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) 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) 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.

~~(8)(9)~~ A vendor applicant previously authorized in a peer group under ~~Subparagraph (a)(2) Item (2)~~ Item (2) of this Rule 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 under ~~Subparagraph (a)(2) Item (2)~~ 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 ~~Subparagraph (a)(1) Item (1)~~ Item (1) of this Rule.

1 ~~(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection~~
2 ~~criteria:~~

3 ~~(1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a~~
4 ~~WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each~~
5 ~~WIC supplemental food listed on the WIC Price List.~~

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

13 ~~(3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-~~
14 ~~eligible medical food directly from:~~

15 ~~(A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;~~

16 ~~(B) Food and drug wholesalers registered with the North Carolina Secretary of State and~~
17 ~~inspected or licensed by the North Carolina Department of Agriculture and Consumer~~
18 ~~Services;~~

19 ~~(C) Retail food stores that purchase directly from suppliers described in Part (b)(3)(A) or Part~~
20 ~~(b)(3)(B) of this Rule; or~~

21 ~~(D) A supplier on another state's list of approved infant formula suppliers as verified by that~~
22 ~~state's agency.~~

23 ~~Authorized vendors shall agree to make available to the state or local WIC agency, upon request,~~
24 ~~invoices or receipts documenting purchases of all infant formula, exempt infant formula, and~~
25 ~~WIC eligible medical foods. Acceptable receipts include company letterhead or name of~~
26 ~~wholesaler or manufacturer with date(s) of purchase and itemization of purchases reflecting infant~~
27 ~~formula, exempt infant formula, and WIC eligible medical food purchases.~~

28 ~~(4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC~~
29 ~~Price List must not exceed the maximum price set by the state agency for each supplemental food~~
30 ~~within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule. The~~
31 ~~maximum price for each supplemental food shall be established as follows:~~

32 ~~(A) The most recent WIC Price Lists submitted by authorized vendors within the same peer~~
33 ~~group shall be used to determine the maximum price for each supplemental food. The~~
34 ~~WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum~~
35 ~~price determination. The maximum price shall be the 97th percentile of the current~~
36 ~~highest shelf prices for each supplemental food within a vendor peer group. The state~~
37 ~~agency shall reassess the maximum price set for each supplemental food at least four~~

1 times a year. For two of its price assessments, the state agency shall use the WIC Price
2 Lists which must be submitted by all vendors by April 1 and October 1 each year in
3 accordance with Subparagraph (c)(31) of this Rule. The other two price assessments
4 shall be based on WIC Price Lists requested from a sample of vendors within each peer
5 group in January and July of each year. The sample of vendors shall exclude
6 predominantly WIC vendors.

7 (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum
8 price(s) set by the state agency for that applicant's peer group, the applicant shall be
9 notified in writing. Within 30 days of the date of the written notice, the vendor applicant
10 may resubmit price(s) that it will charge the state WIC Program for those foods that
11 exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices
12 exceed the maximum prices set by the state agency, the vendor applicant shall be deemed
13 to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor
14 applicant's resubmitted prices still exceed the maximum prices set by the state agency, or
15 the vendor applicant does not resubmit prices within 30 days of the date of written notice,
16 the application shall be denied in writing. The vendor applicant must wait 90 days from
17 the date of receipt of the written denial to reapply for authorization.

18 (5) A vendor applicant shall pass a monitoring review by the local WIC program to determine
19 whether the store has minimum inventory of supplemental foods as specified in Subparagraph
20 (e)(24) of this Rule. A vendor applicant that fails this review shall be allowed a second
21 opportunity for an unannounced monitoring review within 14 days. If the applicant fails both
22 reviews, the applicant shall wait 90 days from the date of the second monitoring review before
23 submitting a new application.

24 (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to
25 attend, WIC Vendor Training provided by the local WIC Program prior to authorization and
26 ensure that the applicant's employees receive instruction in WIC program procedures and
27 requirements.

28 (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or
29 have the prices posted on the shelf or display case at all times.

30 (8) The store shall be located at a permanent and fixed location within the State of North Carolina.
31 The store shall be located at the address indicated on the WIC vendor application and shall be the
32 site at which WIC supplemental foods are selected by the WIC customer.

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

35 (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or
36 in part, in the official name in which the business is registered or in the name under which it does
37 business.

- 1 ~~(11) A vendor applicant shall not submit false, erroneous, or misleading information in an application~~
2 ~~to become an authorized WIC vendor or in subsequent documents submitted to the state or local~~
3 ~~WIC agency.~~
- 4 ~~(12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a~~
5 ~~spouse, child, or parent who is employed by the state WIC program or the local WIC program~~
6 ~~serving the county in which the vendor applicant conducts business. A vendor applicant shall not~~
7 ~~have an employee who handles, transacts, deposits, or stores WIC food instruments or cash value~~
8 ~~vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC~~
9 ~~program or the local WIC program serving the county in which the vendor applicant conducts~~
10 ~~business.~~
- 11 ~~(13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's~~
12 ~~current owners, officers, or managers have been convicted of or had a civil judgment entered~~
13 ~~against them for any activity indicating a lack of business integrity, including fraud, antitrust~~
14 ~~violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making~~
15 ~~false statements, receiving stolen property, making false claims, and obstruction of justice. For~~
16 ~~purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a~~
17 ~~verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established,~~
18 ~~adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo~~
19 ~~contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as~~
20 ~~defined in this Rule is the same as a conviction for purposes of this Subparagraph.~~
- 21 ~~(14) A vendor applicant shall not be authorized if it is currently disqualified from the Special Nutrition~~
22 ~~Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship~~
23 ~~and the disqualification period that otherwise would have been imposed has not expired.~~
- 24 ~~(15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have~~
25 ~~a separate manager on site for each store, shall not have an owner who holds a financial interest in~~
26 ~~any of the following:~~
- 27 ~~(A) a SNAP vendor which is disqualified from participation in the SNAP or has been~~
28 ~~assessed a civil money penalty for hardship in lieu of disqualification and the time period~~
29 ~~during which the disqualification would have run, had a penalty not been paid, is~~
30 ~~continuing; or~~
- 31 ~~(B) another WIC vendor which is disqualified from participation in the WIC Program or~~
32 ~~which has been assessed an administrative penalty pursuant to G.S. 130A 22(c1),~~
33 ~~Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g),~~
34 ~~(h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a~~
35 ~~penalty, the time during which the disqualification would have run, had a penalty not~~
36 ~~been assessed, is continuing.~~

1 The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial
2 interest during the period of disqualification. Additionally, the requirements of this Subparagraph
3 shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under
4 Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to
5 that SNAP vendor. The requirements of this Subparagraph shall apply until the time the SNAP
6 vendor disqualification otherwise would have expired.

7 (16) — A vendor applicant, excluding free standing pharmacies, must have SNAP authorization for the
8 store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization
9 number to the state agency.

10 (17) — A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified
11 from participation in the WIC Program and the disqualification period has not expired.

12 (e) By signing the WIC Vendor Agreement, the vendor agrees to:

13 (1) — Process WIC program food instruments and cash value vouchers in accordance with the terms of
14 the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;

15 (2) — Accept WIC program food instruments and cash value vouchers in exchange for WIC
16 supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A
17 NCAC 43D .0501;

18 (3) — Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits
19 and vegetables with a cash value voucher, accurately determine the charges to the WIC program,
20 and complete the "Pay Exactly" box on the food instrument or cash value voucher prior to
21 obtaining the signature of the WIC customer. The WIC customer is not required to get all of the
22 supplemental foods listed on the food instrument or the full dollar value of the cash value voucher.
23 However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a
24 cash value voucher if the WIC customer pays the difference;

25 (4) — Enter in the "Pay Exactly" box on the food instrument or cash value voucher only the total amount
26 of the current shelf prices, or less than the current shelf prices, for the supplemental food actually
27 provided and shall not charge or collect sales taxes for the supplemental food provided;

28 (5) — Charge no more for supplemental food provided to a WIC customer than to a non WIC customer
29 or no more than the current shelf price, whichever is less;

30 (6) — Accept payment from the state WIC Program only up to the maximum price set by the state
31 agency for each food instrument within that vendor's peer group. The maximum price for each
32 food instrument shall be based on the maximum prices set by the state agency for each
33 supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A
34 food instrument deposited by a vendor for payment which exceeds the maximum price shall be
35 paid at the maximum price set by the state agency for that food instrument. Payment to
36 predominantly WIC vendors for a food instrument shall not exceed the statewide average for that
37 food instrument. This average excludes data from predominantly WIC vendors;

- 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~~
4 ~~Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;~~
- 5 ~~(9) — For non contract brand milk based and soy based infant formulas, excluding exempt infant~~
6 ~~formulas, accept payment from the state WIC Program only up to the maximum price established~~
7 ~~for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;~~
- 8 ~~(10) — For free standing pharmacies, provide only exempt infant formula and WIC eligible medical~~
9 ~~foods;~~
- 10 ~~(11) — Excluding free standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in~~
11 ~~WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually~~
12 ~~in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The~~
13 ~~store must wait 180 days to reapply for authorization;~~
- 14 ~~(12) — Accept WIC program food instruments and cash value vouchers only on or between the "Date of~~
15 ~~Issue" and the "Participant Must Use By" dates;~~
- 16 ~~(13) — Prior to obtaining the signature, enter in the "Date Transacted" box the month, day and year the~~
17 ~~WIC food instrument or cash value voucher is exchanged for supplemental food;~~
- 18 ~~(14) — Ensure that the food instrument or cash value voucher is signed in the presence of the cashier;~~
- 19 ~~(15) — Refuse to transact any food instrument or cash value voucher that has been altered;~~
- 20 ~~(16) — Not transact food instruments or cash value vouchers in whole or in part for cash, credit,~~
21 ~~unauthorized foods, or non food items;~~
- 22 ~~(17) — Not provide refunds or permit exchanges for authorized supplemental foods obtained with food~~
23 ~~instruments or cash value vouchers, except for exchanges of an identical authorized supplemental~~
24 ~~food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell~~
25 ~~by," "best if used by," or other date limiting the sale or use of the food. An identical authorized~~
26 ~~supplemental food means the exact brand, type and size as the original authorized supplemental~~
27 ~~food obtained and returned by the WIC customer;~~
- 28 ~~(18) — Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here"~~
29 ~~box on the face of the food instrument or cash value voucher to enable the vendor number to be~~
30 ~~read during the Program editing process;~~
- 31 ~~(19) — Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number~~
32 ~~in the "Authorized WIC Vendor Stamp" box in the endorsement;~~
- 33 ~~(20) — Deposit WIC program food instruments and cash value vouchers in the vendor's bank. All North~~
34 ~~Carolina WIC program food instruments and cash value vouchers must be deposited in the~~
35 ~~vendor's bank within 60 days of the "Date of Issue" on the food instrument or cash value voucher;~~

- 1 ~~(21) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner~~
 2 ~~authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC~~
 3 ~~vendor stamp;~~
- 4 ~~(22) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor~~
 5 ~~owner or manager have access to the stamp and report loss of this stamp within two business days~~
 6 ~~to the local agency;~~
- 7 ~~(23) Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or~~
 8 ~~cash value vouchers;~~
- 9 ~~(24) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental~~
 10 ~~foods that are outside of the manufacturer's expiration date do not count towards meeting the~~
 11 ~~minimum inventory requirement. The following items and sizes constitute the minimum~~
 12 ~~inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1)~~
 13 ~~of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors~~
 14 ~~in Peer Group IV of Subparagraph (a)(3) of this Rule:~~

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
Cereals	2 types: whole grain	
	(minimum package size 12 ounce)	6 packages
Eggs	Grade A,	2 dozen
	large, white: one dozen	
	size carton	
Juices	Single strength:	
	48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	one pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Infant Cereal	8 ounce box	6 boxes
Infant Formula	milk based concentrate;	34 cans
	13 ounce	
	and	
	soy based concentrate;	17 cans
	13 ounce	
	and	

1 _____ milk based powder; _____ 10 cans
 2 _____ 12.9 to 14.3 ounce
 3 _____ and-
 4 _____ soy based powder; _____ 5 cans
 5 _____ 12.9 to 14.3 ounce
 6 _____ Brands must be the
 7 _____ primary contract infant formulas
 8 _____ Fruits _____ 14 to 16 ounce can: 2 varieties _____ 6 cans
 9 _____ Vegetables _____ 14 to 16 ounce can: 2 varieties _____ 6 cans

10
 11 All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I
 12 through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3)
 13 of this Rule shall supply milk, soy based or lactose free infant formula in 32 ounce ready to feed
 14 or lactose free powder within 48 hours of request by the state or local WIC agency;

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

17 ~~(26) Permit the purchase of supplemental food without requiring other purchases;~~

18 ~~(27) Attend, or cause a manager or other authorized store representative to attend, annual vendor~~
 19 ~~training upon notification by the local agency;~~

20 ~~(28) Inform and train vendor's cashiers and other staff on WIC Program requirements;~~

21 ~~(29) Be accountable for the actions of its owners, officers, managers, agents, and employees who~~
 22 ~~commit vendor violations;~~

23 ~~(30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with~~
 24 ~~the agreement and state and federal WIC Program rules, regulations and statutes. This includes~~
 25 ~~allowing access to all WIC food instruments and cash value vouchers at the store, vendor records~~
 26 ~~pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of~~
 27 ~~purchase orders, and any other proofs of purchase, federal and state corporate and individual~~
 28 ~~income tax and sales and use tax returns and all records pertinent to these returns, and books and~~
 29 ~~records of all financial and business transactions. These records must be retained by the vendor~~
 30 ~~for a period of three years or until any audit pertaining to these records is resolved, whichever is~~
 31 ~~later. Failure or inability to provide these records or providing false records for an inventory audit~~
 32 ~~shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (g)(1) of this Rule;~~

33 ~~(31) Submit a current accurately completed WIC Price List when signing this agreement, and by April~~
 34 ~~1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week~~
 35 ~~of any written request by the state or local WIC agency. Failure to submit a WIC Price List as~~
 36 ~~required by this Subparagraph within 30 days of the required submission date shall result in~~

- 1 ~~disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this~~
2 ~~Rule;~~
- 3 ~~(32) Reimburse the state agency within 30 days of written notification of a claim assessed due to a~~
4 ~~vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use~~
5 ~~of the WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of~~
6 ~~the full purchase price of each food instrument or cash value voucher invalid under Subparagraphs~~
7 ~~(a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency~~
8 ~~or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the~~
9 ~~violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule~~
10 ~~for the vendor violation(s);~~
- 11 ~~(33) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state~~
12 ~~agency or for WIC food instruments or cash value vouchers not paid or partially paid by the state~~
13 ~~agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental~~
14 ~~foods obtained with food instruments or cash value vouchers;~~
- 15 ~~(34) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC~~
16 ~~food instruments or cash value vouchers;~~
- 17 ~~(35) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in~~
18 ~~location, cessation of operations, or withdrawal from the WIC Program. Change of ownership,~~
19 ~~change in location of more than three miles from the vendor's previous location, cessation of~~
20 ~~operations, withdrawal from the WIC Program or disqualification from the WIC Program shall~~
21 ~~result in termination of the WIC Vendor Agreement by the state agency. Change of ownership,~~
22 ~~change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the~~
23 ~~WIC Vendor Agreement shall not stop a disqualification period applicable to the store;~~
- 24 ~~(36) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the~~
25 ~~Agreement or disqualification from the WIC Program;~~
- 26 ~~(37) Offer WIC customers the same courtesies as offered to other customers;~~
- 27 ~~(38) Not provide incentive items to WIC customers unless each incentive item is less than two dollars~~
28 ~~(\$2.00) in cost to the vendor in accordance with 42 USC 1786(h)(14). If incentive items are~~
29 ~~offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall~~
30 ~~not provide to WIC customers transportation to or from the vendor's premises, delivery of~~
31 ~~supplemental foods, lottery tickets, or cash gifts. The limitations of this Subparagraph apply only~~
32 ~~to predominantly WIC vendors;~~
- 33 ~~(39) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement.~~
34 ~~Additionally, a store must reapply to become authorized following the expiration of a~~
35 ~~disqualification period or termination of the Agreement. In all cases, the vendor applicant is~~
36 ~~subject to the vendor selection criteria of Paragraph (b) of this Rule; and~~

1 ~~(40) — Comply with all the requirements for vendor applicants of Subparagraphs (b)(3), (b)(4) and (b)(7)~~
2 ~~through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a~~
3 ~~vendor at any time during the vendor's period of authorization to determine compliance with these~~
4 ~~requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that~~
5 ~~fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule~~
6 ~~during the vendor's period of authorization, and terminate the Agreement of or sanction or both~~
7 ~~any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(10), (b)(11), (b)(14) or~~
8 ~~(b)(16) of this Rule during the vendor's period of authorization.~~

9 ~~(d) By signing the WIC Vendor Agreement, the local agency agrees to the following:~~

10 ~~(1) — Provide annual vendor training on WIC procedures and rules;~~

11 ~~(2) — Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement~~
12 ~~and state and federal WIC program rules, regulations, and applicable law. A minimum of one-~~
13 ~~third of all authorized vendors shall be monitored within a contract year (October 1 through~~
14 ~~September 30) and all vendors shall be monitored at least once within three consecutive contract~~
15 ~~years. Any vendor shall be monitored within one week of written request by the state agency;~~

16 ~~(3) — Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments,~~
17 ~~blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of~~
18 ~~the WIC Vendor Agreement; and~~

19 ~~(4) — Assist the vendor with questions which may arise under the Agreement or through the vendor's~~
20 ~~participation in the WIC Program.~~

21 ~~(e) For a food retailer or free standing pharmacy to participate in the WIC Program, a current WIC Vendor~~
22 ~~Agreement must be signed by the vendor, the local WIC agency, and the state agency.~~

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

25 ~~(g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent~~
26 ~~amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the state agency shall not allow imposition~~
27 ~~of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in~~
28 ~~7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:~~

29 ~~(1) — claiming reimbursement for the sale of an amount of a specific supplemental food item which~~
30 ~~exceeds the store's documented inventory of that supplemental food item for six or more days~~
31 ~~within a 60 day period. The six or more days do not have to be consecutive days within the 60-~~
32 ~~day period. Failure or inability to provide records or providing false records required under~~
33 ~~Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R.~~
34 ~~246.12(l)(1)(iii)(B) and this Subparagraph;~~

35 ~~(2) — two occurrences of vendor overcharging within a 12 month period;~~

1 ~~(3) two occurrences of receiving, transacting or redeeming food instruments or cash value vouchers~~
2 ~~outside of authorized channels, including the use of an unauthorized vendor or an unauthorized~~
3 ~~person within a 12 month period;~~

4 ~~(4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-~~
5 ~~month period;~~

6 ~~(5) two occurrences of providing credit or non food items, other than alcohol, alcoholic beverages,~~
7 ~~tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in~~
8 ~~21 U.S.C. 802, in exchange for food instruments or cash value vouchers within a 12 month~~
9 ~~period; or~~

10 ~~(6) three occurrences of providing unauthorized food items in exchange for food instruments or cash-~~
11 ~~value vouchers, including charging for supplemental food provided in excess of those listed on the~~
12 ~~food instrument within a 12 month period.~~

13 ~~(h) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except~~
14 ~~as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following~~
15 ~~state established violations in accordance with the sanction system below. The total period of disqualification shall~~
16 ~~not exceed one year for state established violations investigated as part of a single investigation, as defined in~~
17 ~~Paragraph (i) of this Rule:~~

18 ~~(1) When a vendor commits any of the following violations, the state established disqualification~~
19 ~~period is:~~

20 ~~(A) 90 days for each occurrence of failure to properly transact a WIC food instrument or~~
21 ~~cash value voucher by not completing the date or purchase price on the WIC food~~
22 ~~instrument or cash value voucher before obtaining the signature, by not obtaining the~~
23 ~~signature in the presence of the cashier, or by accepting a WIC food instrument or cash-~~
24 ~~value voucher prior to the "Date of Issue" or after the "Participant Must Use By" dates on~~
25 ~~the food instrument or cash value voucher;~~

26 ~~(B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food~~
27 ~~instrument or cash value voucher;~~

28 ~~(C) 30 days for each occurrence of requiring the purchase of a specific brand when more than~~
29 ~~one WIC supplemental food brand is available; and~~

30 ~~(D) 30 days for each occurrence of failure to submit a WIC Price List as required by~~
31 ~~Subparagraph (e)(31) of this Rule.~~

32 ~~(2) When a vendor commits any of the following violations, the vendor shall be assessed sanction~~
33 ~~points as follows for each occurrence:~~

34 ~~(A) 2.5 points for:~~

35 ~~(i) stocking WIC supplemental foods outside of the manufacturer's expiration date;~~

36 ~~or~~

37 ~~(ii) unauthorized use of the "WIC" acronym or the WIC logo.~~

- 1 (B) — 5 points for:
- 2 (i) — failure to attend annual vendor training;
- 3 (ii) — failure to stock minimum inventory;
- 4 (iii) — failure to mark the current shelf prices of all WIC supplemental foods on the
- 5 foods or have the prices posted on the shelf or display case; or
- 6 (iv) — failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of
- 7 this Rule regarding incentive items and services.

- 8 (C) — 7.5 points for:
- 9 (i) — discrimination on the basis of WIC participation (separate WIC lines, denying
- 10 trading stamp); or
- 11 (ii) — contacting a WIC customer in an attempt to recoup funds for a food instrument
- 12 or a cash value voucher or contacting a WIC customer outside the store
- 13 regarding the transaction or redemption of a WIC food instrument or a cash
- 14 value voucher.

- 15 (D) — 15 points for:
- 16 (i) — failure to allow monitoring of a store by WIC staff when required;
- 17 (ii) — failure to provide WIC food instruments or cash value vouchers for review
- 18 when requested;
- 19 (iii) — failure to provide store inventory records when requested by WIC staff, except
- 20 as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for
- 21 failure or inability to provide records for an inventory audit;
- 22 (iv) — nonpayment of a claim assessed by the state agency;
- 23 (v) — providing false information on vendor records (application, vendor agreement,
- 24 price list, WIC food instruments, cash value vouchers or monitoring forms),
- 25 except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule
- 26 for providing false records for an inventory audit; or
- 27 (vi) — failure to purchase infant formula, exempt infant formula, and WIC eligible
- 28 medical food from an authorized supplier as required by Subparagraphs (b)(3)
- 29 and (c)(40) of this Rule.

30 (3) — For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a

31 vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result

32 of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The

33 nature of the violation(s) and the number of violations, as represented by the points assigned in

34 Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula

35 used to calculate the disqualification period is the number of points assigned to the violation

36 carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor

1 ~~has accumulated more than 15 points, 18 days shall be added to the disqualification period for~~
2 ~~each point over 15 points.~~

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

4 ~~(1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the~~
5 ~~following violations:~~

6 ~~(A) buying or selling food instruments or cash value vouchers for cash (trafficking);~~

7 ~~(B) selling firearms, ammunition, explosives, or controlled substances as defined in 21~~
8 ~~U.S.C. 802, in exchange for food instruments or cash value vouchers;~~

9 ~~(C) selling alcohol or alcoholic beverages or tobacco products in exchange for food~~
10 ~~instruments or cash value vouchers;~~

11 ~~(D) vendor overcharging;~~

12 ~~(E) receiving, transacting, or redeeming food instruments or cash value vouchers outside of~~
13 ~~authorized channels, including the use of an unauthorized vendor or an unauthorized~~
14 ~~person;~~

15 ~~(F) charging for supplemental food not received by the WIC customer;~~

16 ~~(G) providing credit or non food items, other than alcohol, alcoholic beverages, tobacco~~
17 ~~products, cash, firearms, ammunition, explosives, or controlled substances as defined in~~
18 ~~21 U.S.C. 802, in exchange for food instruments or cash value vouchers;~~

19 ~~(H) providing unauthorized food items in exchange for food instruments or cash value~~
20 ~~vouchers, including charging for supplemental food provided in excess of those listed on~~
21 ~~the food instrument;~~

22 ~~(I) failure to properly transact a WIC food instrument or cash value voucher;~~

23 ~~(J) requiring a cash purchase to transact a WIC food instrument or cash value voucher; or~~

24 ~~(K) requiring the purchase of a specific brand when more than one WIC supplemental food~~
25 ~~brand is available.~~

26 ~~(2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect~~
27 ~~the following violations:~~

28 ~~(A) failure to stock minimum inventory;~~

29 ~~(B) stocking WIC supplemental food outside of the manufacturer's expiration date;~~

30 ~~(C) failure to allow monitoring of a store by WIC staff when required;~~

31 ~~(D) failure to provide WIC food instruments or cash value vouchers for review when~~
32 ~~requested;~~

33 ~~(E) failure to provide store inventory records when requested by WIC staff;~~

34 ~~(F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or~~
35 ~~have the prices posted on the shelf or display case;~~

36 ~~(G) failure of a predominantly WIC vendor to comply with Subparagraph (e)(38) of this Rule~~
37 ~~regarding incentive items and services; or~~

- 1 (H) ~~unauthorized use of the "WIC" acronym or the logo.~~
- 2 (3) ~~Any other method used by the state or local agency to detect the following violations by a vendor~~
- 3 within a 12-month period:
- 4 (A) ~~failure to attend annual vendor training;~~
- 5 (B) ~~failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule;~~
- 6 (C) ~~discrimination on the basis of WIC participation (separate WIC lines, denying trading~~
- 7 stamps);
- 8 (D) ~~contacting a WIC customer in an attempt to recoup funds for food instruments or cash-~~
- 9 value vouchers or contacting a WIC customer outside the store regarding the transaction
- 10 or redemption of WIC food instruments or cash-value vouchers;
- 11 (E) ~~nonpayment of a claim assessed by the state agency;~~
- 12 (F) ~~providing false information on vendor records (application, vendor agreement, price list,~~
- 13 WIC food instruments, cash value vouchers or monitoring forms);
- 14 (G) ~~claiming reimbursement for the sale of an amount of a specific supplemental food item~~
- 15 which exceeds the store's documented inventory of that supplemental food item for a
- 16 specific period of time, or failure or inability to provide records or providing false records
- 17 required under Subparagraph (c)(30) of this Rule for an inventory audit; or
- 18 (H) ~~failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods~~
- 19 from an authorized supplier.
- 20 (j) ~~The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all~~
- 21 subsequent amendments and editions.
- 22 (k) ~~The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference~~
- 23 with all subsequent amendments and editions. ~~The existence of any of the factors listed in Parts (1)(3)(A), (1)(3)(B)~~
- 24 ~~or (1)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no~~
- 25 ~~geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced~~
- 26 ~~in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of~~
- 27 ~~these factors exist.~~
- 28 (l) ~~The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:~~
- 29 (1) ~~The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all~~
- 30 subsequent amendments and editions, provided that the vendor's average monthly redemptions
- 31 shall be calculated by using the six-month period ending with the month immediately preceding
- 32 the month during which the notice of administrative action is dated.
- 33 (2) ~~The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in~~
- 34 lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of
- 35 this Rule when the state agency determines that disqualification of a vendor would result in
- 36 participant hardship in accordance with Subparagraph (1)(3) of this Rule.

1 ~~(3) In determining whether to disqualify a WIC vendor for the state established violations listed in~~
2 ~~Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the~~
3 ~~following factors, which conclusively show lack of hardship, are found to exist:~~

4 ~~(A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S.~~
5 ~~160A 2, and another WIC vendor is located within seven miles of the noncomplying~~
6 ~~vendor;~~

7 ~~(B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A 2,~~
8 ~~and another WIC vendor is located within three miles of the noncomplying vendor; or~~

9 ~~(C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the~~
10 ~~local agency at which WIC participants pick up their food instruments or cash value~~
11 ~~vouchers.~~

12 ~~(4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated~~
13 ~~by reference with all subsequent amendments and editions.~~

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

17 ~~(n) The provision in 42 USC 1786 (f)(26) regarding prior warning to vendors is incorporated by reference with all~~
18 ~~subsequent amendments and editions.~~

19 ~~(o) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency~~
20 ~~in accordance with Subparagraph (c)(32) of this Rule.~~

21 ~~(p) 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~~
22 ~~abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or~~
23 ~~other remedies that may be applicable under any federal or state law.~~

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

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

37

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

2

1 0A NCAC 43D.0707 is proposed for adoption 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
5 criteria:

6 (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a
7 WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each
8 WIC supplemental food listed on the WIC Price List.

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

18 (a) the sources specified in 42 USC 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
23 state's 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. A vendor applicant shall not be authorized if within the last year the vendor applicant
28 had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt
29 infant formula, or WIC-eligible medical food from the sources specified in this Item. A vendor
30 applicant shall not be authorized if within the last year the vendor applicant had a previous WIC
31 Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC
32 eligible medical food to WIC customers that was not purchased from the sources specified in this
33 Item.

34 (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC
35 Price List must not exceed the maximum price set by the state agency for each supplemental food
36 within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The
37 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
7 submitted by all vendors by April 1 and October 1 each year in accordance with Item (32)
8 of Rule .0708. The other two price assessments shall be based on WIC Price Lists
9 requested from a sample of vendors within each peer group in January and July of each
10 year.

11 (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum
12 price(s) set by the state agency for that applicant's peer group, the applicant shall be
13 notified in writing. Within 30 days of the date of the written notice, the vendor applicant
14 may resubmit price(s) that it will charge the state WIC Program for those foods that
15 exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices
16 exceed the maximum prices set by the state agency, the vendor applicant shall be deemed
17 to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's
18 resubmitted prices still exceed the maximum prices set by the state agency, or the vendor
19 applicant does not resubmit prices within 30 days of the date of written notice, the
20 application shall be denied in writing. The vendor applicant must wait 90 days from the
21 date of receipt of the written denial to reapply for authorization.

22 (5) A vendor applicant shall pass a monitoring review by the local WIC agency to determine whether
23 the store has minimum inventory of supplemental foods as specified in Item (24) of Rule .0708. A
24 vendor applicant that fails this review shall be allowed a second opportunity for an unannounced
25 monitoring review within 14 days. If the applicant fails both reviews, the application shall be
26 denied in writing and the applicant shall wait 90 days from the date of the second monitoring
27 review before submitting a new application.

28 (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to
29 attend, WIC Vendor Training provided by the local WIC agency prior to authorization and ensure
30 that the applicant's employees receive instruction in WIC program procedures and requirements.

31 (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or
32 have the prices posted on the shelf or display case at all times.

33 (8) The store shall be located at a permanent and fixed location within the State of North Carolina.
34 The store shall be located at the address indicated on the WIC vendor application and shall be the
35 site at which WIC supplemental foods are selected by the WIC customer.

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

- 1 (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or
2 in part, in the official name in which the business is registered or in the name under which it does
3 business.
- 4 (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application
5 to become an authorized WIC vendor or in subsequent documents submitted to the state or local
6 WIC agency. A vendor applicant shall not be authorized if within the last year the vendor
7 applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or
8 misleading information.
- 9 (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a
10 spouse, child, or parent who is employed by the state WIC program or the local WIC program
11 serving the county in which the vendor applicant conducts business. A vendor applicant shall not
12 have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value
13 vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC
14 program or the local WIC program serving the county in which the vendor applicant conducts
15 business.
- 16 (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's
17 current owners, officers, or managers have been convicted of or had a civil judgment entered
18 against them for any activity indicating a lack of business integrity, including fraud, antitrust
19 violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making
20 false statements, receiving stolen property, making false claims, and obstruction of justice. For
21 purposes of this Item, "convicted" or "conviction" means and includes a plea of guilty, a verdict or
22 finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating
23 body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or
24 the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this
25 Item is the same as a conviction for purposes of this Item.
- 26 (14) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental
27 Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for
28 hardship and the disqualification period that otherwise would have been imposed has not expired.
- 29 (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have
30 a separate manager on site for each store, shall not have an owner who holds a financial interest in
31 any of the following:
- 32 (a) a SNAP vendor which is disqualified from participation in the SNAP or has been
33 assessed a civil money penalty for hardship in lieu of disqualification and the time period
34 during which the disqualification would have run, had a penalty not been paid, is
35 continuing; or
- 36 (b) another WIC vendor which is disqualified from participation in the WIC Program or
37 which has been assessed a monetary or civil money penalty pursuant to G.S. 130A-

1 22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 as the result of violation of
2 Paragraphs (a) or (b) of Rule .0710, and if assessed a penalty, the time during which the
3 disqualification would have run, had a penalty not been assessed, is continuing.

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

10 (16) A vendor applicant, excluding free-standing pharmacies, must have SNAP authorization for the
11 store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization
12 number to the state agency.

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

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

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

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

23

1 10A NCAC 43D.0708 is proposed for adoption 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 food instruments and cash-value vouchers in accordance with the terms of
6 the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;

7 (2) Accept WIC program food instruments and cash-value vouchers in exchange for WIC
8 supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A
9 NCAC 43D .0501;

10 (3) Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits
11 and vegetables with a cash-value voucher, accurately determine the charges to the WIC program,
12 and complete the "Pay Exactly" box on the food instrument or cash-value voucher prior to
13 obtaining the signature of the WIC customer. The WIC customer is not required to get all of the
14 supplemental foods listed on the food instrument or the full dollar value of the cash-value voucher.
15 However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a
16 cash-value voucher if the WIC customer pays the difference;

17 (4) Enter in the "Pay Exactly" box on the food instrument or cash-value voucher only the total amount
18 of the current shelf prices, or less than the current shelf prices, for the supplemental food actually
19 provided and shall not charge or collect sales taxes for the supplemental food provided;

20 (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer
21 or no more than the current shelf price, whichever is less;

22 (6) Accept payment from the state WIC Program only up to the maximum price set by the state
23 agency for each food instrument within that vendor's peer group. The maximum price for each
24 food instrument shall be based on the maximum prices set by the state agency for each
25 supplemental food, as described in Sub-item (4)(a) of Rule .0707, listed on the food instrument. A
26 food instrument deposited by a vendor for payment which exceeds the maximum price shall be
27 paid at the maximum price set by the state agency for that food instrument;

28 (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value
29 voucher;

30 (8) Not charge the state WIC Program more than the maximum price set by the state agency under
31 Item (4)(a) of Rule .0707 for each supplemental food within the vendor's peer group;

32 (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible medical food
33 purchased only from the sources specified in Item (3) of Rule .0707. Providing infant formula,
34 exempt infant formula, or WIC eligible medical food that has not been purchased from the sources
35 specified in Item (3) of Rule .0707 shall result in termination of the WIC Vendor Agreement;

36 (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible medical
37 foods;

- 1 (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in
2 WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually
3 in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The
4 store must wait 180 days to reapply for authorization;
- 5 (12) Accept WIC program food instruments and cash-value vouchers only on or between the "Issue
6 Date" and the "Participant Must Use By" dates;
- 7 (13) Prior to obtaining the WIC customer's signature, enter in the "Date Transacted" box the month,
8 day and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;
- 9 (14) Ensure that the WIC customer signs the food instrument or cash-value voucher in the presence of
10 the cashier;
- 11 (15) Refuse to transact any food instrument or cash-value voucher that has been altered;
- 12 (16) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit,
13 unauthorized foods, or non-food items;
- 14 (17) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food
15 instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental
16 food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell
17 by," "best if used by," or other date limiting the sale or use of the food. An identical authorized
18 supplemental food means the exact brand, type and size as the original authorized supplemental
19 food obtained and returned by the WIC customer;
- 20 (18) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here"
21 box on the face of the food instrument or cash-value voucher to enable the vendor number to be
22 read during the Program editing process;
- 23 (19) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number
24 in the "Authorized WIC Vendor Stamp" box in the endorsement;
- 25 (20) Deposit WIC program food instruments and cash-value vouchers in the vendor's bank. All North
26 Carolina WIC program food instruments and cash-value vouchers must be deposited in the
27 vendor's bank within 60 days of the "Issue Date" on the food instrument or cash-value voucher;
- 28 (21) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner
29 authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC
30 vendor stamp;
- 31 (22) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor
32 owner or manager have access to the stamp and report loss of this stamp within two business days
33 to the local WIC agency;
- 34 (23) Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or
35 cash-value vouchers;
- 36 (24) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental
37 foods that are outside of the manufacturer's expiration date do not count towards meeting the

1 minimum inventory requirement. The following items and sizes constitute the minimum
 2 inventory of supplemental foods for vendors in Peer Groups I through III of Item (1) of Rule
 3 .0706, vendors in Peer Groups I through IV of Item (2) of Rule .0706 and vendors in Peer Group
 4 IV of Item (3) of Rule .0706:
 5

<u>Food Item</u>	<u>Type of Inventory</u>	<u>Quantities Required</u>
<u>Milk</u>	<u>Whole fluid: gallon</u> <u>-and-</u> <u>Skim/lowfat fluid: gallon</u>	<u>2 gallons</u> <u>4 gallons</u>
<u>Cheese</u>	<u>1 pound package</u>	<u>2 pounds</u>
<u>Cereals</u>	<u>2 types: whole grain</u> <u>(minimum package size 12 ounce)</u>	<u>6 packages total</u>
<u>Eggs</u>	<u>Grade A, large, white:</u> <u>one dozen size carton</u>	<u>2 dozen</u>
<u>Juices</u>	<u>Single strength:</u> <u>48 ounce container</u> <u>64 ounce container</u>	<u>4 containers</u> <u>4 containers</u>
<u>Dried Peas and Beans</u>	<u>one pound package</u>	<u>2 packages</u>
<u>Peanut Butter</u>	<u>16 to 18 ounce container</u>	<u>2 containers</u>
<u>Infant Cereal</u>	<u>8 ounce box</u>	<u>6 boxes</u>
<u>Infant Formula</u>	<u>milk-based concentrate; 12.0 – 13.0 ounce</u> <u>-and-</u> <u>soy-based concentrate; 12.0 to 13 ounce</u> <u>-and-</u>	<u>34 cans</u> <u>17 cans</u>

	<u>milk-based powder; 131.0 to 14.0 ounce</u> <u>-and-</u> <u>soy-based powder; 11.0 to 14.0 ounce</u> <u>Brands must be the primary contract infant</u> <u>formulas</u>	<u>10 cans</u> <u>5 cans</u>
<u>Fruits</u>	<u>14 to 16 ounce can: 2 varieties</u>	<u>6 cans total</u>
<u>Vegetables</u> <u>(Excludes foods in</u> <u>Dried Peas and</u> <u>Beans category)</u>	<u>14 to 16 ounce can: 2 varieties</u>	<u>6 cans total</u>

- 1
- 2 All vendors in Peer Groups I through III of Item (1) of Rule .0706, Peer Groups I through IV of
- 3 Item (2) of Rule .0706 and Peer Groups IV and V of Item (3) of Rule .0706 shall supply milk, soy-
- 4 based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48
- 5 hours of request by the state or local WIC agency;
- 6 (25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's
- 7 expiration date;
- 8 (26) Permit the purchase of supplemental food without requiring other purchases;
- 9 (27) Attend, or cause a manager or other authorized store representative to attend, annual vendor
- 10 training upon notification by the local WIC agency. Failure to attend annual vendor training by
- 11 September 30 of each year shall result in termination of the WIC Vendor Agreement;
- 12 (28) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- 13 (29) Be accountable for the actions of its owners, officers, managers, agents, and employees who
- 14 commit vendor violations;
- 15 (30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with
- 16 the Agreement and state and federal WIC Program rules, regulations and applicable law. This
- 17 includes providing access to all Program-related records, including access to all WIC food
- 18 instruments and cash-value vouchers at the store, vendor records pertinent to the purchase and sale
- 19 of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other
- 20 proofs of purchase, federal and state corporate and individual income tax and sales and use tax
- 21 returns and all records pertinent to these returns, and books and records of all financial and
- 22 business transactions. These records must be retained by the vendor for a period of three years or
- 23 until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any

1 other provision of this Rule and Rules .0707 and .0710, failure or inability to provide these records
2 for an inventory audit or providing false records for an inventory audit shall be deemed a violation
3 of 7 C.F.R. 246.12(1)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710. Invoices, receipts,
4 purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:

5 (a) the name of the seller and be prepared entirely by the seller or on the seller's business
6 letterhead;

7 (b) the date of purchase and the date the authorized vendor received the WIC
8 supplemental food at the store if different from the date of purchase; and

9 (c) a description of each WIC supplemental food item purchased, including brand name,
10 unit size, type or form, and quantity;

11 (31) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a
12 statement of the total amount of revenue derived from SNAP-eligible food sales and written
13 documentation to support the amount of sales claimed by the vendor, such as sales records,
14 financial statements, reports, tax documents or other verifiable documentation;

15 (32) Submit a current accurately completed WIC Price List when signing this Agreement, and by April
16 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week
17 of any written request by the state or local WIC agency;

18 (33) Reimburse the state agency in full or agree to a repayment schedule with the state agency within
19 30 days of written notification of a claim assessed due to a vendor violation that affects payment
20 to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. Failure to
21 reimburse the state agency in full or agree to a repayment schedule within 30 days of written
22 notification of a claim shall result in termination of the WIC Vendor Agreement. The state agency
23 shall deny payment or assess a claim in the amount of the full purchase price of each food
24 instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of
25 Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the
26 vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall
27 also be subject to any vendor sanctions authorized under Rule .0710 for the vendor violation(s);

28 (34) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state
29 agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state
30 agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental
31 foods obtained with food instruments or cash-value vouchers;

32 (35) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC
33 food instruments or cash-value vouchers;

34 (36) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in
35 location, cessation of operations, or withdrawal from the WIC Program. Change of ownership,
36 change in location of more than three miles from the vendor's previous location, cessation of
37 operations, withdrawal from the WIC Program or disqualification from the WIC Program shall

- 1 result in termination of the WIC Vendor Agreement by the state agency. Change of ownership,
2 change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the
3 WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
4 (37) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the
5 Agreement or disqualification from the WIC Program;
6 (38) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the
7 same courtesies offered to other customers or requiring separate WIC lines;
8 (39) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement.
9 Additionally, a store must reapply to become authorized following the expiration of a
10 disqualification period or termination of the Agreement. In all cases, the vendor applicant is
11 subject to the vendor peer group criteria of Rule .0706 and the vendor selection criteria of Rule
12 .0707; and
13 (40) Comply with all the requirements for vendor applicants of Items (3), (4) and (7) through (16) of
14 Rule .0707 throughout the term of authorization. The state agency may reassess a vendor at any
15 time during the vendor's period of authorization to determine compliance with these requirements.
16 The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply
17 with Items (3), (4), (8), (9), (10), (11), (12), (13) or (15) of Rule .0707 during the vendor's period
18 of authorization, and terminate the Agreement of or sanction or both any vendor that fails to
19 comply with Items (7), (14) or (16) of Rule .0707 during the vendor's period of authorization.

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

21

1 10A NCAC 43D.0709 is proposed for adoption as follows:

2

3 **10A NCAC 43D .0709 LOCAL WIC AGENCY**

4 By signing the WIC Vendor Agreement, the local WIC agency agrees to the following:

5 (1) Provide annual vendor training on WIC procedures and rules;

6 (2) Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement
7 and state and federal WIC program rules, regulations, and applicable law. A minimum of one-

8 third of all authorized vendors shall be monitored within a fiscal year (October 1 through
9 September 30) and all vendors shall be monitored at least once within three consecutive fiscal

10 years. Any vendor shall be monitored within one week of written request by the state agency;

11 (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments,
12 blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of
13 the WIC Vendor Agreement; and

14 (4) Assist the vendor with questions which may arise under the Agreement or through the vendor's
15 participation in the WIC Program.

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

17

1 10A NCAC 43D.0710 is proposed for adoption as follows:

2
3 **10A NCAC 43D.0710 VENDOR VIOLATIONS AND SANCTIONS**

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

8 (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which
9 exceeds the store's documented inventory of that supplemental food item for six or more days
10 within a 60-day period. The six or more days do not have to be consecutive days within the 60-
11 day period. Failure or inability to provide records or providing false records required under Item
12 (30) of Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R.
13 246.12(l)(1)(iii)(B) and this Subparagraph;

14 (2) two occurrences of vendor overcharging within a 12-month period;

15 (3) two occurrences of receiving, transacting or redeeming food instruments or cash-value vouchers
16 outside of authorized channels, including the use of an unauthorized vendor or an unauthorized
17 person within a 12-month period;

18 (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-
19 month period;

20 (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages,
21 tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in
22 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers within a 12-month
23 period; or

24 (6) three occurrences of providing unauthorized food items in exchange for food instruments or cash-
25 value vouchers, including charging for supplemental food provided in excess of those listed on the
26 food instrument within a 12-month period.

27 (b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except
28 as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following
29 state-established violations in accordance with the number of occurrences and sanctions set forth below. If during
30 the course of a single investigation the state agency determines that a vendor has committed multiple state-
31 established violations, the disqualification periods shall be cumulative, provided that the total period of
32 disqualification shall not exceed one year for state-established violations investigated as part of a single
33 investigation, as defined in Paragraph (c) of this Rule:

34 (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC
35 participation as referenced in Item (38) of Rule .0708. Each date this violation is detected is a
36 separate occurrence;

- 1 (2) One year for three occurrences within a 12-month period of failure to properly transact a WIC
2 food instrument or cash-value voucher by not completing the date and purchase price on the WIC
3 food instrument or cash-value voucher before obtaining the WIC customer's signature, by not
4 obtaining the WIC customer's signature in the presence of the cashier, or by accepting a WIC food
5 instrument or cash-value voucher prior to the "Issue Date" or after the "Participant Must Use By"
6 dates on the food instrument or cash-value voucher. Except as provided in 7 C.F.R.
7 246.12(l)(3)(iv), each improperly transacted food instrument or cash-value voucher is a separate
8 occurrence;
- 9 (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact a
10 WIC food instrument or cash-value voucher. Except as provided in 7 C.F.R. 246.12(l)(3)(iv),
11 each transacted food instrument or cash-value voucher requiring a cash purchase is a separate
12 occurrence;
- 13 (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an
14 attempt to recoup funds for a food instrument or cash-value voucher or contacting a WIC customer
15 outside the store regarding the transaction or redemption of a WIC food instrument or cash-value
16 voucher. Each contact with any WIC customer is a separate occurrence, whether each contact is
17 with the same or different WIC customers;
- 18 (5) 180 days for three occurrences within a 12-month period of failure to provide Program-related
19 records referenced in Item (30) of Rule .0708 when requested by WIC staff, except as provided in
20 Item (30) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide
21 records for an inventory audit. Each request for records is a separate occurrence, whether each
22 request is for the same or different records;
- 23 (6) 180 days for three occurrences within a 12-month period of failure to provide the information
24 referenced in Item (31) of Rule .0708 when requested by WIC staff. Each request for information
25 is a separate occurrence, whether each request is for the same or different information;
- 26 (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum
27 inventory specified in Item (24) of Rule .0708. Each date this violation is detected is a separate
28 occurrence;
- 29 (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods
30 outside of the manufacturer's expiration date. Each date this violation is detected is a separate
31 occurrence;
- 32 (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by
33 WIC staff. Each attempt to monitor the store is a separate occurrence;
- 34 (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as
35 required by Item (32) of Rule .0708. Each written request by the state or local WIC agency for
36 submission of a WIC Price List is a separate occurrence, whether each request is for the same or
37 different WIC Price Lists;

- 1 (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices
2 of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case.
3 Each date this violation is detected is a separate occurrence; and
4 (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific
5 brand when more than one WIC supplemental food brand is available. Except as provided in 7
6 C.F.R. 246.12(l)(3)(iv), each transacted food instrument or cash-value voucher requiring the
7 purchase of a specific brand when more than one WIC supplemental food brand is available is a
8 separate occurrence.

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

- 10 (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the
11 following violations:
12 (A) buying or selling food instruments or cash-value vouchers for cash (trafficking);
13 (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21
14 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
15 (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food
16 instruments or cash-value vouchers;
17 (D) vendor overcharging;
18 (E) receiving, transacting, or redeeming food instruments or cash-value vouchers outside of
19 authorized channels, including the use of an unauthorized vendor or an unauthorized
20 person;
21 (F) charging for supplemental food not received by the WIC customer;
22 (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco
23 products, cash, firearms, ammunition, explosives, or controlled substances as defined in
24 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
25 (H) providing unauthorized food items in exchange for food instruments or cash-value
26 vouchers, including charging for supplemental food provided in excess of those listed on
27 the food instrument;
28 (I) failure to properly transact a WIC food instrument or cash-value voucher;
29 (J) requiring a cash purchase to transact a WIC food instrument or cash-value voucher; or
30 (K) requiring the purchase of a specific brand when more than one WIC supplemental food
31 brand is available.
32 (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect
33 the following violations:
34 (A) failure to stock the minimum inventory specified in Item (24) of Rule .0708;
35 (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
36 (C) failure to allow monitoring of a store by WIC staff;

- 1 (D) failure to provide Program-related records referenced in Item (30) of Rule .0708 when
2 requested by WIC staff;
- 3 (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or
4 have the prices posted on the shelf or display case; or
- 5 (F) unauthorized use of the "WIC" acronym or the logo.
- 6 (3) Any other method used by the state or local agency to detect the following violations by a vendor
7 within a 12-month period:
- 8 (A) failure to attend annual vendor training;
- 9 (B) failure to submit a WIC Price List as required by Item (32) of Rule .0708;
- 10 (C) discrimination on the basis of WIC participation as referenced in Item (38) of Rule .0708.
- 11 (D) contacting a WIC customer in an attempt to recoup funds for food instruments or cash-
12 value vouchers or contacting a WIC customer outside the store regarding the transaction
13 or redemption of WIC food instruments or cash-value vouchers;
- 14 (E) nonpayment of a claim assessed by the state agency;
- 15 (F) providing false, erroneous, or misleading information to the state or local WIC agency;
- 16 (G) claiming reimbursement for the sale of an amount of a specific supplemental food item
17 which exceeds the store's documented inventory of that supplemental food item for a
18 specific period of time, or failure or inability to provide records or providing false records
19 required under Item (30) of Rule .0708 for an inventory audit;
- 20 (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods
21 from the sources specified in Item (3) of Rule .0707; or
- 22 (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible
23 medical food that was not purchased from the sources specified in Item (3) of Rule
24 .0707.

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

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

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

- 35 (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all
36 subsequent amendments and editions, provided that the vendor's average monthly redemptions

1 shall be calculated by using the six-month period ending with the month immediately preceding
2 the month during which the notice of administrative action is dated.

3 (2) The state agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu
4 of disqualification of a vendor for the state-established violations listed in Paragraph (b) of this
5 Rule when the state agency determines that disqualification of a vendor would result in participant
6 hardship in accordance with Subparagraph (f)(3) of this Paragraph.

7 (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in
8 Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the
9 following factors, which conclusively show lack of hardship, are found to exist:

10 (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S.
11 160A-2, and another WIC vendor is located within seven miles of the noncomplying
12 vendor;

13 (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2,
14 and another WIC vendor is located within three miles of the noncomplying vendor; or

15 (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the
16 local agency at which WIC participants pick up their food instruments or cash-value
17 vouchers.

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

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

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

26 (i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in
27 accordance with Item (33) of Rule .0708.

28 (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
29 abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or
30 other remedies that may be applicable under any federal or state law.

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

1 instruments or cash-value vouchers. After entering into an agreement for a one-time payment, a non-authorized
2 store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash-
3 value vouchers accepted thereafter.

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

7 History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 178