

10A NCAC 43D .0706 AUTHORIZED WIC VENDORS

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

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

Peer Group I - - zero to two cash registers;

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

Peer Group III - - six or more cash registers.

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

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

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

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

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

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

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

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military 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;

- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store 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) of this Rule, the state agency shall look at the most recent 12-month period of sales 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) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

- (8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(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) 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) of this Rule.

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

- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
 - (A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;
 - (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture and Consumer Services;
 - (C) Retail food stores that purchase directly from suppliers described in Part (b)(3)(A) or Part (b)(3)(B) of this Rule; or
 - (D) A supplier on another state's list of approved infant formula suppliers as verified by that state's agency.

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

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule. The maximum price for each supplemental food shall be established as follows:
 - (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(31) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year. The sample of vendors shall exclude predominantly WIC vendors.
 - (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state

WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(24) of this Rule. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.
- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or in part, in the official name in which the business is registered or in the name under which it does business.
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency.
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.
- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (14) A vendor applicant shall not be authorized if it is currently disqualified from the Special Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.

- (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
- (A) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.
- The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Subparagraph shall apply until the time the SNAP vendor disqualification otherwise would have expired.
- (16) A vendor applicant, excluding free-standing pharmacies, must have SNAP authorization for the store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization number to the state agency.
- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.

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

- (1) Process WIC program food instruments and cash-value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;
- (2) Accept WIC program food instruments and cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits and vegetables with a cash-value voucher, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument or cash-value voucher prior to obtaining the signature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument or the full dollar value of the cash-value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash-value voucher if the WIC customer pays the difference;
- (4) Enter in the "Pay Exactly" box on the food instrument or cash-value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors for a food instrument shall not exceed the statewide average for that food instrument. This average excludes data from predominantly WIC vendors;

- (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value voucher;
- (8) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;
- (9) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible medical foods;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (12) Accept WIC program food instruments and cash-value vouchers only on or between the "Date of Issue" and the "Participant Must Use By" dates;
- (13) Prior to obtaining the signature, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;
- (14) Ensure that the food instrument or cash-value voucher is signed in the presence of the cashier;
- (15) Refuse to transact any food instrument or cash-value voucher that has been altered;
- (16) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (17) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (18) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument or cash-value voucher to enable the vendor number to be read during the Program editing process;
- (19) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- (20) Deposit WIC program food instruments and cash-value vouchers in the vendor's bank. All North Carolina WIC program food instruments and cash-value vouchers must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument or cash-value voucher;
- (21) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;
- (22) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local agency;
- (23) Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or cash-value vouchers;
- (24) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors 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-	
Cheese	Skim/lowfat fluid: gallon	4 gallons
	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	
Juices	size carton	
	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-	
	milk-based powder;	10 cans
	12.9 to 14.3 ounce	
	-and-	
	soy-based powder;	5 cans
	12.9 to 14.3 ounce	
	Brands must be the	
	primary contract infant formulas	
Fruits	14 to 16 ounce can: 2 varieties	6 cans
Vegetables	14 to 16 ounce can: 2 varieties	6 cans

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

- (25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (26) Permit the purchase of supplemental food without requiring other purchases;
- (27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local agency;
- (28) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (29) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowing access to all WIC food instruments and cash-value vouchers at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory

audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (g)(1) of this Rule;

- (31) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
 - (32) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
 - (33) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash-value vouchers;
 - (34) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
 - (35) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
 - (36) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the Agreement or disqualification from the WIC Program;
 - (37) Offer WIC customers the same courtesies as offered to other customers;
 - (38) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with 42 USC 1786(h)(14). If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, or cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors;
 - (39) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor selection criteria of Paragraph (b) of this Rule; and
 - (40) Comply with all the requirements for vendor applicants of Subparagraphs (b)(3), (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(10), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide annual vendor training on WIC procedures and rules;

- (2) Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
 - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement; and
 - (4) Assist the vendor with questions which may arise under the Agreement or through the vendor's participation in the WIC Program.
- (e) For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
- (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
- (g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:
- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
 - (2) two occurrences of vendor overcharging within a 12-month period;
 - (3) two occurrences of receiving, transacting or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
 - (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
 - (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers within a 12-month period; or
 - (6) three occurrences of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.
- (h) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule:
- (1) When a vendor commits any of the following violations, the state-established disqualification period is:
 - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument or cash-value voucher by not completing the date or purchase price on the WIC food instrument or cash-value voucher before obtaining the signature, by not obtaining the signature in the presence of the cashier, or by accepting a WIC food instrument or cash-value voucher prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument or cash-value voucher;
 - (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument or cash-value voucher;

- (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
 - (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule.
- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
- (A) 2.5 points for:
 - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
 - (ii) unauthorized use of the "WIC" acronym or the WIC logo.
 - (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory;
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
 - (iv) failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services.
 - (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamp); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for a food instrument or a cash-value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or a cash-value voucher.
 - (D) 15 points for:
 - (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instruments or cash-value vouchers for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim assessed by the state agency;
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash-value vouchers or monitoring forms), except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for providing false records for an inventory audit; or
 - (vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier as required by Subparagraphs (b)(3) and (c)(40) of this Rule.
- (3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.
- (i) For investigations pursuant to this Section, a single investigation is:
 - (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
 - (A) buying or selling food instruments or cash-value vouchers for cash (trafficking);

- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers;
 - (D) vendor overcharging;
 - (E) receiving, transacting, or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
 - (H) providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument;
 - (I) failure to properly transact a WIC food instrument or cash-value voucher;
 - (J) requiring a cash purchase to transact a WIC food instrument or cash-value voucher; or
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
- (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff when required;
 - (D) failure to provide WIC food instruments or cash-value vouchers for review when requested;
 - (E) failure to provide store inventory records when requested by WIC staff;
 - (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;
 - (G) failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services; or
 - (H) unauthorized use of the "WIC" acronym or the logo.
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule;
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps);
 - (D) contacting a WIC customer in an attempt to recoup funds for food instruments or cash-value vouchers or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
 - (E) nonpayment of a claim assessed by the state agency;
 - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash-value vouchers or monitoring forms);
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit; or
 - (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from an authorized supplier.

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

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

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

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments or cash-value vouchers.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.

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

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

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

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

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

(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 written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

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