

## SUBCHAPTER 43D – WIC/NUTRITION

### SECTION .0100 - DEFINITIONS

<b>10A NCAC 43D .0101</b>	<b>DIETETICS</b>
<b>10A NCAC 43D .0102</b>	<b>DIETITIAN</b>
<b>10A NCAC 43D .0103</b>	<b>NUTRITIONIST</b>
<b>10A NCAC 43D .0104</b>	<b>THE AMERICAN DIETETIC ASSOCIATION</b>
<b>10A NCAC 43D .0105</b>	<b>HOME ECONOMIST</b>
<b>10A NCAC 43D .0106</b>	<b>COMPETENT DIETARY PROFESSIONAL</b>
<b>10A NCAC 43D .0107</b>	<b>WIC</b>

*History Note:* Authority G.S. 130A-361;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. December 6, 1991; November 1, 1990;  
Repealed Eff. October 1, 2009.

### SECTION .0200 - WIC PROGRAM GENERAL INFORMATION

#### **10A NCAC 43D .0201 DESCRIPTION**

The Nutrition Services Branch is responsible for the administration of the WIC Program in North Carolina.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; December 6, 1991; November 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

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

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

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3).
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency for the implementation, maintenance, and operation of the State WIC agency's WIC EBT system that acts as the agent of the State WIC agency to process and settle EBT transactions.
- (6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a State or local agency action that results in a claim against the individual for repayment of the cash value of issued benefits by which the individual is not eligible or results in the individual's denial of participation or disqualification from the WIC Program, as set forth in Rule .0410 of this Subchapter. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7 CFR 246.9.
- (7) "First date to spend" means "first date of use" as defined in 7 C.F.R. 246.12, hereby incorporated by reference with all subsequent amendments and editions.
- (8) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

- (9) "Food benefits" are the prescribed amounts of WIC authorized foods and formulas or a fixed dollar amount prescribed to WIC customers to receive fruits and vegetables.
  - (10) "Food benefit balance" means the unspent food benefits for the current month that are available to use by the cardholder.
  - (11) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
  - (12) "Last date to spend" means "last date of use" as defined in 7 C.F.R. 246.12, hereby incorporated by reference with all subsequent amendments and editions.
  - (13) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
  - (14) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.
  - (15) "New authorized WIC vendor" is an authorized WIC vendor that has been approved to accept WIC for the first time and does not include vendors that have a previous WIC authorization history.
  - (16) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.
  - (17) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.
  - (18) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.
  - (19) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.
  - (20) "Redeemed food benefits" means the benefits that have been used by the WIC customer.
  - (21) "Redemption" is the process by which a vendor receives payment from the State agency or its financial agent for food benefits transacted at that vendor location.
  - (22) "Shelf price" is the price listed on the shelf for the WIC supplemental food.
  - (23) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
  - (24) The "State agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.
  - (25) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.
  - (26) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.
  - (27) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
  - (28) "Transaction" is the process by which a WIC customer tenders food benefits at an authorized vendor in exchange for authorized supplemental foods.
  - (29) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.
  - (30) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.
  - (31) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
  - (32) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
  - (33) "WIC customer" means a WIC participant, parent, or caretaker of an infant or child participant, proxy for the eligible participant, or compliance investigator who transacts food benefits at a vendor in exchange for WIC supplemental food.
  - (34) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.
- (b) A copy of 7 C.F.R. Part 246 is available free of charge at <https://www.ecfr.gov>.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246.2; 7 C.F.R. 246.9; 7 C.F.R. 246.12; 7 C.F.R. 246.18; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;  
Temporary Amendment Eff. May 17, 2000;  
Amended Eff. April 1, 2001;  
Temporary Amendment Eff. July 1, 2002;  
Amended Eff. August 1, 2004;  
Temporary Amendment Eff. July 1, 2006;  
Amended Eff. October 1, 2017; February 1, 2013; October 1, 2009; April 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;  
Amended Eff. March 1, 2020.

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

- (a) The State agency shall administer the WIC program in accordance with:
- (1) 42 U.S.C. 1786; and
  - (2) 7 C.F.R. 246.1 through 246.28, United States Department of Agriculture, Food and Nutrition Service, Special Supplemental Nutrition Program for Women, Infants and Children.
- (b) The documents listed in Paragraph (a) of this Rule are available for inspection at the Division of Public Health, Women's and Children's Section, Nutrition Services Branch at 5601 Six Forks Road, Raleigh, NC 27609 during regular business hours, Monday through Friday from 8:00 AM to 5:00 PM.

*History Note:* Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2017; October 1, 2009; April 1, 1984; April 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

#### **10A NCAC 43D .0204 CONTRACT WITH FNS**

- (a) The Division of Public Health shall maintain the Federal-State Special Supplemental Nutrition Program Agreement with the United States Department of Agriculture, Food and Nutrition Service.
- (b) The state agency shall prepare, submit to FNS, and maintain the North Carolina State WIC Program Plan of Operations to fulfill the requirements of 7 C.F.R. 246.4. This plan is available for inspection at the state agency during business hours.

*History Note:* Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

#### **10A NCAC 43D .0205 POLICIES: GUIDELINES AND MANUALS**

- (a) The state agency shall promulgate policies, guidelines and manuals to facilitate operation of the WIC Program in accordance with the contract with FNS, the guidelines and instructions issued by FNS in policy letters and management evaluations, and the North Carolina State WIC Program Plan of Operations and the rules contained in this Subchapter.
- (b) The policies, guidelines and manuals maintained under (a) of this Rule are available for inspection at the state agency during regular business hours.

*History Note:* Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

#### **10A NCAC 43D .0206 GENERAL ADMINISTRATION**

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. November 1, 1990;  
Repealed Eff. October 1, 2009.*

#### **10A NCAC 43D .0207 LOCAL WIC AGENCY AGREEMENT AND BUDGET**

- (a) The state agency shall enter into an agreement and negotiate a budget with each local WIC agency in accordance with 7 C.F.R. 246.6.
- (b) The availability of budgeted support cost funds for each local WIC agency is contingent upon the availability of WIC program support cost funds.
- (c) Since local support cost funds are allocated according to the assigned number of participants to be served, in the event a local WIC agency is unable to serve the assigned number of participants, the state agency shall reduce the amount of support cost funds provided to the local WIC agency by a portion reflective of the level of underperformance.
- (d) The state agency shall notify the local WIC agency in writing of any reduction of support cost funds available to the local WIC agency.
- (e) When state food dollars are overexpended during a federal fiscal year, local WIC Programs that have maintained an active case load in excess of their assigned number of participants shall reimburse to the state their proportionate share of the overexpenditure.

*History Note: Authority G.S. 130A-361;  
Eff. April 1, 1982;  
Amended Eff. October 1, 2009; April 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

### **SECTION .0300 - SELECTION OF LOCAL WIC AGENCIES**

#### **10A NCAC 43D .0301 INITIAL APPLICATION**

- (a) Any local agency interested in applying for a WIC program grant shall, upon request to the state agency, be sent an information package to facilitate the application process.
- (b) If the application is submitted but is incomplete, the state agency shall notify the applicant of the additional information required within fifteen days of receipt of the application.
- (c) The state agency shall send notice of approval or denial of the application within thirty days of receipt of a complete application. The applicant will be informed as to whether funds are available to expand WIC program services.
- (d) If the application is approved, a written agreement will be executed.
- (e) If the application is denied, the applicant may appeal the decision according to Section .0800 of this Subchapter.

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. September 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

#### **10A NCAC 43D .0302 CRITERIA FOR SELECTION OF LOCAL AGENCIES**

- (a) The state agency shall only accept applications from local agencies as defined in 7 C.F.R. 246.2.
- (b) The application must be to provide WIC program benefits to an area or population not receiving program benefits from a local WIC agency.
- (c) WIC program funds must be available to serve the area or population described in the application.
- (d) The State Agency shall consider the local agency priority system and Affirmative Action Plan described in 7 C.F.R. 246.5 in making the decision to fund or not to fund an application.

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009;*

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

**10A NCAC 43D.0303 CONTINUATION OF LOCAL WIC AGENCIES**

- (a) All grants to local WIC agencies shall be issued annually through an agreement unless the agreement has been terminated as specified in Rule .0305 of this Section.
- (b) All local WIC agencies are eligible to obtain a grant for the next fiscal year provided that:
- (1) WIC program funds are available to serve the area or population;
  - (2) The agency continues to operate as a local WIC agency; and
  - (3) The agency signs and submits the grant agreement and budget required by the state agency.

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; September 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

**10A NCAC 43D .0304 EXPANSION OF LOCAL WIC PROGRAMS**

Local WIC agencies that plan to increase the number of persons served shall submit a written request to the Nutrition Services Section. The availability of funds and the Affirmative Action Plan contained in the North Carolina State WIC Program Plan of Operation will be considered in making the decision to approve or deny the request.

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. December 6, 1991; November 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

**10A NCAC 43D .0305 TERMINATION OF LOCAL WIC AGENCIES**

- (a) The authority to operate a local WIC program may be terminated for noncompliance.
- (b) If FNS terminates or suspends the North Carolina WIC program, the state agency shall in turn, terminate or suspend its agreements with local WIC agencies.
- (c) Termination of a local agency is subject to the appeal provisions of 7 C.F.R. 246.18(a)(3) and Section .0800 of this Subchapter.

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; September 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

**SECTION .0400 - ELIGIBILITY FOR WIC PROGRAM PARTICIPATION**

- 10A NCAC 43D .0401 ELIGIBILITY**
- 10A NCAC 43D .0402 APPLICATION**
- 10A NCAC 43D .0403 MEDICAL AND NUTRITION ASSESSMENT**
- 10A NCAC 43D .0404 NUTRITIONAL RISK CERTIFICATION CRITERIA**
- 10A NCAC 43D .0405 SCHEDULE OF CERTIFICATION**
- 10A NCAC 43D .0406 DOCUMENTATION OF CERTIFICATION**
- 10A NCAC 43D .0407 TRANSFER OF CERTIFICATION**

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 143B-10;  
Eff. July 1, 1981;  
Amended Eff. October 1, 1993; September 1, 1991; December 6, 1991; November 1, 1990; October 1, 1990; July 1, 1989;*

*Repealed Eff. October 1, 2009.*

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

- (a) A waiting list shall be established in accordance with 7 C.F.R. 246.7(f), which is incorporated by reference with all subsequent amendments and editions.
- (b) Local WIC agencies maintaining a waiting list shall continue to provide WIC program benefits to all individuals enrolled in the program until the expiration of their certification period.
- (c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority level are first given an opportunity to receive food benefits in accordance with 7 C.F.R. 246.7(e)(4) which is incorporated by reference with all subsequent amendments and editions.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.7;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; November 1, 1990; July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;  
Amended Eff. March 1, 2020.*

**10A NCAC 43D .0409 REQUIRED NOTIFICATIONS**

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. September 1, 1991; July 1, 1989;  
Repealed Eff. October 1, 2009.*

**10A NCAC 43D .0410 PARTICIPANT VIOLATIONS AND SANCTIONS**

- (a) The State agency shall assess a claim for the full value of Program benefits that have been obtained or disposed of improperly as the result of a participant violation. "Participant violation" means those violations listed in 7 C.F.R. 246.2 which are incorporated by reference in Rule .0202 of this Subchapter. A claim shall not be paid by offsetting the claim against future Program benefits.
- (b) The following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a one-year disqualification of the participant from the WIC Program, except as provided in Paragraphs (c) and (d) of this Rule:
  - (1) Exchanging food instruments, cash-value vouchers or supplemental food for cash;
  - (2) Exchanging food instruments, cash-value vouchers or supplemental food for alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802;
  - (3) A claim for dual participation resulting from intentional misrepresentation;
  - (4) Intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain Program benefits;
  - (5) Any participant violation for which a claim of one hundred dollars (\$100.00) or more is assessed;
  - (6) A second or subsequent claim assessed for any participant violation, regardless of the dollar amount. The second or subsequent claim does not have to be for the same participant violation as the initial claim to result in a one-year disqualification; and
  - (7) Physical harm to clinic or vendor staff.
- (c) The one-year disqualification referenced in Paragraph (b) of this Rule shall not be imposed against the participant if a claim is assessed and full payment is made or a repayment schedule is agreed upon within 30 days of receipt of a written demand for repayment of the claim for the improperly obtained or disposed of Program benefits.
- (d) The one-year disqualification referenced in Paragraph (b) of this Rule shall not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant. Designation of a proxy shall be approved if the proxy:
  - (1) is at least 18 years of age;
  - (2) presents proof of identification in the form of a government-issued photo identification card, work or school identification card, health benefits or social services program card, social security card, birth certificate, or a pay stub or utility bill no more than 60 days old;

- (3) has written authorization from the participant or the parent or caretaker of an infant or child participant;
  - (4) will not be serving as proxy for more than two families at the same time; and
  - (5) will be the person who transacts the food instruments.
- (e) Except as provided in Subparagraphs (b)(5) and (b)(6) of this Rule, the following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first violation and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits:
- (1) Exchanging food instruments, cash-value vouchers or supplemental food for credit;
  - (2) Exchanging food instruments, cash-value vouchers or supplemental food for non-food items, other than alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802; and
  - (3) Exchanging food instruments, cash-value vouchers or supplemental food for unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument.

For the violations listed in this Paragraph, failure to pay a claim in full or agree to a repayment schedule within 30 days of receipt of a written demand for repayment of a claim, shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(f) The occurrence of a second or subsequent participant violation listed in Paragraph (e) of this Rule shall result in a one-year disqualification of the participant and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits. The second or subsequent violation does not have to be the same as the initial violation to result in a one-year disqualification. The one-year disqualification shall not be imposed against the participant if full payment is made or a repayment schedule is agreed upon within 30 days of receipt of a written demand for repayment of a claim. Additionally, the one-year disqualification shall not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(g) Threatening physical harm to or verbal abuse of clinic or vendor staff by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first occurrence of this violation. A second occurrence within a 12-month period shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(h) For any disqualification imposed under this Rule, a participant may reapply for Program participation if during the period of the disqualification full payment is made or a repayment schedule is agreed upon, or in the case of a participant who is an infant, child, or under age 18, the state or local agency approves the designation of a proxy in accordance with Paragraph (d) of this Rule.

(i) The participant has a right to a fair hearing in accordance with Section .0900 of this Subchapter for sanctions imposed under this Rule.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1983; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002; Amended Eff. October 1, 2009; August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

#### **10A NCAC 43D .0411 DUAL PARTICIPATION**

(a) A WIC participant shall not participate simultaneously in one or more than one WIC clinic, or participate in the WIC Program and the Commodity Supplemental Food Program ("CSFP") during the same period of time. For purposes of this Rule, participate means certification as a WIC participant for the receipt of WIC food instruments or cash-value vouchers or certification as a CSFP participant for the receipt of CSFP food.

(b) The state agency shall immediately terminate the participation in one of the clinics or Programs, or the simultaneous participation in a single clinic, in accordance with 7 C.F.R. 246.7 (l) when a participant is found to be in violation of Paragraph (a) of this Rule.

(c) In the case of dual participation resulting from intentional misrepresentation, the participant, parent or caretaker of an infant or child participant, or proxy shall repay Program benefits improperly issued as a result of the dual participation,

and the participant shall be disqualified from participation in both Programs or clinic(s) in accordance with 7 C.F.R. 246.7 (l) and Paragraph (b) of Rule .0410 of this Section. For purposes of this Paragraph, receiving WIC food instruments or cash-value vouchers under two or more participant identities in a single WIC clinic during the same issuance period and transacting one or more of the food instruments or cash-value vouchers received under two or more of the identities constitutes dual participation based on intentional misrepresentation. Receiving WIC food instruments or cash-value vouchers from more than one WIC clinic during the same issuance period and transacting one or more of the food instruments or cash-value vouchers received from two or more of the clinics constitutes dual participation based on intentional misrepresentation. Additionally, receiving WIC food instruments or cash-value vouchers and CSFP food during the same time period and transacting one or more of the WIC food instruments or cash-value vouchers constitutes dual participation based on intentional misrepresentation.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Temporary Adoption Eff. July 1, 2002;  
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## **SECTION .0500 – WIC PROGRAM FOOD PACKAGE**

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

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

(b) The following exclusions from the food package have been adopted by the North Carolina WIC Program:

- (1) mackerel and sardines;
- (2) goat milk; and
- (3) dried fruits and vegetables.

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

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.10; 42 U.S.C. 1786;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;  
Amended Eff. March 1, 2020.*

### **10A NCAC 43D .0502 QUANTITY OF FOODS**

The amount of supplemental foods provided shall not exceed the maximum quantities specified in 7 C.F.R. 246.10, which is incorporated by reference with all subsequent amendments and editions.

*History Note: Authority G.S. 130A-361;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; July 1, 1989; July 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

### **10A NCAC 43D .0503 USE OF WIC SUPPLEMENTAL FOODS**



WIC supplemental foods shall be provided for consumption by the participant and not be distributed for use by institutions such as child and day care centers.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
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#### **SECTION .0600 - WIC PROGRAM NUTRITION EDUCATION**

**10A NCAC 43D .0601** EDUCATION OF PARTICIPANTS  
**10A NCAC 43D .0602** DOCUMENTATION OF NUTRITION EDUCATION  
**10A NCAC 43D .0603** CONTINUING EDUCATION OF STAFF  
**10A NCAC 43D .0604** THE LOCAL AGENCY NUTRITION EDUCATION PLAN

*History Note:* Authority G.S. 130A-361;  
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#### **SECTION .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

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

The WIC program shall provide supplemental foods through a uniform EBT retail distribution system in accordance with 7 C.F.R. 246.12. Local agencies shall use an automated data processing system to promote the provision of and accounting for food benefits issued to participants.

*History Note:* Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.12;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;  
Amended Eff. March 1, 2020.

##### **10A NCAC 43D .0702 ISSUANCE OF FOOD BENEFITS**

- (a) Local WIC agencies shall issue WIC program food benefits to program participants in a manner which ensures that participants can receive the supplemental foods that have been prescribed for them in accordance with 7 C.F.R. 246.10, which is incorporated by reference with all subsequent amendments and editions.
- (b) Local WIC agencies shall issue food benefits and shall retain documentation of issuance. The documentation of issuance shall include the dated signature of the authorized individual receiving the food benefits, as set out in Subparagraph (c) of this Rule.
- (c) Food benefits shall be issued only to the participant, the participant's parent, the participant's caretaker, a proxy, or a representative of the program completing a compliance buy.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246.2; 7 C.F.R. 246.10; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. April 1, 2001;  
Temporary Amendment Eff. July 1, 2002;  
Amended Eff. October 1, 2009; August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;  
Amended Eff. March 1, 2020.

#### **10A NCAC 43D .0703 USE OF FOOD BENEFITS**

(a) Participants may transact food benefits on any day on or between the "First Date to Spend" and "Last Date to Spend" for their certification period, as defined in 7 C.F.R. 246.7(g), which is incorporated by reference with all subsequent amendments and editions.

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

(c) Authorized WIC vendors shall have their bank account credited with payments for completed EBT transactions. Food benefits shall not be assigned, transferred, sold, or otherwise negotiated.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.7; 7 C.F.R. 246.12; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989; Temporary Amendment Eff. July 1, 2002; Amended Eff. October 1, 2017; October 1, 2009; August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020.*

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

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1989; July 1, 1985; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. October 1, 2009; August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Repealed Eff. March 1, 2020.*

#### **10A NCAC 43D .0705 PAYMENT OF WIC FOOD BENEFITS**

The State of North Carolina shall:

- (1) accept EBT transactions for North Carolina WIC food benefits through the Federal Reserve and commercial banking systems;
- (2) provide payment for all valid WIC food benefits. To the extent that funds are available in the WIC disbursing account, payment shall be provided by the Department of Health and Human Services.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.12; Eff. July 1, 1981; Amended Eff. October 1, 2009; April 1, 2001; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020.*

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

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

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

WIC sales figures of new authorized WIC 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 based on redemption.

- (2) Authorized vendors for which annual WIC supplemental food sales are available, including chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups, as set forth in 7 CFR 246.12(g)(4) and 7 CFR 246.12(h)(3), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
- (3) "Annual WIC supplemental food sales" is the dollar amount an authorized vendor redeems in WIC food benefits within a 12-month period.
- (4) In determining a vendor's peer group designation based on annual WIC supplemental food sales, the State agency shall look at the most recent 12-month period of redemption data.
- (5) 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.
- (6) 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 shall 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.
- (7) A vendor applicant previously authorized in a peer group based on annual WIC supplemental food sales that is being reauthorized following the nonrenewal or termination of its agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously in, 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 using criteria for new vendor applicants as set forth in Item (1) of this Rule.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.12; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. June 23, 2000; May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002; Amended Eff. November 1, 2005; August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. February 1, 2013; October 1, 2009; February 1, 2008; April 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020.*

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

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

- (1) A vendor applicant shall complete a WIC Vendor Application, as set forth in Item (20) of this Rule, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for

those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.

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

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

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:
- (a) The most recent prices submitted through the EBT system by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be two standard deviations above the average current highest shelf price of each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year.
  - (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 State agency shall send the applicant written notice. Within 30 days of the date of receipt of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of receipt of the written notice, the agency shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.
- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (17) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.

- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name under which the business is registered or in the name under which it does business.
- (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
- (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
- (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
  - (c) a plea of no contest, nolo contendere, or the equivalent; or
  - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
- (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
  - (a) a SNAP vendor that is disqualified from participation in 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, has not expired; or
  - (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, has not expired.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item ends the disqualification period applicable to that SNAP vendor earlier than the disqualification period otherwise would have expired. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.
- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s)

or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.

- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a certified third party processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.
- (20) A WIC Vendor Application shall include the following information:
  - (a) The store name, physical address, and hours of operation;
  - (b) The type of ownership under which the vendor operates;
  - (c) The names and contact information of owners or officers;
  - (d) Annual food sales data and percentages for the following tender types: cash, credit, debit, SNAP, and WIC;
  - (e) The store's SNAP authorization number and history of SNAP participation, if a retail grocery store; and
  - (f) Other information that the store is required to provide to the State agency in accordance with 7 C.F.R. 246.12.

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

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786; Eff. February 1, 2013; Amended Eff. October 1, 2017; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020.*

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

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

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

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

- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store shall wait 180 days to reapply for authorization;
- (12) Ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- (13) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;
- (14) Not transact food benefits in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (15) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food benefits, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (16) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food benefits;
- (17) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. Free-standing pharmacies are not required to maintain a minimum inventory of supplemental foods. The following items and sizes constitute the minimum inventory of supplemental foods for vendors:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	2 gallons
	-and- Skim/lowfat fluid: gallon	6 gallons
Cheese	1 pound package	2 packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: 1 dozen size carton	2 dozen
Juices	Single strength: 48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Tuna	5 to 6 ounce can	6 cans
Bread/Tortillas	16 ounce loaf of bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package
Rice	14 to 16 ounce package	2 packages
Infant Cereal	8 ounce box	6 boxes

Infant Fruits and Vegetables	3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable	64 ounces
Infant Formula	milk-based powder; 11.0 to 14.0 ounce -and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	8 cans 4 cans
Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	10 cans total

All vendors, except free-standing pharmacies, shall supply milk or soy-based infant formula in 32 ounce ready-to-feed or powder within 48 hours of request by the State or local WIC agency. Free-standing pharmacies shall only supply exempt infant formula or WIC-eligible nutritionals. Free-standing pharmacies shall supply exempt infant formula or WIC-eligible nutritionals within 48 hours of a request;

- (18) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (19) Permit the purchase of supplemental food without requiring other purchases;
- (20) Comply with the following EBT provisions:
  - (a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program or a third-party processor that has been certified according to criteria established by the EBT Processor selected by the State WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within 24 hours of any periods of time during which they do not maintain an Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor;
  - (b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program State Rules, federal regulations, and statutes;
  - (c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);
  - (d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;
  - (e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed;
  - (f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements;
  - (g) Require an owner, manager, or other authorized store representative to complete training on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;
  - (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendor's staff does not approve the WIC transactions for WIC customers under any circumstances;
  - (i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt, and updated balance of the WIC customer's account;



- (j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the types, sizes, and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;
  - (k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;
  - (l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.
- (21) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
  - (22) Inform and train vendor's cashiers and other staff on WIC Program requirements;
  - (23) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
  - (24) Allow monitoring and inspection by State and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and State, and federal WIC Program rules, regulations, and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records shall be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710 of this Section, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
    - (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;
    - (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
    - (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
  - (25) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents, or other verifiable documentation;
  - (26) Submit a current completed WIC Price List when signing this agreement, and within two weeks of any written request by the State or local WIC agency;
  - (27) Reimburse the State agency in full or agree to a repayment schedule with the State agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor. Failure to reimburse the State agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. Payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);
  - (28) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food benefits not paid or partially paid by the State agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food benefits;
  - (29) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food benefits;

- (30) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (31) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(h)(3)(iii), offered to other customers or requiring separate WIC lines;
- (32) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria set forth in 7 CFR 246.12(g)(4), 7 CFR 246.12(h)(3), and the vendor selection criteria of Rule .0707 of this Section; and
- (33) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), (15), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.
- (34) Permit the State agency to reassess the 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.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246.12; 42 U.S.C. 1786;  
 Eff. March 1, 2013;  
 Amended Eff. October 1, 2017;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;  
 Amended Eff. March 1, 2020; July 1, 2018.

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

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

- (1) Provide annual vendor training on WIC procedures and rules;
- (2) Conduct routine monitoring, as set forth in 7 C.F.R. 246.2 and 7 C.F.R. 246.12(j)(2), of 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 fiscal year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive fiscal 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.

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

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

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

- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item (24) of Rule .0708 of this Section 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 benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
- (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits within a 12-month period; or
- (6) three occurrences of providing unauthorized food items in exchange for food benefits, including charging for supplemental food provided in excess of those listed on the food benefit balance within a 12-month period.

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

- (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in Item (31) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (2) One year for three occurrences within a 12-month period of failure to properly transact WIC food benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each improper transaction is a separate occurrence;
- (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact WIC food benefits. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each transaction requiring a cash purchase is a separate occurrence;
- (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for food benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food benefits. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;
- (5) 180 days for three occurrences within a 12-month period of failure to provide program-related records referenced in Item (24) of Rule .0708 when requested by WIC staff, except as provided in Item (24) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;
- (6) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item (25) of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;
- (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item (17) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;
- (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;

- (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item (26) of Rule .0708. Each written request by the State or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;
- (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence;
- (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each transaction requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate occurrence;
- (13) 180 days for three occurrences within a 12-month period of failure to make EBT point of sale equipment accessible to WIC customers to ensure that EBT transactions are completed in accordance with Rule .0708; and
- (14) 90 days for three occurrences within a 12-month period of failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section;

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

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

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
  - (A) buying or selling food benefits for cash (trafficking);
  - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits;
  - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food benefits;
  - (D) vendor overcharging;
  - (E) receiving, transacting, or redeeming food benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
  - (F) charging for supplemental food not received by the WIC customer;
  - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits;
  - (H) providing unauthorized food items in exchange for food benefits, including charging for supplemental food provided in excess of those listed on the food benefit balance;
  - (I) failure to properly transact WIC food benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance;
  - (J) requiring a cash purchase to transact WIC food benefits; or
  - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
  - (A) failure to stock the minimum inventory specified in Item (17) of Rule .0708;
  - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
  - (C) failure to allow monitoring of a store by WIC staff;
  - (D) failure to provide program-related records referenced in Item (24) of Rule .0708 when requested by WIC staff;
  - (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;

- (F) unauthorized use of the "WIC" acronym or the logo, as defined in WIC Policy Memo #2009-1, which is hereby incorporated by reference, including subsequent amendments and editions, and available free of charge at <https://www.fns.usda.gov/wic/clarification-use-wic-acronym-and-logo>;
  - (G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
  - (H) failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section.
- (3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
  - (B) failure to submit a WIC Price List as required by Item (26) of Rule .0708;
  - (C) discrimination on the basis of WIC participation as referenced in Item (31) of Rule .0708.
  - (D) contacting a WIC customer in an attempt to recoup funds for food benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food benefits;
  - (E) nonpayment of a claim assessed by the State agency;
  - (F) providing false, erroneous, or misleading information to the State or local WIC agency;
  - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item (24) of Rule .0708 for an inventory audit;
  - (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or
  - (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.
- (d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or (f)(3)(C) of this Rule shall show adequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.
- (f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a vendor:
- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
  - (2) The State agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the State-established violations listed in Paragraph (b) of this Rule when the State agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (f)(3) of this Paragraph.
  - (3) In determining whether to disqualify a WIC vendor for the State-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which show lack of hardship, are found to exist:
    - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-1(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-1(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 are certified to receive WIC food benefits.
  - (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions. These provisions also apply to a vendor that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).

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

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

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

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

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

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246.12; 7 C.F.R. 246.18; 42 U.S.C. 1786; Eff. February 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020; January 1, 2018.

## **SECTION .0800 - WIC PROGRAM ADMINISTRATIVE APPEALS**

### **10A NCAC 43D .0801 RESERVED FOR FUTURE CODIFICATION**

#### **10A NCAC 43D .0802 APPEALS**

(a) The appeal provisions for vendors and local agencies found in 7 C.F.R. 246.18(a), (b)(1) and (b)(9) are incorporated by reference with all subsequent amendments and editions. The appeal procedures in 7 C.F.R. 246.18(b)(1) and (b)(9) shall apply to the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).

(b) All administrative appeals under this Section shall be made in accordance with G.S. 150B and G.S. 130A-24.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 USC 1786; Eff. July 1, 1981; Amended Eff. July 1, 1987; July 1, 1986; July 1, 1983; July 1, 1982; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

### **10A NCAC 43D .0803 RESERVED FOR FUTURE CODIFICATION**

#### **10A NCAC 43D .0804 CONTINUATION OF PARTICIPATION**

Except as provided in 42 U.S.C. 1786(o)(2) and 7 C.F.R. 246.18(a)(2) and (a)(3)(iii), the participation of a local WIC agency or authorized WIC vendor in the WIC program may continue during an administrative appeal. Except as provided in 42 U.S.C. 1786(o)(2) and 7 C.F.R. 246.18(a)(2) and (a)(3)(iii), the adverse action shall become effective upon issuance of a final agency decision pursuant to G.S. 150B-36 which upholds the adverse action.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1986; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

**10A NCAC 43D .0805    RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 43D .0806    CONTINUING RESPONSIBILITIES**

An appeal shall not relieve the local agency or authorized WIC vendor that is permitted to continue Program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the state or local agency and WIC Program rules, regulations, and law.

*History Note:*    *Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 U.S.C. 1786;*  
*Eff. July 1, 1981;*  
*Temporary Amendment Eff. July 1, 2002;*  
*Amended Eff. July 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

**SECTION .0900 - WIC PROGRAM PARTICIPANT FAIR HEARINGS**

**10A NCAC 43D .0901    RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 43D .0902    GENERAL CONDITIONS**

(a) This Section shall be carried out in accordance with 7 C.F.R. 246.9 and G.S. 150B-22. The fair hearing procedures set out in this Section establish an informal dispute resolution process which must be complied with prior to making a formal appeal in accordance with G.S. 150B.

(b) For the purposes of this Section, agency official shall mean the Branch Head of the Nutrition Services Branch or his or her designee.

*History Note:*    *Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*  
*Eff. July 1, 1981;*  
*Amended Eff. December 6, 1991; November 1, 1990; July 1, 1987;*  
*Temporary Amendment Eff. July 1, 2002;*  
*Amended Eff. July 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

**10A NCAC 43D .0903    AVAILABILITY**

Any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued Program benefits or results in the individual's denial of participation or disqualification from the WIC Program by requesting a fair hearing.

*History Note:*    *Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*  
*Eff. July 1, 1981;*  
*Amended Eff. November 1, 1990;*  
*Temporary Amendment Eff. July 1, 2002;*  
*Amended Eff. July 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

**10A NCAC 43D .0904    NOTIFICATION OF THE RIGHT TO A FAIR HEARING**

(a) Every current or potential WIC participant shall be informed by the local WIC agency of his or her right to a fair hearing:

- (1) in writing at the time of application;
- (2) in writing whenever he or she is determined ineligible;
- (3) in writing if disqualified due to abuse of the program;
- (4) in writing at the time of assessment of a claim for repayment of the cash value of improperly issued Program benefits; and

- (5) orally or in writing at least 15 days before the expiration of each certification period.
- (b) The content of the notice of fair hearing shall include:
  - (1) a statement of the right to a fair hearing;
  - (2) the method by which a fair hearing may be requested, including the time limit; and
  - (3) who may represent the individual.
- (c) In order to notify current and potential participants of the fair hearing process, a simplified summary of the steps involved in obtaining a fair hearing shall be posted in a visible place at every WIC site where certifications are performed, food instruments are issued or applications are accepted. This notification shall contain:
  - (1) notice of right to a fair hearing;
  - (2) a simplified explanation of the definition and purpose of a fair hearing;
  - (3) the method by which a fair hearing may be requested, including the time limit; and
  - (4) who may represent the individual at the fair hearing and in requesting a fair hearing.

*History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

#### **10A NCAC 43D .0905 REQUEST FOR A FAIR HEARING**

- (a) A request for a fair hearing is any expression that conveys a desire to present a case contesting an action that results in an individual's denial of participation, or disqualification from the program or a claim against an individual for repayment of the cash value of improperly issued Program benefits. This request may be made to any of the following:
  - (1) the agency official;
  - (2) the agency director of the local WIC agency;
  - (3) the WIC director of the local WIC agency;
  - (4) any person serving in one of the above three roles in the absence of the agency official, agency director or WIC director.
- (b) If the request is not made directly to the agency official, the individual receiving the request shall immediately notify the agency official of the request by telephone.
- (c) All requests shall be documented in writing.
  - (1) If the original request is made in writing, the individual receiving the request shall retain a photocopy and send the original to the agency official immediately following the telephone call.
  - (2) If a verbal request is received, the individual receiving the request shall document the request in writing, including:
    - (A) the applicant's or participant's name;
    - (B) the name of the individual making the request:
      - (i) their mailing address;
      - (ii) telephone number; and
      - (iii) relation to the applicant or participant;
    - (C) the date of the request; and
    - (D) the cause for the request along with the name, title, and signature of the person writing the documentation.

The original copy of this documentation shall be sent to the agency official immediately following the telephone call with a copy being retained by the sender.

- (d) The request for a fair hearing may be made by the individual affected by the action or the individual's parent, caretaker, or any other person acting on his or her behalf.
- (e) If an individual or an individual's parent, caretaker, or any other person acting on his or her behalf expresses verbally the desire for a fair hearing to a state or local agency staff member not authorized to accept a request, that staff member shall provide assistance in contacting the individuals who can accept a fair hearing request.
- (f) The request for a fair hearing must be made within 60 days from the date the applicant or participant is given notice of the action. If the notification is mailed, this time period shall begin on the date the notification was mailed.

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



*Eff. July 1, 1981;*  
*Amended Eff. November 1, 1990;*  
*Temporary Amendment Eff. July 1, 2002;*  
*Amended Eff. July 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

#### **10A NCAC 43D .0906 DENIAL OR DISMISSAL OF A REQUEST**

The hearing officer shall deny or dismiss a hearing if:

- (1) the request is not received within 60 days of the date of notification of the action;
- (2) the request is withdrawn in writing by the appellant or his or her representative;
- (3) the request is verbally withdrawn by the appellant or the appellant's parent, caretaker, or any other person acting on his or her behalf during conversation with the agency Official. Within 10 days of this verbal withdrawal request the agency official shall send a letter to the appellant and the local WIC agency summarizing the events which lead to the withdrawal of the request. This letter shall include notification of the appellant's right to reinstate the request for a fair hearing;
- (4) the appellant or the appellant's parent, caretaker, or any other person acting on his or her behalf fails to appear at the scheduled hearing, unless the failure to appear was due to circumstances beyond the control of the appellant or his or her representative;
- (5) the request is made in reference to the tailoring of the food package; or
- (6) the initial action assessing a claim for the cash value of improperly issued Program benefits or denying participation or disqualifying from the program has been reversed by the local WIC agency or the state agency, resulting in the provision of program benefits to the appellant.

*History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*  
*Eff. July 1, 1981;*  
*Amended Eff. November 1, 1990;*  
*Temporary Amendment Eff. July 1, 2002;*  
*Amended Eff. July 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

#### **10A NCAC 43D .0907 CONTINUATION OF BENEFITS**

(a) WIC program benefits shall be continued during the appeal of the following actions when the request for a hearing is received within 15 days of notification of the action:

- (1) disqualification from the program for abuse during a certification period;
- (2) determination of ineligibility during a certification period due to categorical ineligibility or residential ineligibility; or
- (3) other terminations during a certification period.

(b) WIC program benefits shall not be continued when a fair hearing is requested:

- (1) in any of the situations in Paragraph (a) of this Rule if the request is made more than 15 days after the date of notification; or
- (2) by applicants who are denied benefits at the initial or subsequent determination of WIC eligibility if the previous certification period has expired.

(c) When benefits are continued due to a request for a fair hearing as specified above, the individual shall continue to receive benefits until an adverse hearing decision is reached or the certification period expires, whichever occurs first.

*History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*  
*Eff. July 1, 1981;*  
*Temporary Amendment Eff. July 1, 2002;*  
*Amended Eff. July 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

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

- (a) The local or State agency official shall notify the appellant, or his or her representative, the local WIC agency, and the Nutrition Services Branch in writing that a request for a hearing has been received.
- (b) Notice of the date, time, and place of the hearing shall be given to all parties at least 10 days in advance of the hearing.
- (c) The notice to the appellant, or his or her representative, shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the date, time, and place for the hearing is satisfactory. If a response is not received at least 72 hours prior to the time proposed for the hearing, it shall be assumed that the date, time, and place are satisfactory.
- (d) The notice shall contain:
  - (1) an explanation of the procedure for the hearing;
  - (2) a statement of the date, hour, place and nature of the hearing;
  - (3) a reference to the particular sections of the statutes and rules involved; and
  - (4) a statement of the factual allegations.
- (e) If the appellant, or his or her representative, indicates that he or she desires another time and date, the agency official shall set a new time and date for the hearing. The hearing shall be accessible to the appellant, or his or her representative.
- (f) The hearing shall be held within 21 days from the date the agency official receives the request.

*History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020.*

#### **10A NCAC 43D .0909 HEARING OFFICER**

The Director of the Division of Public Health shall designate a representative who did not participate in taking the action under appeal to be the hearing officer. The hearing officer shall:

- (1) preside over the informal proceeding;
- (2) ensure that all relevant issues are considered;
- (3) request, receive and insert into the hearing record all evidence determined necessary to reach a decision;
- (4) conduct the meeting in accordance with due process and ensure an orderly hearing;
- (5) order, if relevant and necessary, an independent medical assessment or professional evaluation for the appellant from a source mutually satisfactory to all parties to the hearing; and
- (6) issue a decision.

*History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1995; July 1, 1987; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*

#### **10A NCAC 43D .0910 HEARING PROCEDURE AND RIGHTS OF THE AGGRIEVED PARTY**

- (a) Any party to the hearing may be assisted or represented by an attorney or other person.
- (b) Any party to the hearing may examine, prior to and during the hearing, the documents and records presented to support the action under appeal.
- (c) The hearing shall be open to the public, and the aggrieved party and the state and local agency may have witnesses.
- (d) Any party to the hearing may present any oral or documentary evidence and arguments.
- (e) Any party to the hearing may question or refute any testimony or other evidence.
- (f) Any party to the hearing may submit evidence to establish pertinent facts and circumstances in the case.

(g) The appellant or his or her representative may obtain a continuance by notifying the hearing officer by telephone or in writing at least 48 hours before the original hearing date. If the appellant or representative fails to attend the scheduled hearing without requesting a continuance from the hearing officer by telephone or in writing at least 48 hours before the original hearing date, the appellant waives any right to a hearing and the original action of the agency shall become final, unless the failure to attend the hearing without requesting a continuance was due to circumstance beyond the control of the appellant or his or her representative.

*History Note:* Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. July 1, 1987; October 1, 1985;  
Temporary Amendment Eff. July 1 2002;  
Amended Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

#### **10A NCAC 43D .0911 DECISION**

(a) The fair hearing decision shall be made by the hearing official and shall be based only on the oral and documentary evidence presented at the hearing and applicable state statutes and rules, and federal laws and regulations and shall be made a part of the hearing record by the hearing officer.

(b) The hearing official shall notify in writing the aggrieved party, any designated representative of the aggrieved party, the local WIC agency and the Nutrition Services Branch of the decision within 45 days from the date of the request for the hearing.

(c) If the decision is in favor of the aggrieved party and benefits were denied or discontinued, benefits shall begin within two business days after issuance of the decision.

(d) If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.

(e) The hearing officer shall prepare a recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing which, together with all papers and requests filed in the proceeding and the written fair hearing decision, shall constitute the exclusive hearing record.

(f) The decision shall be binding on the local WIC agency.

(g) All hearing records shall be retained for three years.

(h) Upon request by any member of the public a copy of all hearing records and decisions in a form that does not identify individuals (appellant or local agency) shall be prepared by the Nutrition Services Branch and be available for inspection and copying.

*History Note:* Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. December 6, 1991;  
Temporary Amendment Eff. July 1, 2002;  
Amended Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.

### **SECTION .1000 - CONSULTATION SERVICES**

#### **10A NCAC 43D .1001 ADMINISTRATION**

*History Note:* Authority G.S. 130A-361; 42 U.S.C. 1761;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. December 6, 1991; November 1, 1990;  
Repealed Eff. October 1, 2009.

#### **10A NCAC 43D .1002 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 43D .1003 PUBLIC HEALTH DIETITIANS**  
**10A NCAC 43D .1004 NUTRITION PROGRAM CONSULTANTS**

*History Note:* Authority G.S. 130A-361;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 1985;  
Repealed Eff. October 1, 2009.

**SECTION .1100 - RESERVED FOR FUTURE CODIFICATION**

**SECTION .1200 - MATERNAL AND CHILD HEALTH BLOCK GRANT NUTRITION PROGRAM**

**10A NCAC 43D .1201 GENERAL**  
**10A NCAC 43D .1202 PROVIDER ELIGIBILITY**  
**10A NCAC 43D .1203 ALLOCATION OF FUNDS**  
**10A NCAC 43D .1204 CLIENT ELIGIBILITY**  
**10A NCAC 43D .1205 SCOPE OF SERVICES**  
**10A NCAC 43D .1206 SERVICE PROVIDER QUALIFICATIONS**  
**10A NCAC 43D .1207 PAYMENT FOR REIMBURSABLE SERVICES**

*History Note:* Authority G.S. 130A-361;  
Eff. October 1, 1993;  
Repealed Eff. July 1, 2014.