

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

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Agency: NC Commission for Public Health
Department of Health and Human Services, Division of Child and Family Well-Being
Community Nutrition Services Section

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Rule Citations:

- 10A NCAC 43D .0201 Description (Amendment)
- 10A NCAC 43D .0202 Definitions (Amendment)
- 10A NCAC 43D .0203 References (Amendment)
- 10A NCAC 43D .0204 Contract with FNS (Amendment)
- 10A NCAC 43D .0205 Policies: Guidelines and Manuals (Amendment)
- 10A NCAC 43D .0207 Local WIC Agency Agreement and Budget (Amendment)
- 10A NCAC 43D .0304 Expansion of Local WIC Programs Amendment)
- 10A NCAC 43D .0410 Participant Violations and Sanctions (Amendment)
- 10A NCAC 43D .0411 Dual Participation (Amendment)
- 10A NCAC 43D .0501 Supplemental Foods (Amendment)
- 10A NCAC 43D .0702 Issuance of Food Benefits (Amendment)
- 10A NCAC 43D .0707 Vendor Applicants (Amendment)
- 10A NCAC 43D .0708 Authorized Vendors (Amendment)
- 10A NCAC 43D .0709 Local WIC Agency (Amendment)
- 10A NCAC 43D .0804 Continuation of Participation (Amendment)
- 10A NCAC 43D .0902 General Conditions (Amendment)
- 10A NCAC 43D .0904 Notification of the Right to a Fair Hearing (Amendment)
- 10A NCAC 43D .0905 Request for a Fair Hearing (Amendment)
- 10A NCAC 43D .0906 Denial or Dismissal of a Request (Amendment)
- 10A NCAC 43D .0907 Continuation of Benefits (Amendment)
- 10A NCAC 43D .0908 Notice of Hearing (Amendment)
- 10A NCAC 43D .0909 Hearing Officer (Amendment)
- 10A NCAC 43D .0911 Decision (Amendment)

State Government Impact: Yes

Local Government Impact: Yes

Private Sector Impact: Yes

Substantial Impact: No

Relevant Statutes: N.C.G.S. 130A-361; 42 U.S.C. 1786;

Necessity for Rule Changes

Effective June 17, 2024, the USDA Food and Nutrition Service (FNS) made updates to the Special Supplemental Nutrition Program for Women, Infants and Children (“WIC”) food package rules. The changes require more diverse food options for WIC participants, ensuring that nutritional needs are met based on the latest dietary guidelines. The NC WIC Program is 100% federally funded and requires the state WIC agency to maintain compliance with the federally required WIC Food Packages and all other applicable federal regulations. The required WIC Food Package changes must be implemented to avoid an interruption of WIC services. Federal regulation requires State agencies who administer the WIC Program to fully implement the required WIC Food Package changes by April 20, 2026. Consequently, the NC WIC Program is proposing to amend its rules to:

- 1) comply with the federally required changes to minimum WIC food packages;
- 2) align NC’s rules for food inventory requirements with the current NC WIC Program’s Authorized Products List¹;
- 3) reflect the NC WIC Program’s new organizational structure within NC DHHS; and
- 4) update definitions, policies and procedures to align with recent NC WIC program modernizations already in place.

These WIC Food Package changes will contribute to providing NC WIC participants with more options to meet their nutritional needs, cultural eating pattern, and foster healthy growth and development. These changes align with recommendations from the National Academies of Science, Engineering, and Medicine’s (NASEM) and other relevant agencies.

NC WIC Program

The WIC food packages provide supplemental foods designed to address the specific nutritional needs of income-eligible pregnant, breastfeeding, and non-breastfeeding postpartum individuals, infants, and children up to five years of age who are at nutritional risk. The NC WIC Program serves over 250,000 participants via 85 local WIC agencies.

The funding level for the NC WIC Program will not change as a result of the adopting the proposed amendments. The State receives money from the federal government for administration of the WIC Program according to a federal funding formula. Program administration is outlined annually via a State Plan, and approval of the State Plan is a pre-requisite to receiving funding. The grant to the State for FY 2024 is \$167,055,793.00. We expect the level of funding to remain relatively stable unless there are future changes to the federal funding formula. To ensure compliance with the federal implementation deadline of April 20, 2026, the NC Commission for Public Health anticipates considering this rule package and fiscal note at its meeting on August 6, 2025. This should allow an effective date as early as December 1, 2025.

Proposed Rule Changes and Anticipated Fiscal Impact

The proposed rule changes and associated impacts are as follows:

1. Amend Policies, Procedures, and Terminology for WIC Program Management

- a. Add a definition for the term “eWIC”
This definition is added to align with the completed transition to an Electronic Benefits Transfer (EBT) system. This change is made in **Rule 10A NCAC 43D .0202**.
- b. Add location of Policies: Guidelines and Manuals

¹ NC WIC Authorized Products List can be viewed at <https://www.ncdhhs.gov/ncwicfoods>.

The proposed rule change will add the online reference and website that discloses where the State agency publicizes the guidelines and manuals to facilitate operation of the WIC Program. This change is made in the following rules: **10A NCAC 43D .0203, .0205 and .0709.**

- c. Amend procedures requirements for WIC Program Issuance of Benefits
The proposed rule changes will remove from item (b) the requirement that documentation of issuance by the local WIC agencies includes a signature of the authorized individual receiving the food benefits. Additionally, the proposed rule change will also include listing a participant's guardian as eligible for food benefits to be issued. This change is made in **Rule 10A NCAC 43D .0702.**
- d. Change the term "vendor stamp" to "vendor id number"
With the implementation of EBT in 2020, the "vendor stamp" term was replaced with "vendor ID number" to streamline operations. The proposed rule change is updating the terminology to align with existing requirements and ongoing practices. This change is made in **Rule 10A NCAC 43D .0709.**

State and Local Impact

Benefits in the form of time savings are likely for State and Local governments due to these changes.

- The State agency currently uses an EBT system and the inclusion of modernized terminology like "eWIC" and "vendor id number" reflects that transition. The updated terminology will be universal across all program related policies, guidelines and manuals, resulting in improved rule clarity.
- The rule will be revised to explicitly state that a participant's guardian is authorized to receive food benefits on behalf of the participant. This change is intended to align the rule language with current practices. At local WIC agencies, participants are already prompted to provide information about their guardian during benefit issuance if applicable. This ensures that guardians can act on behalf of participants as needed. This update is considered minor and will not alter any existing procedures or practices at local WIC agencies. It simply formalizes what is already standard practice in the program.
- The elimination of the electronic signature requirement will further streamline the process of issuing benefits without compromising security. The collection of signatures at the point of benefit issuance has become redundant due to recent system modernization and security improvements. These improvements include the use of a Personal Identification Number (PIN) which acts as an electronic signature at issuance and the point of purchase. There will be no cost to local WIC agencies as a result of the proposed changes. The elimination of the signature requirement is unlikely to result in savings to local WIC agencies other than minimal time savings.

Private Sector Impact

Benefits in the form of time savings are likely for authorized participants and retailers due to these changes.

- The discontinuation of the signature requirement will benefit the participant in the form of time savings during WIC benefits issuance. The amount of time savings will be negligible.
- The updates to terminology will provide clarity and consistency in the rule language and improve alignment between policy and practice, reducing ambiguity for participants and retailers.

2. Update the Administrators and Meaning of Agency Official of the NC WIC Program

In 2022, the North Carolina WIC Program transitioned to being administered by the newly formed Division of Child and Family Well-Being (DCFV) and Community Nutrition Services Section (CNSS). Additionally, under the new division, the agency official's title changed from the Branch Head of the Nutrition Services Branch to the Assistant Director for the Community Nutrition Services Section.

DCFV was established to support North Carolina's goal that children are healthy and thrive in safe, stable and nurturing families, schools, and communities. As a result, the rules are now being amended to remove language referencing the Department of Public Health (DPH) and the Nutrition Services Branch (NSB) and to reflect that the North Carolina WIC Program is now being administered by the newly formed Division of Child and Family Well-Being in the Community Nutrition Services Section. This change is made in the following rules: **10A NCAC 43D .0201, .0202, .0203, .0204, .0304, .0501, .0902, .0908, .0909, and .0911.**

State and Local Impact

All program resources and contracts have already been updated to reflect the new organizational changes as part of our annual review process. As such, there should be no economic impact to State and Local governments due to this rule change other than minimal unquantifiable benefits from the improved rule clarity and consistency with ongoing practices.

Private Sector Impact

There is no economic impact to authorized retailers or WIC participants due to this rule change other than minimal unquantifiable benefits from the improved rule clarity and consistency with ongoing practices.

3. Remove the Requirement for Reimbursement by Local WIC Agencies

The proposed rule change will remove item (e), which states that when local WIC agencies maintain a caseload in excess of their assigned participants, they shall reimburse the state their proportionate share of the over expenditure. This change is made in **Rule 10A NCAC 43D .0207.**

State and Local Impact

There will be no cost to State and Local agencies due to the removal of this requirement. The state WIC agency currently implements cost containment strategies and/or wait lists for the local WIC agency to prevent overspending of food dollars. Food funds are managed at the State level, so local agencies have no control over food funds. Staff have been unable to identify any instances when local agencies have been required to reimburse the state due to over expenditures. The state will continue to implement the same cost containment strategies, including requiring local agencies to use wait lists to prevent overspending. As such, the removal of the requirement for reimbursement for over expenditures will have no effect other than improving rule clarity by removing an unused and unnecessary provision.

Private Sector Impact

There is no economic impact to WIC authorized retailers or WIC participants due to this change.

4. Update terminology to reflect modern EBT system and eliminate unused proxy restriction

The proposed rule changes to **Rule 10A NCAC 43D .0410** will change the terms "food instruments" to "eWIC card," "cash value vouchers" to "benefits," participant's "food instruments" to participant's "available benefit balance," item (b)(1), (2) and item (e)(1),(2), and (3). In item (d)(5) the term "food instruments" will be changed to "supplemental food benefits or cash value benefits." The State Agency has moved from a paper-based food instrument system to Electronic Benefits Transfer (EBT) which was approved during a previous rule change review. EBT implementation required a pilot and ten-phase rollout, which necessitated the program to keep two systems operational during the rollout. The proposed amendments to language in this rule reflect that change. Additionally, the restriction on the number of families a proxy can serve in item (d)(4) will be removed.

State and Local Impact

There will be no economic impact to State and Local agencies due to the terminology changing. It is simply an administrative change. The proposed terms are currently used when referencing the NC WIC Program's EBT system.

Theoretically, removing the limit requirements for proxies could allow more families access to WIC Program services that they might otherwise miss out on due to proxy restrictions. In practice, however, neither the State nor local agencies have a mechanism to track the number of families a proxy is serving. As such, this provision has not been enforced and the effect of the proposed rule change is likely minimal. It should be noted that the same safeguards currently in place to identify and deter participant fraud will continue to be exercised for a participant's proxy.

Private Sector Impact

There is no economic impact to WIC authorized retailers. The change of terms is as administrative change to streamline program terminology resulting from the ongoing use of an EBT system. The proposed changes to proxy requirements could especially be beneficial for participants in underserved communities or rural areas where there are few people available to serve as proxies. Again, it is relatively unlikely that this benefit will be realized as the current rule provision limiting the number of families a proxy can serve is not enforced.

5. Update terminology for dual participation

The proposed changes to **Rule 10A NCAC 43D .0410** will remove the references of participation in the Commodity Supplemental Food Program (CSFP) in items (a) and (c). Additionally, item (c) will include benefits being "improperly transacted" as a form of intentional misrepresentation. The proposed rule change would also and change the terms "food instruments" to "food" and cash value "vouchers" to cash value "benefits."

State and Local Impact

There will be no economic impact to State and Local agencies due to the removal of this reference and terms. It is simply an administrative change for purposes of clarity and consistency across all the WIC rules.

Private Sector Impact

There is no economic impact to WIC authorized retailers or WIC participants due to this change. It is simply an administrative change for purposes of clarity and consistency across all the WIC rules.

6. Remove Exclusions from the WIC Program Food Package

The proposed changes to **Rule 10A NCAC 43D .0501** will remove item (b), which identifies specific foods excluded from WIC Program food packages (mackerel, sardines, goat milk, dried fruits and vegetables). Additionally, item (c) will be amended to align with the proposed changes to item (b).

State and Local Impact

There is no economic impact to State and Local governments due to this change. The Program is 100% federally funded and reverts unused food dollars back to USDA. We anticipate overall selection of previously excluded items to be minimal but are changing to address requests for those products. If the State agency opts to add these food items to its Authorized Products List (APL),² these changes should improve overall satisfaction with the NC WIC Program, better meet participant food choices, and cultural eating patterns. Expanding the APL will redirect funds to newly included items, reducing the amount returned to the Federal government and incrementally improving North Carolina's use of appropriated federal funds.

² [NC WIC Authorized Product List \(APL\) | NCDHHS](#), accessed March 10, 2025.

Private Sector Impact

There is a potential benefit to the WIC participant and WIC authorized retailers if specified foods currently excluded are allowed as a WIC approved option. The added foods will allow for greater flexibility in nutritious food selections. It is anticipated that this may increase the nutritional benefit received and improve WIC participant shopping experiences. Allowing additional WIC approved food items positively impacts WIC authorized retailers because they are likely to have the additional items routinely in stock resulting in a possible increase in revenue generated by their stores. Though the potential addition of WIC approved foods positively impacts retailers, it cannot be quantified given the diversity in size of the various retailers and food options offered statewide. It should be noted that although these particular food items will no longer be excluded by rule, they will not necessarily be added to NC's authorized product list for purchase using WIC benefits. The State has flexibility to exclude foods that are deemed "inappropriate for provision as supplemental foods" for any of the reasons listed in Paragraph (c) of Rule .0501. Whether or not to add these items to the State's APL is being considered and will require separate action by the State agency before implementing. Removing the exclusion from this rule is a necessary step, however, before they can be added to the APL.³

7. Update "SNAP" to "FNS/SNAP"

The proposed changes to **Rule 10A NCAC 43D .0707** will amend the Supplemental Nutrition Services Assistance Program "SNAP" to NC Food and Nutrition Services or FNS/SNAP. SNAP is a long-standing Federal program providing food assistance to low-income individuals and households. As one of the WIC program's selection criteria, potential retailers are required to be authorized to accept FNS/SNAP benefits prior to being authorized as an authorized WIC retailer. As a result of SNAP in NC now being referenced as Food and Nutrition Services or FNS/SNAP, the terminology in this rule is being changed accordingly.

State and Local Impact

There is no economic impact to State and Local governments due to this change. WIC program resources are reviewed and updated annually as needed. As the printed inventory for WIC program resources are replaced, any new data including the names of program stakeholders are updated as applicable. These proposed changes will result in a more accurate and consistent depiction of FNS/SNAP terminology.

Private Sector Impact

There is no economic impact to WIC authorized retailers as they do not need to make additional investments to comply with the proposed rule change. These proposed changes are to terminology only.

8. Modification of Minimum Inventory Requirements

The proposed changes to **Rule 10A NCAC 43D .0708** are as follows:

Bread/Tortillas

- Specify that the bread must be whole wheat/whole grain. This aligns with the NC APL and USDA's federal food package which promotes whole grains. It is an administrative change and will not require any changes in practice.
- Introduce a loaf size range (changing from "16 ounce loaf" to "16 to 24 ounce loaf"). This change will better reflect modern package sizes. These larger loaf sizes are already allowed in practice. As such, this change will better align the rule with current practice which will improve clarity.

³<https://www.federalregister.gov/documents/2024/04/18/2024-07437/special-supplemental-nutrition-program-for-women-infants-and-children-wic-revisions-in-the-wic-food>

Juices

- Eliminate the requirement to stock 48oz containers. This change recognizes that this size package is no longer common.
- Amend the requirement for 64oz containers to specify two varieties. This change compensates for the loss of variety that would result from eliminating the separate requirement to stock 48oz containers.
- Increase the required quantity of 64oz containers from four to six. This change compensates for the loss of volume that would result from eliminating the separate requirement to stock four 48oz containers.
- These changes to the juice container sizes may require some retailers to shift their inventories. It is likely, however, that the vast majority of retailers already stock the required quantity and variety of 64 oz containers since they have become more common. The changes will allow retailers to stop stocking 48 oz containers all together, which could provide some relief as these smaller sizes have become less common. Overall, these changes are unlikely to produce any cost savings on net.

Dried Peas and Beans

- Replace the term “Dried Peas and Beans” with the more general term “Legumes.” This change aligns with current terminology used by USDA as well as the NC APL. It is an administrative change and will not require any changes in practice.

Rice

- Specify that rice must be whole grain. This aligns with the NC APL and USDA’s federal food package which promotes whole grains. It is an administrative change and will not require any changes in practice.

Vegetables

- Increase the required variety of vegetables from two to three to comply with federal WIC food package rules.

The change to the WIC food packages to stock three varieties of vegetables instead of two is required by the recent changes to the federal WIC food package. Per Federal Regulation 7 CFR 246.12(g)(3)(i) *The State agency must establish minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized.*⁴

Failure to implement the minimum inventory requirement change (specifically, the increase to 3 varieties of vegetables) would result in the NC WIC Program being noncompliant with Federal Regulations. Per a Regulatory Impact Analysis (RIA) conducted by the USDA,” based on the estimated number of small vendors that could be impacted, this rule will not have a significant economic impact on a substantial number of small entities. The updated stocking requirement will require vendors to carry one additional form of vegetable and will allow vendors to meet this requirement by stocking fresh, canned, or frozen vegetables, depending on their policies. Given the flexibility in this requirement, the Department anticipates minimum negative impact on vendors and, in the long-term, expects that the administrative burden on vendors will remain substantially unchanged⁵.” The NC WIC Program currently authorizes 23 of these small vendors which makes up less than 2% of its 1,600 plus authorized retailers. We believe the other 98% of retailers are already in compliance with the new minimum inventory requirements.

A major benefit of implementing the proposed minimum inventory changes is to avoid penalizing actions that the Federal government might take if the proposed minimum inventory rules changes are not adopted. Those penalizing actions include the USDA putting the State agency on a corrective action plan. Should a corrective action plan be put in place, administrative time will be expended addressing the corrective action and ensuring

⁴copied in part: [CFR-2024-title7-vol4.pdf](#)

⁵<https://www.federalregister.gov/documents/2024/04/18/2024-07437/special-supplemental-nutrition-program-for-women-infants-and-children-wic-revisions-in-the-wic-food>

NC is brought into compliance. The Department cannot estimate the exact savings from preventing a corrective action plan but wants to preclude this outcome by implementing the necessary changes to minimum inventory requirements in advance of the federal deadline. Additionally, the USDA may refuse to approve the NC WIC State Plan in future years until North Carolina fully complies with minimum inventory federal regulations. Refusal to approve the State Plan would be the most severe repercussion and last resort the USDA would employ to ensure that North Carolina adopts the required federal regulations regarding minimum inventory requirements.

State and Local Impact

Staff time will be required for the State to develop system updates, training curriculum and materials for the minimum inventory requirements and new food package changes. Existing staff will incorporate these tasks into their regular work duties, and no new staff will be hired. Time would be required to train state and local staff regarding changes to the minimum inventory requirements and WIC Food Packages. Training for staff will not require a significant amount of time. It will be approximately 1 hour per state and local staff member and will not have a great impact on their standard work schedule. There are estimated 150 local staff to be trained, which will result in a total of 150 training hours for local staff that complete vendor activities across the state.

The estimated average annual compensation for local agency WIC staff is \$48,000 in salary plus \$18,336 in total benefits⁶. This equates to approximately \$31.80 per hour. The estimated total one-time opportunity cost for local staff training would be \$31.80 per hour x 150 staff = \$4,770. The estimated average annual compensation for a state employee in the North Carolina WIC Program is approximately \$81,932 (salary plus benefits). This equates to approximately \$39.39 per hour⁷. The number of State staff that will need to be trained is 30. The total one-time opportunity cost for training state staff is estimated to be \$39.39 per hour x 30 staff = \$1,182.

The improved rule clarity and consistency with the NC APL and federal requirements will increase the likelihood that retailers will comply with the NC WIC minimum food inventory requirements, thereby avoiding potential issues related to enforcement. This could save State and local agency monitors time and resources. As these changes are minimal and mostly reflect ongoing practices, any time and resource savings to inspectors are likely to be minimal.

Private Sector Impact

The cost incurred by the retailer would be the time necessary to train their employees on the new minimum inventory requirements and food package changes. The new material required for minimum inventory and food package changes would be included in the annual training requirements that retailers currently adhere to and should not represent a significant burden. Most WIC-authorized retailers are very likely to already be meeting the proposed revised NC WIC food package inventory requirements. As such, the greatest impact is likely to be on the smaller retailers, some of whom might need to slightly increase their inventory of one or more foods. Small retailers make up less than 2% of the 1,600 authorized retailers in NC. Given the small scope and scale of the proposed changes to the NC WIC food package, we expect the total impacts to retailers to be minimal and easily accommodated. All WIC-authorized retailers may benefit from the improved rule clarity and consistency with the NC APL and federal requirements. At a minimum, the improved rule clarity will increase the likelihood

⁶ The compensation estimate used data from the UNC School of Government County Salary Survey to approximate wages and Bureau of Labor Statistics data to determine total compensation, respectively available at <https://www.sog.unc.edu/publications/reports/county-salaries-north-carolina-2023> and <https://www.bls.gov/news.release/ecec.t03.htm>.

⁷ The estimated hourly compensation is based on the starting salary for the average NC WIC Program staff (Salary Grade NC 14) plus benefits, which were obtained at <https://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>.

that retailers will comply with the NC WIC minimum food inventory requirements, thereby avoiding potential issues related to enforcement.

Additionally, there is a potential benefit to the WIC participant if the types of foods, package sizes, and quantities are expanded. Those additional foods, package sizes, and quantities will allow for greater flexibility in food selections which can develop into positive and healthy eating habits. It is anticipated that this may increase the prescribed food package redemption thereby improving the nutritional benefit received and improving participant shopping experiences. Since most of the changes being made to the rules, however, will not impose new requirements beyond ongoing practices, these potential benefits to WIC participants will be relatively minimal. Nonetheless, there is a value in maintaining compliance with federal WIC minimum food inventories and revising NC's minimum food inventory to align with the NC APL and better reflect modern package sizes and food preferences.

9. Update the General Statute regarding continuation of participation by WIC vendors and Local WIC agencies

Rule 10A NCAC 43D .0804 will be amended to change G.S. 150B-36 to G.S. 150B-42. G.S. 150B-36 which upholds the adverse action upon issuance of a final agency decision has been repealed. G.S. 150B-42 clearly and accurately contains language pertaining to final agency decision and should replace the repealed G.S.

State, Local, and Private Sector Impact

There is no economic impact to State and Local governments due to this change.

10. Amend content of fair hearing notice

Rule 10A NCAC 43D .0904 will be amended to add the Civil Rights Statement as content to be included in notices of fair hearings. The rule is being changed to ensure every current and potential WIC participant are made aware of their civil rights regarding fair hearings. Additionally, terminology is being revised "eWIC benefits" since NC fully converted to an Electronic Benefit Transfer (EBT) system in 2018.

State, Local, and Private Sector Impact

There is no economic impact to State and Local governments or the private sector due to this change. This is an administrative change to include our civil rights statement that currently exists and is routinely distributed informing participants of their civil rights during notification of a fair hearing and updates terminology to accurately reflect the full transition to an EBT system in 2018.

11. Amend procedures to request a fair hearing

Rule 10A NCAC 43D .0905 will be amended to remove the telephone as the form of communication to notify the agency official of a request for a fair hearing if the request is not made directly to the agency official. The requirement for the original copy of documentation to be sent following the telephone call will also be removed. The proposed change will add email as the form of communication to notify the agency official of a request for a fair hearing if the request is not made directly to the agency official. Additionally, if the original request was received in writing, the original copy will be sent to the agency official immediately.

State, Local, and Private Impact

This rule change will only impact State and local governments. This rule change does not impact the ability to request a hearing or the amount of time allotted to schedule or hold the hearing. It is simply an administrative

change to reflect modern technology. The inclusion of email communication is expected to enhance efficiency by allowing faster notification and response times.

12. Amend procedures for denial or dismissal of a hearing request

Rule 10A NCAC 43D .0906 will be amended to add the ability for a hearing officer to deny or dismiss a hearing request if the individual has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing. The rule is being changed to align with other policies and procedures publicized by the WIC Program.

State, Local, and Private Impact

Requests for hearings are infrequent. As such, this change is unlikely to result in significant time savings for state and local agency staff involved in preparing for and conducting hearings. Similarly, there is unlikely to be an impact to the vast majority of individuals since these hearing requests are extremely uncommon.

Training for State staff, local staff, and authorized retailers is conducted annually. Addressing the changes during annual training will not require a significant amount of time as all updates are already included in the training curriculum. Additionally, NC WIC program resources are updated annually which include changes and updates to policies and procedures prior to publication.

13. Update terminology in continuation of benefits rule

Rule 10A NCAC 43D .0907 will be amended to change the wording “categorical ineligibility” to “a change in income eligibility” in item (a)(2), as well as removing item (a)(3), and adding item (b)(2). This change will align the language used in the rule to be consistent with current processes, procedures, other WIC Program publicized resources detailing procedures for the continuation of benefits.

State, Local, and Private Impact

There is no economic impact to State and Local governments or the private sector due to this change. It is simply an administrative change for the purpose of providing clarity.

14. Allow more time for an appellant to respond to a hearing notice

Rule 10A NCAC 43D .0908 will be amended to change the word “hour” to the word “time” in the requirements of what the notice shall include in the proposed rule change. The use of the word “time” is direct and allows for improved clarity. Additionally, by increasing the time the appellant or their representative has to indicate whether the time/date of the proposed hearing is satisfactory from 72 hours prior to 24 hours prior allows more time to communicate any scheduling discrepancies.

State, Local, and Private Impact

If a hearing is requested, the proposed change allows appellants an additional 48 hours to respond to hearing notices. Conversely, it reduces the time agency officials have to notify stakeholders (e.g., other state/local agency staff) of schedule changes. Agency staff are accustomed to adjusting their schedules on short notice, making them well-suited for accommodating last-minute changes. It is not expected to have a significant impact on State government, local government, or the private sector as there are very few participant fair hearings requested (zero within the past five years). This change does not impact the amount of time allotted to schedule or hold a hearing.

Summary

In summary, the proposed rules will:

1. Modify the requirements of minimum inventory for authorized retailers. In some cases, this will also expand the types of supplemental foods approved for issuance to WIC participants.
 - a. Increase the minimum variety of vegetables from two to three to comply with recent changes to federal WIC food package rules.
 - b. Remove exclusions from the NC WIC Program food package for mackerel, sardines, goat milk, dried fruits, and dried vegetables. Although these particular food items will no longer be excluded by rule, they will not be authorized for purchase using WIC benefits unless/until the State chooses to add them to its authorized product list. While this change might not lead to immediate changes, it could contribute to a more flexible WIC program in the long term.
 - c. Adjust container size requirements to accommodate modern food package sizes for juices, rice, and bread.
 - d. Adjust inventory requirements for 64oz juices to compensate for eliminating the requirement to stock 48oz juices.
 - e. Clarify that rice must be “whole grain” and bread must be “whole wheat/whole grain.”
2. Update the administrator and agency official of the WIC program due to an organizational change within NC DHHS.
3. Update the fair hearing procedures for requests, notifications, denial and dismissals.
 - a. Allow appellants an additional 48 hours to respond to hearing notices.
 - b. Authorize the hearing officer to deny a second hearing when no additional evidence has been provided.
4. Update terminology to streamline operations, align with ongoing practices, and provide clarity.
 - a. Remove outdated language associated with paper food instrument/cash-value voucher issuance and redemption.
 - b. Remove the requirement for an electronic signature at the point of benefit issuance.
 - c. Explicitly list a guardian as an authorized person to receive food benefits on behalf of a participant.
 - d. Remove the restriction on the number of families that can be served by a proxy. Since this restriction has never been enforced, it is unlikely that there will be any significant changes resulting from this rule change. While the rule change might not lead to immediate or significant changes due to lack of enforcement, it could contribute to a more flexible and accessible WIC program in the long term.

Overall, these rule changes are expected to have a minimal impact on State and Local funds. The primary effects will likely be opportunity costs for training and opportunity cost savings from streamlined operational procedures and improved rule clarity and compliance.

Private sector impacts are also expected to be relatively small. The proposed (albeit modest) expansion of food options plus the clarification of restrictions on proxies and guardians should improve the experience for the over 250,000 NC WIC participants. This should increase satisfaction with the WIC Program and possibly encourage more participation in the program. Even small changes that expand the nutritional options available to WIC participants or make the WIC program more accessible can provide significant benefits including improved overall health, enhanced dietary diversity and economic and long-term health savings. Increasing access and wider variety of whole grain bread, rice and vegetables ensures participants get a broader spectrum of essential nutrients and help lower the risk of various chronic conditions and illnesses. Having a diversified diet is essential

to balanced nutrition. A diverse diet is associated with better gut health and the ability to obtain all necessary nutrients, from fiber to essential fatty acids. These benefits may be difficult to obtain with a more limited selection of foods. With even more access to healthier food options, these proposed changes can help mitigate the long-term costs associated with chronic diseases that could arise from poor nutrition. While these benefits are significant, they are largely a result of the ongoing NC WIC program rather than the proposed minor changes. Nonetheless, this highlights the substantial value of making even incremental improvements to such a crucial program.

The potential benefits of expanding the food options and streamlined operations are also expected to be net positive for authorized retailers as they will better reflect current food packaging and consumer preferences. Large retailers are very likely to already be meeting the proposed revised NC WIC food package inventory requirements. As such, the greatest impact is likely to be on the smaller retailers, some of whom might need to slightly increase their inventory of one or more foods. Small retailers make up less than 2% of the 1,600 authorized retailers in NC. Given the small scope and scale of the proposed changes to the NC WIC food package, we expect the total impacts to retailers to be minimal and easily accommodated.

1 10A NCAC 43D .0201 is proposed for amendment as follows:
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3 **SECTION .0200 - WIC PROGRAM GENERAL INFORMATION**
4

5 **10A NCAC 43D .0201 DESCRIPTION**

6 The North Carolina Department of Health and Human Services, Division of Child and Family Well-Being, Community Nutrition
7 Services Section Nutrition Services Branch is responsible for the administration of the WIC Program in North Carolina.
8

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

10 *Eff. July 1, 1981;*

11 *Amended Eff. October 1, 2009; December 6, 1991; November 1, 1990;*

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

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1 10A NCAC 43D .0202 is proposed for amendment as follows:
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3 **10A NCAC 43D .0202 DEFINITIONS**

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

- 6 (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local
7 WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor applicant may appeal the adverse
8 actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- 9 (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal
10 officer.
- 11 (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective
12 North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R 246.12(h)(3).
- 13 (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other
14 business entity that has 20 or more stores owned or operated by the business entity.
- 15 (5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency for the
16 implementation, maintenance, and operation of the State WIC agency's WIC EBT system that acts as the agent of
17 the State WIC agency to process and settle EBT transactions.
- 18 (6) "eWIC" is the term used for EBT by the North Carolina WIC Program.
- 19 (7) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any
20 individual may appeal a State or local agency action that results in a claim against the individual for repayment of
21 the cash value of issued benefits by which the individual is not eligible or results in the individual's denial of
22 participation or disqualification from the WIC Program, as set forth in Rule .0410 of this Subchapter. This process
23 must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7
24 CFR 246.9.
- 25 (8) "First date to spend" means "first date of use" as defined in 7 C.F.R. 246.12, hereby incorporated by reference with
26 all subsequent amendments and editions.
- 27 (9) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- 28 (10) "Food benefits" are the prescribed amounts of WIC authorized foods and formulas or a fixed dollar amount prescribed
29 to WIC customers to receive fruits and vegetables.
- 30 (11) "Food benefit balance" means the unspent food benefits for the current month that are available to use by the
31 cardholder.
- 32 (12) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing
33 pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under
34 a WIC corporate agreement.
- 35 (13) "Last date to spend" means "last date of use" as defined in 7 C.F.R. 246.12, hereby incorporated by reference with
36 all subsequent amendments and editions.
- 37 (14) The "local WIC agency" is the local agency that enters into an agreement with the Division of Child and Family
38 Well-Being to operate the Special Supplemental Nutrition Program for Women, Infants and Children.

- (15) 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~~ Community Nutrition Services Section.
- (16) "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.
- (17) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.
- (18) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.
- (19) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.
- (20) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.
- (21) "Redeemed food benefits" means the benefits that have been used by the WIC customer.
- (22) "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.
- (23) "Shelf price" is the price listed on the shelf for the WIC supplemental food.
- (24) "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.
- (25) 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, Division of Child and Family Well-Being, Community Nutrition Services Section.
- (26) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.
- (27) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.
- (28) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (29) "Transaction" is the process by which a WIC customer tenders food benefits at an authorized vendor in exchange for authorized supplemental foods.
- (30) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.
- (31) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.
- (32) 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.
- (33) 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.

(34) "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.

(35) "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.
Amended Eff. XXX

1 10A NCAC 43D .0203 is proposed for amendment as follows:

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

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

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

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

8 (b) The documents listed in Paragraph (a) of this Rule are available for inspection at the North Carolina Department of Health and
9 Human Services, Division of ~~Public Health, Women's and Children's Section~~ Child and Family Well-Being, Community Nutrition
10 Services Branch Section at 5601 Six Forks Road, Raleigh, NC 27609 during regular business hours, Monday through Friday from 8:00
11 AM to 5:00 PM, and online at www.ncdhhs.gov/ncwic.

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

14 *Eff. July 1, 1981;*

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

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

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1 10A NCAC 43D .0204 is proposed for amendment as follows:
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3 **10A NCAC 43D .0204 CONTRACT WITH FNS**

4 (a) The ~~Department of Health and Human Services Division of Public Health~~ shall maintain the Federal-State Special Supplemental
5 Nutrition Program Agreement with the United States Department of Agriculture, Food and Nutrition Service.

6 (b) The state agency shall prepare, submit to FNS, and maintain the North Carolina State WIC Program Plan of Operations to fulfill
7 the requirements of 7 C.F.R. 246.4. This plan is available for inspection at the state agency during business hours.
8

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

10 *Eff. July 1, 1981;*

11 *Amended Eff. October 1, 2009;*

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

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1 10A NCAC 43D .0205 is proposed for amendment as follows:
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3 **10A NCAC 43D .0205 POLICIES: GUIDELINES AND MANUALS**

4 (a) The state agency shall promulgate policies, guidelines and manuals to facilitate operation of the WIC Program in accordance with
5 the contract with FNS, the guidelines and instructions issued by FNS in policy letters and management evaluations, and the North
6 Carolina State WIC Program Plan of Operations and the rules contained in this Subchapter.

7 (b) The policies, guidelines and manuals maintained under (a) of this Rule are available for inspection at the state agency during regular
8 business hours, and online at www.ncdhhs.gov/ncwic.
9

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

11 *Eff. July 1, 1981;*

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

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1 10A NCAC 43D .0207 is proposed for amendment as follows:
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3 **10A NCAC 43D .0207 LOCAL WIC AGENCY AGREEMENT AND BUDGET**

4 (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.
5 246.6.

6 (b) The availability of budgeted support cost funds for each local WIC agency is contingent upon the availability of WIC program
7 support cost funds.

8 (c) Since local support cost funds are allocated according to the assigned number of participants to be served, in the event a local WIC
9 agency is unable to serve the assigned number of participants, the state agency shall reduce the amount of support cost funds provided
10 to the local WIC agency by a portion reflective of the level of underperformance.

11 (d) The state agency shall notify the local WIC agency in writing of any reduction of support cost funds available to the local WIC
12 agency.

13 ~~(e) When state food dollars are overexpended over expended during a federal fiscal year, local WIC Programs that have maintained an~~
14 ~~active case load in excess of their assigned number of participants shall reimburse to the state their proportionate share of the~~
15 ~~overexpenditure over expenditure.~~

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

18 *Eff. April 1, 1982;*

19 *Amended Eff. October 1, 2009; April 1, 1984;*

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

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1 10A NCAC 43D .0304 is proposed for amendment as follows:
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3 **10A NCAC 43D .0304 EXPANSION OF LOCAL WIC PROGRAMS**

4 Local WIC agencies that plan to increase the number of persons served shall submit a written request to the Community Nutrition
5 Services Section. The availability of funds and the Affirmative Action Plan contained in the North Carolina State WIC Program Plan
6 of Operation will be considered in making the decision to approve or deny the request.
7

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

9 *Eff. July 1, 1981;*

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

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

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10A NCAC 43D .0410 is proposed for amendment as follows:

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, eWIC card, cash-value vouchers~~ benefits, or supplemental food for cash;
- (2) Exchanging ~~food instruments, eWIC card, cash-value vouchers~~ benefits, 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; and
- ~~(4) will not be serving as proxy for more than two families at the same time; and~~
- ~~(5)~~(4) will be the person who transacts the ~~food instruments~~, supplemental food benefits or cash-value benefits.

(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, eWIC card, cash-value vouchers~~ benefits, or supplemental ~~food~~foods for credit;

(2) Exchanging ~~food instruments, eWIC card, cash-value vouchers~~ benefits, or supplemental ~~food foods~~ 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~~, available benefit balance.

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.

Amended Eff. XXX

1 10A NCAC 43D .0411 is proposed for amendment as follows:

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3 **10A NCAC 43D .0411 DUAL PARTICIPATION**

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

8 (b) The state agency shall immediately terminate the participation in one of the clinics or Programs, or the simultaneous participation
9 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.

10 (c) In the case of dual participation resulting from intentional misrepresentation, the participant, parent or caretaker of an infant or
11 child participant, or proxy shall repay Program benefits improperly issued and transacted ~~as a result of the dual participation~~, and the
12 participant shall be disqualified from participation in ~~both Programs or clinic(s)~~ WIC in accordance with 7 C.F.R. 246.7 (l) and
13 Paragraph (b) of Rule .0410 of this Section. For purposes of this Paragraph, receiving WIC food ~~instruments~~ or cash-value ~~vouchers~~
14 benefits under two or more participant identities in a single WIC clinic during the same issuance period and transacting one or more of
15 the food ~~instruments~~ or cash-value ~~vouchers~~ benefits received under two or more of the identities constitutes dual participation based
16 on intentional misrepresentation. Receiving ~~WIC food instruments~~ or cash-value ~~vouchers~~ benefits from more than one WIC clinic
17 during the same issuance period and transacting one or more of the food ~~instruments~~ or cash-value ~~vouchers~~ benefits received from
18 two or more of the clinics constitutes dual participation based on intentional misrepresentation. ~~Additionally, receiving WIC food~~
19 ~~instruments or cash value vouchers and CSFP food during the same time period and transacting one or more of the WIC food~~
20 ~~instruments or cash value vouchers constitutes dual participation based on intentional misrepresentation.~~

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

23 *Temporary Adoption Eff. July 1, 2002;*

24 *Eff. July 1, 2004;*

25 *Amended Eff. October 1, 2009;*

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

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1 10A NCAC 43D .0501 is proposed for amendment as follows:
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3 **10A NCAC 43D .0501 SUPPLEMENTAL FOODS**

4 (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
5 including any subsequent amendments and editions. This material is available for inspection at the Department of Health and Human
6 Services, Division of ~~Public Health~~, Child and Family Well-Being, 5601 Six Forks Road, Raleigh, North Carolina 27609 and may be
7 obtained from ~~Nutrition Services~~ the Community Nutrition Services Section at no cost.

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

9 ~~(1) mackerel and sardines;~~

10 ~~(2) goat milk; and~~

11 ~~(3) dried fruits and vegetables.~~

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

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17 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246.10; 42 U.S.C. 1786;*

18 *Eff. July 1, 1981;*

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

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

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

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

23 *Amended Eff. March 1, 2020.*

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1 10A NCAC 43D .0702 is proposed for amendment as follows:
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3 **10A NCAC 43D .0702 ISSUANCE OF FOOD BENEFITS**

4 (a) Local WIC agencies shall issue WIC program food benefits to program participants in a manner which ensures that participants
5 can receive the supplemental foods that have been prescribed for them in accordance with 7 C.F.R. 246.10, which is incorporated by
6 reference with all subsequent amendments and editions.

7 (b) Local WIC agencies shall issue food benefits and shall retain documentation of issuance. ~~The documentation of issuance shall~~
8 ~~include the dated signature of the authorized individual receiving the food benefits, as set out in Subparagraph (e) of this Rule.~~

9 (c) Food benefits shall be issued only to the participant, the participant's parent, the participant's guardian, a participant's caretaker, a
10 proxy, or a representative of the program completing a compliance buy.

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12 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246.2; 7 C.F.R. 246.10; 42 U.S.C. 1786;*

13 *Eff. July 1, 1981;*

14 *Amended Eff. April 1, 2001;*

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

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

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

18 *Amended Eff. March 1, 2020.*

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

10A NCAC 43D .0707 VENDOR APPLICANTS

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

- (1) A vendor applicant shall complete a WIC Vendor Application, 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 NC Food and Nutrition Services or FNS (Supplemental Nutrition Assistance Program ["SNAP"]) or it has been assessed a FNS/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 FNS/SNAP vendor that is disqualified from participation in FNS/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 FNS/SNAP vendor under Sub-item (16)(a) of this Item ends the disqualification period applicable to that FNS/SNAP vendor earlier than the disqualification period otherwise would have expired. The requirements of this Item shall apply until the time the FNS/SNAP vendor disqualification otherwise would have expired.
- (17) A vendor applicant, excluding free-standing pharmacies, shall have FNS/SNAP authorization for the store as a

prerequisite for WIC vendor authorization and shall provide its FNS/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, FNS/SNAP, and WIC;
 - (e) The store's FNS/SNAP authorization number and history of FNS/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

Amended Eff. XXX

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

10A NCAC 43D .0708 AUTHORIZED VENDORS

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

- (1) Process WIC Program food 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~~ 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~~ Provide the WIC ~~customer~~ customer with 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 have~~ 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 as a 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/ low fat <u>low fat</u> 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; <u>2 varieties</u>	4 <u>6</u> containers
Dried Peas and Beans <u>Legumes</u>	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 to <u>24</u> ounce loaf of <u>whole wheat/whole grain</u> bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package
Rice	14 to 16 <u>24</u> ounce package, <u>whole grain</u>	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	8 cans
	-and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	4 cans
Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables (Excludes foods in Dried Peas and Beans <u>Legumes</u> category)	14 to 16 ounce can: 2 <u>3</u> 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~~ meet 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~~ 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 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;

1 *Amended Eff. October 1, 2017;*

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

3 *Amended Eff. March 1, 2020; July 1, 2018.*

4 *Amended Eff. XXX*

1 10A NCAC 43D .0709 is proposed for amendment as follows:
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3 **10A NCAC 43D .0709 LOCAL WIC AGENCY**

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

- 5 (1) Provide annual vendor training on WIC procedures and rules;
6 (2) 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
7 under the agreement to ensure compliance with the agreement and state and federal WIC program rules, regulations,
8 and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a fiscal year (October
9 1 through September 30) and all vendors shall be monitored at least once within three consecutive fiscal years. Any
10 vendor shall be monitored within one week of written request by the state agency;
11 (3) Provide vendors with directions on how to access the North Carolina WIC Vendor Manual online at
12 <https://www.ncdhhs.gov/wicvendorsconnection>, all Vendor Manual amendments, blank WIC Price Lists, and the
13 authorized WIC vendor ~~stamp~~ id indicated on the signature page of the WIC Vendor Agreement; and
14 (4) Assist the vendor with questions which may arise under the agreement or through the vendor's participation in the
15 WIC Program.
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17 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;*

18 *Eff. February 1, 2013;*

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

20 *Amended Eff. XXX*
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1 10A NCAC 43D .0804 is proposed for amendment as follows:
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3 **10A NCAC 43D .0804 CONTINUATION OF PARTICIPATION**

4 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
5 authorized WIC vendor in the WIC program may continue during an administrative appeal. Except as provided in 42 U.S.C. 1786(o)(2)
6 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
7 to ~~G.S. 150B-36~~ G.S. 150B 42 which upholds the adverse action.
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9 *History Note: Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 U.S.C. 1786;*

10 *Eff. July 1, 1981;*

11 *Amended Eff. July 1, 1986;*

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

13 *Amended Eff. July 1, 2004;*

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

15 *Amended Eff. XXX*
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1 10A NCAC 43D .0902 is proposed for amendment as follows:
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3 **10A NCAC 43D .0902 GENERAL CONDITIONS**

4 (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
5 this Section establish an informal dispute resolution process which must be complied with prior to making a formal appeal in
6 accordance with G.S. 150B.

7 (b) For the purposes of this Section, agency official shall mean the ~~Branch Head of the Nutrition Assistant Director for the Division~~
8 of Child and Family Well-Being, Community Nutrition Services Branch Section or his or her designee.

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

10 *Eff. July 1, 1981;*

11 *Amended Eff. December 6, 1991; November 1, 1990; July 1, 1987;*

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

13 *Amended Eff. July 1, 2004;*

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

15 *Amended Eff. XXX*
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1 10A NCAC 43D .0904 is proposed for amendment as follows:
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3 **10A NCAC 43D .0904 NOTIFICATION OF THE RIGHT TO A FAIR HEARING**

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

- 5 (1) in writing at the time of application;
6 (2) in writing whenever he or she is determined ineligible;
7 (3) in writing if disqualified due to abuse of the program;
8 (4) in writing at the time of assessment of a claim for repayment of the cash value of improperly issued Program benefits;
9 and
10 (5) orally or in writing at least 15 days before the expiration of each certification period.

11 (b) The content of the notice of fair hearing shall include:

- 12 (1) a statement of the right to a fair hearing;
13 (2) the method by which a fair hearing may be requested, including the time limit; and
14 (3) who may represent the individual.
15 (4) The civil rights statement

16 (c) In order to notify current and potential participants of the fair hearing process, a simplified summary of the steps involved in
17 obtaining a fair hearing shall be posted in a visible place at every WIC site where certifications are performed, ~~food instruments~~ eWIC
18 benefits are issued or applications are accepted. This notification shall contain:

- 19 (1) notice of right to a fair hearing;
20 (2) a simplified explanation of the definition and purpose of a fair hearing;
21 (3) the method by which a fair hearing may be requested, including the time limit; and
22 (4) who may represent the individual at the fair hearing and in requesting a fair hearing.
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24 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

25 *Eff. July 1, 1981;*

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

27 *Amended Eff. July 1, 2004;*

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

29 *Amended Eff. XXX*
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1 10A NCAC 43D .0905 is proposed for amendment as follows:
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3 **10A NCAC 43D .0905 REQUEST FOR A FAIR HEARING**

4 (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
5 individual's denial of participation, or disqualification from the program or a claim against an individual for repayment of the cash
6 value of improperly issued Program benefits. This request may be made to any of the following:

- 7 (1) the agency official;
8 (2) the agency director of the local WIC agency;
9 (3) the WIC director of the local WIC agency;
10 (4) any person serving in one of the above three roles in the absence of the agency official, agency director or
11 WIC director.

12 (b) If the request is not made directly to the agency official, the individual receiving the request shall immediately notify the
13 agency official of the request by ~~telephone~~ email.

14 (c) All requests shall be documented in writing.

15 (1) If the original request is made in writing, the individual receiving the request shall retain a photocopy
16 and send the original copy to the agency official immediately. ~~following the telephone call.~~

17 (2) If a verbal request is received, the individual receiving the request shall document the request in writing,
18 including:

- 19 (A) the applicant's or participant's name;
20 (B) the name of the individual making the request:
21 (i) their mailing address;
22 (ii) telephone number; and
23 (iii) relation to the applicant or participant;
24 (C) the date of the request; and
25 (D) the cause for the request along with the name, title, and signature of the person writing the
26 documentation.

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

29 (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
30 other person acting on his or her behalf.

31 (e) If an individual or an individual's parent, caretaker, or any other person acting on his or her behalf expresses verbally the desire
32 for a fair hearing to a state or local agency staff member not authorized to accept a request, that staff member shall provide assistance
33 in contacting the individuals who can accept a fair hearing request.

34 (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.
35 If the notification is mailed, this time period shall begin on the date the notification was mailed.

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

38 *Eff. July 1, 1981;*

39 *Amended Eff. November 1, 1990;*

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

41 *Amended Eff. July 1, 2004;*

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

43 *Amended Eff. XXX*
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1 10A NCAC 43D .0906 is proposed for amendment as follows:
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3 **10A NCAC 43D .0906 DENIAL OR DISMISSAL OF A REQUEST**

4 The hearing officer shall deny or dismiss a hearing if:

- 5 (1) the request is not received within 60 days of the date of notification of the action;
6 (2) the request is withdrawn in writing by the appellant or ~~his or her~~ their representative;
7 (3) the request is verbally withdrawn by the appellant or the appellant's parent, caretaker, or any other person acting on
8 his or her behalf during conversation with the agency Official. Within 10 days of this verbal withdrawal request the
9 agency official shall send a letter to the appellant and the local WIC agency summarizing the events which lead to
10 the withdrawal of the request. This letter shall include notification of the appellant's right to reinstate the request for
11 a fair hearing;
12 (4) the appellant or the appellant's parent, caretaker, or any other person acting on his or her behalf fails to appear at the
13 scheduled hearing, unless the failure to appear was due to circumstances beyond the control of the appellant or his
14 or her representative;
15 (5) the request is made in reference to the tailoring of the food package; or
16 (6) the initial action assessing a claim for the cash value of improperly issued Program benefits or denying participation
17 or disqualifying from the program has been reversed by the local WIC agency or the state agency, resulting in the
18 provision of program benefits to the appellant.
19 (7) The individual has been denied participation by a previous hearing and cannot provide evidence that
20 circumstances relevant to Program eligibility have changed in such a way as to justify a hearing
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22 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*
23 *Eff. July 1, 1981;*
24 *Amended Eff. November 1, 1990;*
25 *Temporary Amendment Eff. July 1, 2002;*
26 *Amended Eff. July 1, 2004;*
27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.*
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1 10A NCAC 43D .0907 is proposed for amendment as follows:
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3 **10A NCAC 43D .0907 CONTINUATION OF BENEFITS**

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

- 6 (1) disqualification from the program for abuse during a certification period; or
7 (2) determination of ineligibility during a certification period due to a change in income eligibility ~~categorical~~
8 ~~ineligibility~~ or residential ~~ineligibility~~ eligibility; ~~or~~
9 ~~(3) other terminations during a certification period.~~

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

- 11 (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
12 notification; or
13 ~~(2) by determination of ineligibility during a certification period due to categorical ineligibility; or~~
14 ~~(2)(3)~~ by applicants who are denied benefits at the initial or subsequent determination of WIC eligibility if the previous
15 certification period has expired.

16 (c) When benefits are continued due to a request for a fair hearing as specified above, the individual shall continue to receive benefits
17 until an adverse hearing decision is reached or the certification period expires, whichever occurs first.
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19 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

20 *Eff. July 1, 1981;*

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

22 *Amended Eff. July 1, 2004;*

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

24 *Amended Eff. XXX*
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1 10A NCAC 43D .0908 is proposed for amendment as follows:
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3 **10A NCAC 43D .0908 NOTICE OF HEARING**

4 (a) The local or State agency official shall notify the appellant, or his or her representative, the local WIC agency, and the ~~Nutrition~~
5 ~~Services Branch~~ Community Nutrition Services Section in writing that a request for a hearing has been received.

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

7 (c) The notice to the appellant, or his or her representative, shall include a stamped envelope with the return address of the agency
8 official with a request ~~that it be returned~~ for response using the stamped envelope or by email indicating whether the time, date, ~~time~~,
9 and place for the hearing is satisfactory. If a response is not received at least ~~72~~ 24 hours prior to the time proposed for the hearing, it
10 shall be assumed that the time, date, ~~time~~, and place are satisfactory.

11 (d) The notice shall contain:

- 12 (1) an explanation of the procedure for the hearing;
13 (2) a statement of the time, date, ~~hour~~, place and nature of the hearing;
14 (3) a reference to the particular sections of the statutes and rules involved; and
15 (4) a statement of the factual allegations.

16 (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
17 new time and date for the hearing. The hearing shall be accessible to the appellant, or his or her representative.

18 (f) The hearing shall be held within 21 days from the date the agency official receives the request.
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20 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

21 *Eff. July 1, 1981;*

22 *Amended Eff. November 1, 1990;*

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

24 *Amended Eff. July 1, 2004;*

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

26 *Amended Eff. March 1, 2020.*

27 *Amended Eff. XXX*
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1 10A NCAC 43D .0909 is proposed for amendment as follows:
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3 **10A NCAC 43D .0909 HEARING OFFICER**

4 The Director of the Division of ~~Public Health~~ Child and Family Well-Being shall designate a representative who did not participate in
5 taking the action under appeal to be the hearing officer. The hearing officer shall:

- 6 (1) preside over the informal proceeding;
- 7 (2) ensure that all relevant issues are considered;
- 8 (3) request, receive and insert into the hearing record all evidence determined necessary to reach a decision;
- 9 (4) conduct the meeting in accordance with due process and ensure an orderly hearing;
- 10 (5) order, if relevant and necessary, an independent medical assessment or professional evaluation for the appellant from
11 a source mutually satisfactory to all parties to the hearing; and
12 (6) issue a decision.
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14 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

15 *Eff. July 1, 1981;*

16 *Amended Eff. July 1, 1995; July 1, 1987;*

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

18 *Amended Eff. July 1, 2004;*

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

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1 10A NCAC 43D .0911 is proposed for amendment as follows:
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3 **10A NCAC 43D .0911 DECISION**

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

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

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

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

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

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

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

19 (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
20 (appellant or local agency) shall be prepared by the ~~Nutrition Services Branch~~ Community Nutrition Services Section and be available
21 for inspection and copying.
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23 *History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;*

24 *Eff. July 1, 1981;*

25 *Amended Eff. December 6, 1991;*

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

27 *Amended Eff. July 1, 2004;*

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

29 *Amended Eff. XXX*
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