

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

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

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

- 8 (1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds
9 the store's documented inventory of that supplemental food item for six or more days within a 60-
10 day period. The six or more days do not have to be consecutive days within the 60-day period.
11 Failure or inability to provide records or providing false records required under Item ~~(32)~~(24) of
12 Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and
13 this Subparagraph;
- 14 (2) two occurrences of vendor overcharging within a 12-month period;
- 15 (3) two occurrences of receiving, transacting or redeeming food ~~instruments or cash value vouchers~~
16 benefits outside of authorized channels, including the use of an unauthorized vendor or an
17 unauthorized person within a 12-month period;
- 18 (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-
19 month period;
- 20 (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages,
21 tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21
22 U.S.C. 802, in exchange for food ~~instruments or cash value vouchers~~benefits within a 12-month
23 period; or
- 24 (6) three occurrences of providing unauthorized food items in exchange for food ~~instruments or cash~~
25 ~~value vouchers, benefits~~, including charging for supplemental food provided in excess of those listed
26 on the food ~~instrument~~ benefit balance within a 12-month period.

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

- 30 (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC
31 participation as referenced in Item ~~(40)~~(31) of Rule .0708. Each date this violation is detected is a
32 separate occurrence;
- 33 (2) One year for three occurrences within a 12-month period of failure to properly transact a WIC food
34 ~~instrument or cash value voucher by not completing the date and purchase price on the WIC food~~
35 ~~instrument or cash value voucher before obtaining the WIC customer's signature, by not obtaining~~
36 ~~the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument~~
37 ~~or cash value voucher prior to the "Issue Date" or after the "Participant Must Use By" dates on the~~

1 ~~food instrument or cash value voucher.~~ benefits by manually entering the EBT card number or
2 entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from
3 UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not
4 entering the correct quantity and item price, or not providing the WIC participant with a receipt that
5 shows the items purchased and the participant's remaining food benefit balance. Except as provided
6 in 7 C.F.R. 246.12(l)(3)(iv), each ~~improperly transacted food instrument or cash value voucher~~
7 improper transaction is a separate occurrence;

8 (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact a
9 WIC food ~~instrument or cash value voucher.~~ benefits. Except as provided in 7 C.F.R.
10 246.12(l)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring a cash
11 purchase is a separate occurrence;

12 (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt
13 to recoup funds for a food ~~instrument or cash value voucher.~~ benefits or contacting a WIC customer
14 outside the store regarding the transaction or redemption of a WIC food ~~instrument or cash value~~
15 ~~voucher.~~ benefits. Each contact with any WIC customer is a separate occurrence, whether each
16 contact is with the same or different WIC customers;

17 (5) 180 days for three occurrences within a 12-month period of failure to provide program-related
18 records referenced in Item ~~(32)~~(24) of Rule .0708 when requested by WIC staff, except as provided
19 in Item ~~(32)~~(24) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide
20 records for an inventory audit. Each request for records is a separate occurrence, whether each
21 request is for the same or different records;

22 (6) 180 days for three occurrences within a 12-month period of failure to provide the information
23 referenced in Item ~~(33)~~(25) of Rule .0708 when requested by WIC staff. Each request for
24 information is a separate occurrence, whether each request is for the same or different information;

25 (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory
26 specified in Item ~~(25)~~(17) of Rule .0708. Each date this violation is detected is a separate occurrence;

27 (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside
28 of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;

29 (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by
30 WIC staff. Each attempt to monitor the store is a separate occurrence;

31 (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as
32 required by Item ~~(34)~~(26) of Rule .0708. Each written request by the state or local WIC agency for
33 submission of a WIC Price List is a separate occurrence, whether each request is for the same or
34 different WIC Price Lists;

35 (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of
36 all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each
37 date this violation is detected is a separate occurrence; ~~and~~

1 (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand
2 when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R.
3 246.12(l)(3)(iv), each ~~transacted food instrument or cash value voucher~~ transaction requiring the
4 purchase of a specific brand when more than one WIC supplemental food brand is available is a
5 separate ~~occurrence~~ occurrence;

6 (13) 180 days for three occurrences of failure to make EBT point of sale equipment accessible to WIC
7 customers to ensure that EBT transactions are completed in accordance with Rule .0708; and

8 (14) 90 days for three occurrences within a 12-month period of failure to comply with minimum lane
9 coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section;

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

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

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

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

18 (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C.
19 802, in exchange for food ~~instruments or cash value vouchers~~ benefits;

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

22 (D) vendor overcharging;

23 (E) receiving, transacting, or redeeming food ~~instruments or cash value vouchers~~ benefits
24 outside of authorized channels, including the use of an unauthorized vendor or an
25 unauthorized person;

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

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

30 (H) providing unauthorized food items in exchange for food ~~instruments or cash value~~
31 ~~vouchers~~ benefits, including charging for supplemental food provided in excess of those
32 listed on the food ~~instrument~~ benefit balance;

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

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

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

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

- 3 (A) failure to stock the minimum inventory specified in Item ~~(25)~~(17) of Rule .0708;
- 4 (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
- 5 (C) failure to allow monitoring of a store by WIC staff;
- 6 (D) failure to provide program-related records referenced in Item ~~(32)~~(24) of Rule .0708 when
7 requested by WIC staff;
- 8 (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have
9 the prices posted on the shelf or display case; ~~or~~
- 10 (F) unauthorized use of the "WIC" acronym or the ~~logo~~-logo;
- 11 (G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
- 12 (H) failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2)
13 and Rule .0708(20)(c) of this Section.

14 (3) Any other method used by the state or local agency to detect the following violations by a vendor
15 within a 12-month period:

- 16 (A) failure to attend annual vendor training;
- 17 (B) failure to submit a WIC Price List as required by Item ~~(34)~~(26) of Rule .0708;
- 18 (C) discrimination on the basis of WIC participation as referenced in Item ~~(40)~~(31) of Rule
19 .0708.
- 20 (D) contacting a WIC customer in an attempt to recoup funds for food ~~instruments or cash-~~
21 ~~value vouchers-benefits~~ or contacting a WIC customer outside the store regarding the
22 transaction or redemption of WIC food ~~instruments or cash value vouchers-benefits~~;
- 23 (E) nonpayment of a claim assessed by the state agency;
- 24 (F) providing false, erroneous, or misleading information to the state or local WIC agency;
- 25 (G) claiming reimbursement for the sale of an amount of a specific supplemental food item
26 which exceeds the store's documented inventory of that supplemental food item for a
27 specific period of time, or failure or inability to provide records or providing false records
28 required under Item ~~(32)~~(24) of Rule .0708 for an inventory audit;
- 29 (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods
30 from the sources specified in Item (3) of Rule .0707; or
- 31 (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical
32 food that was not purchased from the sources specified in Item (3) of Rule .0707.

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

35 (e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with
36 all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or
37 (f)(3)(C) of this Rule shall show adequate participant access provided there is no geographic barrier, such as an

1 impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall
2 not consider other indicators of inadequate participant access when any of these factors exist.

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

5 (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all
6 subsequent amendments and editions, provided that the vendor's average monthly redemptions shall
7 be calculated by using the six-month period ending with the month immediately preceding the
8 month during which the notice of administrative action is dated.

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

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

16 (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-
17 2, and another WIC vendor is located within seven miles of the noncomplying vendor;

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

20 (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local
21 agency at which WIC participants ~~pick up their food instruments or cash value~~
22 vouchers are certified to receive WIC food benefits.

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

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

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

31 (i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in
32 accordance with Item ~~(35)(27)~~ of Rule .0708.

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

36 ~~(k) Notwithstanding other provisions of this Rule and Rules .0707 and .0708, for the purpose of providing a one time~~
37 ~~payment to a non authorized store for WIC food instruments or cash value vouchers accepted by the store, an~~

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

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

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

14 *Eff. February 1, 2013;*

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

17 *Amended Eff. January 1, 2020; January 1, 2018.*