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North Carolina Department of Health and Human Services

WIC Infant Formula Rebate Contract #WIC-IF-26

This contract (hereinafter referred to as Contract) is entered into between the North Carolina Department of Health and Human Services, Division of Child and Family Well-Being, hereinafter referred to as the DIVISION, and Abbott Laboratories, Inc. hereinafter referred to as the CONTRACTOR.

1. THE CONTRACTOR'S DUTIES

The CONTRACTOR shall provide the Contract Brand Infant Formulas specified herein through wholesalers and authorized WIC Vendors in sufficient supply to service 100% of the WIC caseload and shall remit to the DIVISION a Rebate for each unit of the CONTRACTOR'S Contract Brand Infant Formulas as specified herein.

2. CONTRACT AMOUNT

The CONTRACTOR shall Rebate to the DIVISION a price per unit for each Contract Brand Infant Formula listed on Attachment 1 of this Contract. The Rebate amount per unit for the Primary Contract Brand Infant Formula is the amount specified by the CONTRACTOR on the WIC Infant Formula Rebate Bid Sheet Template for a Single Bid Solicitation (hereinafter "Bid Sheet") on April 14, 2023. It is identified as Attachment 2 to the DIVISION'S WIC Infant Formula Rebate Initiative Request for Proposals, issued in conjunction with the New Mexico Department of Health and the Arkansas Department of Health, hereinafter referred to as the "Request for Proposals" and incorporated as part of this Contract. The Rebate amounts per unit for the other Contract Brand Infant Formulas specified herein are calculated in accordance with Section III.A.7 and Section III.A.8 of the Request for Proposals.

3. PAYMENT

a. By the 20th of each month (or first working day after the 20th if the 20th is on a weekend or holiday) the DIVISION will submit an invoice to the CONTRACTOR that represents the total number of Contract Brand Infant Formula, by Brand, physical form and size, redeemed from the 1st to the 15th of that month; payment term is 30 calendar days from the date of invoice receipt.

b. By the 5th working day of each month (or first working day after the 5th if the 5th is on a weekend or holiday) the DIVISION will submit an invoice to the CONTRACTOR that represents the total number of Contract Brand Infant Formula, by Brand, physical form and size, redeemed from the 16th through the last day of the previous month; payment term is 30 calendar days from the date of invoice receipt.

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c. The DIVISION'S WIC Program may transition to new systems during the term of this Contract including Management Information or Electronic Benefit Transfer (EBT) Systems or both. Should Rebate functionality in the new systems be delayed, the DIVISION will submit an invoice(s) to the CONTRACTOR based on 90% of the total number of units, by Brand, physical form and size, redeemed for the last invoice statewide data is available from the DIVISION'S system as an initial partial invoice. Once the data is available from the system, the DIVISION will submit an invoice to the CONTRACTOR for the remaining Rebate balance which will be based on the total number of units, by Brand, physical form and size, redeemed for that billing period.

d. The CONTRACTOR agrees that all payments shall be made to the DIVISION by Electronic Funds Transfer (EFT) or Automated Clearing House (ACH) wire transfer.

e. The CONTRACTOR agrees to pay interest penalties to the DIVISION in the amount of one (1.0) percent per month or any portion thereof calculated on the installment amount due or invoice total for which funds have not been transferred to the DIVISION by the CONTRACTOR by the close of business on the due date for the payment.

f. The CONTRACTOR shall make advance payment if requested by the DIVISION. The requested advance payment shall not exceed the number of units issued, by Brand, physical form and size, less the number of units issued but not redeemed, for the most recent closed out month for which data is available for the DIVISION. The DIVISION may request a partial advance payment.

(1) Advance payment is due upon receipt of the request and becomes delinquent after twenty (20) calendar days. A late payment charge of one percent per month accrued on a daily basis (12% annual percentage rate) shall be assessed on any advance payment request that has not been paid within twenty (20) calendar days of its receipt. Late payment penalties will begin on the twenty-first day.

(2) The CONTRACTOR shall be entitled to a non-refundable discount of one-half of one percent, accrued on a daily basis (6% annual percentage rate), for each month that payment is in advance of its original due date, with such discount applied against the actual amount of advance payment made. Any amount in excess of actual Rebates due to the DIVISION shall be deducted from the next payment due to the DIVISION.

g. Price increases or decreases in the CONTRACTOR'S lowest national wholesale price per unit for a full truckload, of any one or all of the Contract Brand Infant Formulas listed herein, will result in an automatic Rebate increase or decrease on a cent-for-cent basis for those formulas. The price per unit Rebate will increase or decrease effective the first day of the month in which the wholesale price per unit increased or decreased. The CONTRACTOR shall notify the DIVISION in writing

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no less than thirty (30) calendar days prior to any changes in wholesale prices. The notification shall include both the date and amount of the increase or decrease.

h. Notwithstanding any other provisions of this Contract, the CONTRACTOR shall pay a Rebate yielding the same percent discount per Reconstituted Fluid Ounce as the Primary Contract Brand Infant Formula, if the Primary Contract Brand Infant Formula is replaced during the term of the Contract, including, but not limited to, replacement by change in formulation or Unit Size. The lowest national wholesale price per unit for a full truckload of the replacement Infant Formula at the time the replacement formula is approved for issuance by the DIVISION will be used to calculate the Rebate.

i. The CONTRACTOR agrees that if a new Contract Brand Infant Formula introduced into the CONTRACTOR'S product line is approved for issuance by the DIVISION or the DIVISION decides to add more Contract Brand Infant Formulas to its approved list, the CONTRACTOR shall pay a Rebate amount per unit for the additional Infant Formula calculated in accordance with Section III.A.7.c. of the Request for Proposals. The DIVISION will notify the CONTRACTOR ninety (90) days, or less if mutually agreed upon, prior to the approval of the new or additional formula for issuance. The DIVISION will notify the affected parties in the WIC community and bill the CONTRACTOR accordingly if and when additional Infant Formula(s) are issued.

j. The CONTRACTOR agrees that in the event of an emergency, Supply Chain Disruption, product recall, or other causes resulting in shortages as determined or declared by federal or state authorities, the DIVISION may issue a Contract Brand Infant Formula that is currently not approved for issuance by the DIVISION or a Non-Contract Brand Infant Formula, except Exempt Infant Formula. The CONTRACTOR shall pay a Rebate amount per unit calculated in accordance with Section III.A. 12.b of the Request for Proposals. The Rebate paid for the substitute formula shall yield the same Rebate Bid Per Unit Cost per ounce as the physical form for which it is being substituted.

k. The CONTRACTOR agrees to pay Rebates to the DIVISION on any redeemed units of Primary Contract Brand Infant Formula and any other Contract Brand Infant Formulas approved for issuance by the DIVISION that are issued with a Food Instrument having a "First Date to Use" on or between October 1, 2023 and September 30, 2026. The Rebate amount applied to the redeemed units shall be the Rebate amount as of the first day of the month of Redemption, except as provided in Paragraph 3(g) for an increase or decrease in wholesale price. Rebate payment shall be made even though the Contract may have expired at the time the units are redeemed and payment of the Rebate is due. For validly redeemed Food Instruments after expiration of the Contract, the Rebate amount applied to the redeemed units shall be the Rebate amount effective on the last day of the Contract Term.

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l. The CONTRACTOR cannot withhold any Rebate payments due to the DIVISION under any circumstances. Any adjustments owed the CONTRACTOR by the DIVISION will be made by the DIVISION in subsequent invoices.

4. PAYMENT DISPUTES

a. The CONTRACTOR must notify the DIVISION of any dispute or error in the Rebate invoice within sixty (60) calendar days of receipt of the invoice. The CONTRACTOR waives its right to challenge any invoice or request the return of any funds after sixty (60) calendar days following the CONTRACTOR'S receipt of the invoice for the funds in question.

b. Late penalties shall be assessed against the CONTRACTOR during the time any amounts are in dispute and will accrue at a rate of one percent per month prorated on a daily basis (12% annual percentage rate). In the event such dispute is settled in favor of the CONTRACTOR, such penalties will not be owed. All disputes will be settled within thirty (30) calendar days, or by closeout of the federal fiscal year in which the dispute occurred, whichever is earlier. Any payments due to the DIVISION shall be received within thirty (30) calendar days from the date of resolution.

c. Adjustments in invoice amounts shall be made by the DIVISION only when an actual error in any disputed invoice is found. Statistical inference or sampling shall not be the basis for any dispute by the CONTRACTOR or any adjustment in an invoice by the DIVISION. Supporting documentation provided by the DIVISION in the event of a dispute shall be limited to the documentation identified in Paragraph 13, of this Contract.

5. CONFLICT OF INTEREST

The CONTRACTOR warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The CONTRACTOR shall comply with all federal and State laws and regulations on conflict of interest.

6. MISCELLANEOUS

a. The CONTRACTOR acknowledges that the WIC Acronym and the WIC logo are service marks owned by the United States Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

The CONTRACTOR shall not use these service marks in any manner on its goods or their containers or packaging or on tags of labels affixed thereto. The CONTRACTOR also shall not use the WIC logo in advertising or other promotional materials (collectively: "advertising").

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The CONTRACTOR shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of the CONTRATOR with the WIC Program, or as to the sponsorship or approval of the CONTRACTOR'S goods, services, advertising, or commercial activities, including nutrition message(s), by the WIC Program, USDA, or the DIVISION.

The CONTRACTOR shall include the following statement with any use of the WIC Acronym in advertising: "WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants, and Children."

b. The CONTRACTOR shall keep confidential and not divulge or make available to any individual or organization without the prior written approval of the DIVISION any information, data, documents or reports provided by the DIVISION to the CONTRACTOR under this Contract.

c. The CONTRACTOR shall not use the award of Contract as part of any news release for commercial advertising.

d. The CONTRACTOR shall give the DIVISION no fewer than one hundred twenty (120) calendar days advance written notice prior to any of the actions listed below in 6.d. (1) through (5). The one hundred twenty (120) calendar days advance written notice shall not begin prior to the date of any required Food and Drug Administration approval for the action.

(1) The introduction of any new Contract Brand Infant Formula into its product line and when the formula will become available in North Carolina's market;

(2) A change in the label of the Primary Contract Brand Infant Formula or any other Contract Brand Infant Formula approved for issuance by the DIVISION;

(3) The replacement of the Primary Contract Brand Infant Formula or any other Contract Brand Infant Formula approved for issuance by the DIVISION, including, but not limited to, replacement by change in formulation or Unit Size;

(4) A change in the name of the Primary Contract Brand Infant Formula or any other Contract Brand Infant Formula approved for issuance by the DIVISION; and

(5) A change in size of the product which impacts the amount of yield and the amount of product issued per month. Due to the impact on an EBT system, products that change size and/or yield must change the Universal Product

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Code (UPC), or the CONTRACTOR must work with the DIVISION to reset the authorized WIC Vendors' shelves and the wholesalers' inventory.

7. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no commissions, percentages, brokerage, gratuities, kickbacks or contingency fees were paid in connection with the Contract, nor exchanged for consideration by the CONTRACTOR for the purpose of securing this Contract.

8. AUDITS AND RECORDS

a. The CONTRACTOR shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices.

b. The CONTRACTOR assures that these records created solely for this Contract shall be subject to inspection, reviews, or audit by State personnel and other personnel duly authorized by the DIVISION, as well as authorized federal personnel. Routine inspections, review or audits shall be upon reasonable notice and during normal business hours.

c. The CONTRACTOR shall maintain and file with the DIVISION such progress, fiscal, inventory and other reports as the DIVISION may require within the period of the Contract.

d. The CONTRACTOR shall retain all financial records, supporting documents, papers, letters or other material made or received by the CONTRACTOR in conjunction with this Contract. It is expressly understood that receipt of substantial evidence of the CONTRACTOR's refusal to comply with this provision shall constitute a breach of the Contract.

9. RETENTION OF RECORDS

a. The CONTRACTOR shall retain all financial records, supporting documents, statistical records, and any other documents created solely for this Contract for a period of five (5) years, or if an audit has been initiated and audit findings have not been resolved at the end of the five (5) years, the records shall be retained until resolution of the audit findings. Any routine audits of such records or documents shall be upon reasonable notice and during normal business hours.

b. Persons duly authorized by the DIVISION and federal auditors pursuant to 2 CFR §200.517 shall have full access to and the right to examine any of said records and documents during said retention period. Such access shall occur during normal business hours.

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10. MONITORING

a. The CONTRACTOR shall provide access to or shall furnish whatever information is necessary for the monitoring of this Contract.

b. The CONTRACTOR shall permit the DIVISION to monitor this Contract according to applicable regulations of the State and federal governments.

11. HOLD HARMLESS/INDEMNIFICATION

The CONTRACTOR agrees to indemnify and hold harmless the State as well as officers, agents, and employees of the DIVISION from all claims or losses arising out of any act or omission of the CONTRACTOR, its agents and employees in the performance of this Contract, and from all suits accruing and resulting from personal injury allegedly caused by any defect in the product furnished pursuant to this Contract. The DIVISION shall give the CONTRACTOR written notice of each such claim or suit and the right and opportunity for the CONTRACTOR to conduct its own defense thereof.

12. COMPLIANCE WITH LAWS

a. The CONTRACTOR shall abide by all applicable State and federal laws and regulations.

b. If any State law conflicts with any federal law, the federal law shall control.

c. The definitions and any and all federal and state statutes, regulations, rules, and policies cited within the RFP and this contract are incorporated by reference in addition to all subsequent amendments and editions.

13. INVOICE REPORTS

a. The DIVISION shall provide the CONTRACTOR an invoice report specifying the number of units of each Contract Brand Infant Formula, by Brand, physical form and size approved for issuance by the DIVISION and paid for during the invoice period. The DIVISION shall provide these calculations and supporting documentation with each invoice. The supporting documentation will be made available to the CONTRACTOR to access through an FTP site and is limited to the Food Instrument number, Food Instrument redeemed amount, Redemption date, First Date to Use, unit count, Brand name, physical form, and size. No identifiable participant information will be provided. Should vendor information be requested, no identifiable vendor information can be provided other than vendor number and address.

b. The CONTRACTOR may audit the records that directly support the volume of units reported as purchased by the DIVISION on each Rebate invoice, including applicable policies and procedures, upon sixty (60) days prior written notice to the DIVISION. Any CONTRACTOR audit shall be conducted by qualified auditors

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and conform to Generally Accepted Auditing Standards. CONTRACTOR audit findings shall be documented with specific data and not based on extrapolations of data. The DIVISION shall retain all records supporting this Contract for a minimum of five (5) years. Individual applicant and/or participant records, as well as individual vendor records, are confidential and exempt from audit by the CONTRACTOR in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Nutrition Program for Women, Infants, and Children. The costs of any audits by the CONTRACTOR shall be borne solely by the CONTRACTOR and are not recoverable from the DIVISION.

14. COMPLIANCE MONITORING

The DIVISION shall monitor WIC Vendors for compliance with North Carolina WIC Program rules, regulations, policies, and procedures, and employ sanctions as necessary to enforce compliance, as outlined in 10A N.C.A.C. 43D.0706 through .0710.

15. TERM

This Contract shall be effective on October 1, 2023, or upon approval by the North Carolina Department of Health and Human Services, whichever is later, and shall terminate on September 30, 2026, or if extended, to September 30, 2028. The extension is solely at the state's discretion. Contract pricing applies to the extension period. No commitment of public funds is permitted prior to Contract approval.

16. CONTRACT ADMINISTRATORS

The name and address of the DIVISION'S administrator for this Contract is Kim Lovenduski, Deputy Director, Community Nutrition Services Section, 1914 Mail Service Center, Raleigh, NC 27699-1914. The representative of the CONTRACTOR responsible for administering the services under this Contract is Kori Stenzel, Senior Manager, WIC Contracts, 3300 Stelzer Road, Department 106711, RP2-2, Columbus, OH 43219. In the event that different representatives are designated by either party after execution of this Contract, notice of the name and address of the new representative will be rendered in writing to the other party and said notification attached to originals of this Contract.

17. PERFORMANCE OF THE CONTRACT

The DIVISION and the CONTRACTOR agree to meet as needed to review the progress and performance of the Contract. During these meetings, any concerns regarding billing procedures must be addressed.

18. MODIFICATION OF CONTRACT

This Contract may not be amended orally or by performance. Modification of provisions of this Contract shall only be valid when they have been reduced to writing and duly signed by both parties to the Contract. The parties agree to amend this Contract if federal or State amendments of any applicable laws or regulations make changes in the Contract necessary.

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19. SEVERABILITY

In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20. GOVERNING LAW

This Contract shall be deemed to have been executed and entered into in the State of North Carolina, the County of Wake, and shall be construed, performed and enforced in all respects in accordance with the laws and rules of the State of North Carolina. It is agreed between the parties hereto that the place of this Contract, its situs and forum, shall be Wake County, North Carolina. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this Contract.

21. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered a substantive part of this Contract.

22. AVAILABILITY OF FUNDS

It is understood and agreed between the CONTRACTOR and the DIVISION that the payment of any amounts specified in this Contract, or its continuation, is dependent upon and subject to the allocation of funds to the DIVISION for the purposes set forth in this Contract.

23. ASSIGNMENT

The CONTRACTOR shall not assign, sublicense, subcontract or otherwise transfer its rights, duties or obligations under this Contract without the prior written approval of the DIVISION, which shall not be unreasonably withheld. The DIVISION shall at all times be entitled to assign or transfer its rights, duties and/or obligations under this Contract to another governmental agency in the State of North Carolina upon giving prior written notice to the CONTRACTOR.

24. FORCE MAJEURE

The CONTRACTOR shall not be liable for delay, failure of performance, loss or damage, due to fire, earthquake, volcanic action, flood, war, civil or military authority, acts of God, or other causes beyond its reasonable control.

Notwithstanding the preceding paragraph, when the CONTRACTOR'S product is not available in any or all of the geographic areas of the State for 72 hours or more, due to a product recall, Supply Chain Disruption, emergency, or other shortage determined by the federal or State authorities the DIVISION, with USDA approval as applicable, shall:

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a. First issue the primary contract brand of infant formula in a different unit size or form, such as liquid concentrate instead of powdered, and the States will receive the same net percentage rebate amount as the original contracted formula.

b. Second, the States would substitute an alternate contract brand of formula in any available unit size or form, authorized for use by the States.

c. Lastly, the CONTRACTOR shall pay a rebate at the same percentage discount as the primary contract brand formula for a Non-Contract brand of formula until the contract brand formula can be supplied. The DIVISION will determine which brand will be substituted. The DIVISION, at its sole discretion, will determine the need for implementing these provisions in the event of an emergency, Supply Chain Disruption, product recall, or other causes resulting in shortages as determined or declared by federal or state authorities.

The CONTRATOR shall, in coordination with the DIVISION, prioritize formula supply to WIC corporate retailers that are key in providing statewide access of infant formula for program participants based on geographic coverage by retailers and/or percentage of formula redemption prior to the supply disruption.

The DIVISION reserves the right to request, during emergency periods and Supply Chain Disruptions, the supply distribution data to key retailers at least weekly for all contract brand infant formulas.

The DIVISION shall invoice, and the CONTRACTOR shall pay, Rebates for the units issued during the period when the CONTRACTOR'S formula was not available, notwithstanding that Food Instruments issued during a shortage may be redeemed after the shortage is remedied. The lowest national wholesale price per unit at the time of issuance for a full truckload of the substitute formula shall be used to calculate the Rebate amount. The Rebate paid for the substitute formula shall yield the same Net Price per Reconstituted Fluid Ounce as the Rebate for the formula for which it is being substituted. At any time after the CONTRACTOR's product is not available in any or all areas of the State for five (5) calendar days or more, the DIVISION may declare the CONTRACTOR in breach and may terminate the Contract for cause pursuant to Paragraph 26(a), "Termination for Cause."

25. ACCESS TO BABY FORMULA ACT OF 2022

In accordance with the Access to Baby Formula Act of 2022, in the event of an infant formula recall, the CONTRACTOR shall remedy and protect the PROGRAM and its' participants against product disruption by performing under a waiver or modification under 42 U.S.C. section 1786 (s)(1); (A) permitting authorized vendors to exchange or substitute authorized supplemental foods obtained with Food Instruments beyond exchanges for an identical (exact brand and size) food item; (B) waiving any requirement with respect to medical documentation for the issuance of Noncontract Brand Infant Formula, except for the requirements for participants receiving Food Package III (as defined in section

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246.10(e)(3) of title 7, Code of Federal Regulations (as in effect on the date of the enactment of the Access to Baby Formula Act of 2022)); (C) waiving the maximum monthly allowance for infant formula; and (D) waiving any additional qualified administrative requirement to address a Supply Chain Disruption, including a supplemental food product recall.

26. DIVISION'S RIGHT TO APPROVE NEW OR ADDITIONAL CONTRACT BRAND INFANT FORMULAS FOR ISSUANCE

The CONTRACTOR agrees that the DIVISION has the right to approve for issuance additional Contract Brand Infant Formulas that are not currently listed in Attachment 1 to this Contract and new Contract Brand Infant Formulas introduced into the CONTRACTOR'S product line during the term of this Contract. The DIVISION is not obligated to add new or additional Contract Brand Infant Formulas to the DIVISION'S WIC-approved food list.

27. **TERMINATION**

Termination shall not nullify or otherwise excuse any obligation owed by the CONTRACTOR to the DIVISION prior to the effective date of the termination or as provided otherwise herein.

a. Termination for Cause

Unless the CONTRACTOR'S material breach of any provision of this Contract is waived by the DIVISION in writing, the DIVISION may, by written notice to the CONTRACTOR specifying CONTRACTOR'S failure, terminate the Contract upon no less than twenty-four (24) hours' notice unless the CONTRACTOR has cured the breach within time frames agreed upon by both parties. Said notice shall be delivered by express mail, signature required, or in person with proof of delivery.

Waiver of breach of any provisions of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be modification of the terms of this Contract. The provisions herein do not limit the DIVISION'S right to remedies at law or to damages.

The DIVISION may terminate this Contract for cause upon the filing of a bankruptcy action or insolvency by or against the CONTRACTOR.

If the Contract is terminated pursuant to this provision, the CONTRACTOR shall provide to the DIVISION the same Rebate payment for Infant Formula that would have been paid until a new Contract is executed.

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b. Termination Without Cause

The DIVISION may terminate this Contract with a minimum of two hundred seventy (270) calendar days advance written notice delivered to the Contract representative specified herein.

In the event of termination of the Contract pursuant to this provision, any payment or obligation incurred during that two hundred seventy (270) calendar days between issuance of notice and termination will be made or satisfied within thirty (30) calendar days of receipt of invoice.

If the Contract is terminated pursuant to this provision, the CONTRACTOR shall continue to pay Rebates from the date notice is given until the end of the notice period or until a new Contract is executed, whichever occurs first. Notwithstanding termination, the CONTRACTOR shall comply with Paragraph 3(h) regarding payment of Rebates on units of Infant Formula redeemed subsequent to the Contract termination.

28. RECONCILIATION INVOICES

For any six (6) month period during the contractual period and within one hundred twenty (120) calendar days of the termination of the Contract, the DIVISION may provide reconciliation invoices to include unreported claims against the CONTRACTOR. Payment from the CONTRACTOR is due within thirty (30) calendar days of receipt of the DIVISION'S invoice. A late payment charge of one percent per month accrued on a daily basis (12% annual percentage rate) shall be assessed on any portion of past-due amounts for which funds have not been received by the State by the close of business on the due date for the payment. The amount will be prorated based on the number of days delinquent. Such sums shall be due in addition to the outstanding balance.

29. ALL TERMS AND CONDITIONS INCLUDED

The Contract and its Attachments contain all the terms and conditions agreed upon by the parties.

All terms and conditions of the DIVISION'S WIC INFANT FORMULA REBATE INITIATIVE REQUEST FOR PROPOSALS (issued February 2, 2023 as amended March 22, 2023), STATES' ANSWERS TO PRE-BID QUESTIONS (issued March 22, 2023) and the CONTRACTOR'S accepted response to the Request for Proposals are hereby incorporated and are a part of the Contract. Also incorporated in the Contract, are the CONTRACT BRAND INFANT FORMULAS APPROVED FOR ISSUANCE (Attachment 1), BID SHEET (Attachment 2), the CONTRACTOR'S CERTIFICATION (Attachment 3), and 10A N.C.A.C. § 43D.0201 through .0911 (Attachment 4).

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IN WITNESS THEREOF, the CONTRACTOR and the DIVISION have executed this Contract in duplicate originals, one of which is retained by each of the parties.

ABBOTT LABORATORIES, INC.

By: Kori Stenzel Date: June 1, 2023

Printed Name: Kori Stenzel Title: Sr. Manager, WIC Contracts

ATTEST: Courtney Haught Date: 6/1/2023

Printed Name: Courtney Haught Title: Associate Mgr., WIC

(Corporate Seal)

Abbott Laboratories Inc. CORPORATE Seal 1997 DELAWARE

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF CHILD AND FAMILY WELL-BEING

By: DocuSigned by: Yvonne Copeland/MV 9FDF1CBCA1F3451... Date: 06/19/23 | 11:18 AM EDT

Yvonne Copeland, Division Director

Witness: DocuSigned by: Sarah Grimsrud 1DEB0594111C484... Date: 06/19/23 | 2:03 PM EDT

Printed Name: Sarah Grimsrud Title: DCFW Assistant Director of Finance

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Contract Brand Infant Formulas Approved For Issuance

Effective for Redemption of food instruments with "first date to spend" on or between October 1, 2023 and September 30, 2026

Unit Size and Form	Brand Name	Wholesale Amount Per Unit	Rebate Bid Per Unit	Percent Rebate
12.4 oz Powder	Similac Advance	$16.340	$12.250	74.969%
13.0 oz Concentrate	Similac Advance	$ 4.690	$ 3.900	83.156%
32.0 oz Ready to Feed	Similac Advance	$ 7.640	$ 1.000	13.089%
12.4 oz Powder	Similac Soy Isomil	$17.67	$13.247	74.969%
13 oz Concentrate	Similac Soy Isomil	$ 5.03	$ 4.183	83.156%
32 oz Ready to Feed	Similac Soy Isomil	$ 8.32	$ 1.089	13.089%
12.5 oz Powder	Similac Sensitive	$16.82	$12.610	74.969%
32 oz Ready to Feed	Similac Sensitive	$ 7.64	$ 1.000	13.089%
12.6 oz Powder	Similac Total Comfort	$16.82	$12.610	74.969%

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WIC Infant Formula Rebate Bid Sheet Template for a Single Bid Solicitation

Purpose: Template for WIC State agencies to use in order to collect bids for primary contract infant formula as part of its single-supplier competitive bid solicitation to meet the federal requirements outlined in 7 C.F.R. 246.10(e)(9)(Table 1) and §246.16a(c)(2, 4-7).

Instructions for the WIC State agency: Please complete all Tillable cells in this template highlighted in pink (i.e., cells K8:L16; B25:E25).
Instructions for the Bidder: Please complete all Tillable cells in this template highlighted in gray (i.e., cells B8:G16; B26:E26; K25:Q26) and read through the certification statements below. Please provide data to at least 3 decimal places when possible. Once complete, please sign and reference procurement instructions provided in the State agency's bid solicitation.

Physical Form	Product Name	UPC Code	Unit Size (in ounces)	Reconstituted Ounce Per Unit	Lowest Wholesale Full Truckload Price Per Unit	Rebate Bid Per Unit	Infant Age Categories	Number of Reconstituted Ounces Issued per Month Based on Max*		Estimated Average Number of Infants by Physical Form Based on 6 Months Average**		Net Price Per Unit	Percent Rebate	Total Monthly Reconstituted Ounces to Bid	Standardized Number of Units of Infant Formula	Total Cost
								Fully Formula Fed Infants	Partially Breastfed Infants	Fully Formula Fed Infants	Partially Breastfed Infants					
Powdered	Similac Advance	070074559582	12.4	90.0	$16,340	$12.250	0-3 months	870	435	13,883	5,643	$4.090	74.969%	47,193,507	524,372	$2,144,682,707
							4-5 months	960	522	7,853	3,016					
							6-11 months	696	384	32,215	2,705					
Liquid Concentrate	Similac Advance	070074569741	13.0	26.0	$4,690	$3,900	0-3 months	823	388	68	52	$0.790	83.156%	193,314	7,435	$5,873,772
							4-5 months	896	460	39	24					
							6-11 months	630	315	91	44					
Ready-to-Feed	Similac Advance	070074533643	32.0	32.0	$7,640	$1,000	0-3 months	832	384	74	61	$6.640	13.089%	173,020	5,407	$35,901,650
							4-5 months	913	474	31	16					
							6-11 months	643	338	69	23					
														Total Monthly Price	$2,186,458,129	

*Based on WIC Program Regulations (§246.10(e)(9)(Table 1) and §246.16a(c)(5)(i))
**Estimated average based on six months of the most recent data available. Excludes infants that are exclusively breastfed or issued exempt infant formula and includes infants that are issued milk- or soy-based infant formula.

Please Note: No assurances are provided on the quantity, type, or physical forms that will be issued under the agreement that will become a result of this bid solicitation. Additionally, the estimated average number of infants provided on this bid sheet is an approximation and excludes infants that are exclusively breastfed or issued exempt infant formula.

Certification:
The bidder hereby certifies that:
1. The bidder is registered under the Food, Drug and Cosmetic Act with the U.S. Department of Health & Human Services and its products are in compliance with Federal regulations issued pursuant to P.L. 100-237.
2. Bids for all physical forms of formula meet the requirements of 246.10 (e) (1)(iii) and 246.10(e)(2)(iii) and are suitable for the routine issuance to the majority of generally healthy, full term infants.
3. Each infant formula product to be supplied under the terms of this contract complies with the Federal Food, Drug, and Cosmetic Act.
4. The bidder can and will supply the quantities of infant formula offered to meet one hundred percent (100%) of the WIC Program's needs in all geographic areas as outlined in the bid solicitation.

State Agency Name:	Arkansas Department of Health, New Mexico Department of Health, and North Carolina Department of Health and Human Services	COURTNEY HAIGHT Notary Public, State of Ohio My Commission Expires January 5, 2026	Manufacturer's Signature: Kon Stengel
Manufacturer Name:	Abbott Laboratories Inc.		

Amendment No. 1 Ist

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NEW MEXICO DEPARTMENT OF HEALTH (NMDOH), ARKANSAS DEPARTMENT OF HEALTH (ADH) AND NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES(NCDHHS)

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC) WIC INFANT FORMULA REBATEINITIATIVE CONTRACTOR CERTIFICATION

CONTRACTOR Abbott Laboratories, Inc.

The undersigned authorized official of the above listed infant formula manufacturer (contractor) certifies:

1. That the contractor has read and understands all requirements and specifications of the Request for Proposals, all attachments and the State's sample contracts, including any amendments made by the States prior to the deadline for the submission of proposals.

2. That the contractor agrees to all requirements, specifications, terms and conditions of the Requestfor Proposals, all attachments and the State's sample contracts, including any amendments made by the States prior to the deadline for the submission of proposals.

3. That the contractor, its principals, officers and employees have not been debarred or otherwise sanctioned by any governmental entity (federal, state, territory, tribal, county or municipality) for misconduct, breach of contract, tortious acts or omissions or criminal acts or omissions relating to the production, sale or distribution of infant formula or WIC rebate contractual compliance in the past 10 years. (The facts, circumstances and agreements or findings relating to any sanction or debarmentmust be provided for the States' consideration).

4. That the contractor shall provide infant formula and rebates to the States pursuant to the termsspecified in the Request for Proposals, all attachments and the State's sample contracts.

5. That the contractor is registered with the Secretary of Health and Human Services under theFederal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) and that the products shall comply with all applicable regulations relevant to infant formulas, including 7 CFR Section 246.10 (g) and 21 CFR Parts 106 and 107, as well as the provisions of the Federal Food, Drug and Cosmetic Act.

6. That the contractor will give the States, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and shall establish a proper accounting system in accordance with generally accepted accounting standards.

7. That the contractor will comply with the provisions of the Federal Certification Regarding Lobbying.

8. That the contractor will comply with the Civil Rights Act of 1964 (42 U.S.C. 2000d, etseq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 6101, et seq.), the Americans With Disabilities Act(42 U.S.C. 12150 et seq.) the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and all other applicable federal and state laws and regulations. These laws and regulations prohibit discrimination on the grounds of race, color, national origin, sex, disability, and age.

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9. That the contractor will comply with the provisions of the Federal Certification Regarding Debarment and Suspension.

10. That the contractor will comply with the provisions of the Federal Certification Regarding Drug-Free Workplace Requirements.

11. That the contractor will comply with the Energy Policy and Conservation Act (Public Law 94-163), the Commodity Distribution Reform Act and the WIC Amendment of 1987 (Public Law 100-237).

12. That the contractor will obey all applicable federal regulations in the performance of its duties, including applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C 1857), the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the States and the EPA Assistant Administrator for Enforcement.

13. That the contractor will carry adequate public liability insurance and other appropriateforms of insurance as well as pay all taxes incident hereto.

14. That the contractor is registered to do business in each State and with each State's Secretary of State.

Kori Stenzel 4.10.23

Signature of Authorized Certifying Official Date

Kori Stenzel Sr. Manager, WIC Contracts

Printed Name of Certifying Official Title

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Attachment III – Contractor Certification

Abbott Laboratories Inc. certified that it has not been debarred or otherwise sanctioned by any governmental entity for misconduct, breach of contract, tortious acts or omissions or criminal acts or omissions relating to the production, sale or distribution of infant formula in the past 10 years. Abbott does not consider its publicly reported May 2022 Consent Decree with the Food and Drug Administration to be a sanction because a consent decree is a resolution of dispute between parties rather than a sanction unilaterally imposed by one party.

We further state that Abbott Laboratories ("Abbott"), of which Abbott Laboratories Inc. is a subsidiary, is a publicly-traded, Fortune 100 Company. All material pending legal proceedings involving Abbott, occurring within the applicable period for reporting such proceedings are disclosed in its Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, which are made available at www.abbottinvestor.com as soon as reasonably practicable after Abbott electronically files these documents with the Securities and Exchange Commission.

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10A NCAC 43D .0706 VENDOR PEER GROUPS

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

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

WIC sales figures of new authorized WIC vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (525,000) shall be placed in a peer group based on redemption.

(2) Authorized vendors for which annual WIC supplemental food sales are available, including chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups, as set forth in 7 CFR 246.12(g)(4) and 7 CFR 246.12(h)(3), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at https://www.ecfr.gov/.

(3) "Annual WIC supplemental food sales" is the dollar amount an authorized vendor redeems in WIC food benefits within a 12-month period.

(4) In determining a vendor's peer group designation based on annual WIC supplemental food sales, the State agency shall look at the most recent 12-month period of redemption data.

(5) If the State agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The State agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.

(6) If at any time during a vendor's authorization the State agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store shall wait 90 days to reapply for vendor authorization. The State agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.

(7) A vendor applicant previously authorized in a peer group based on annual WIC supplemental food sales that is being reauthorized following the nonrenewal or termination of its agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously in, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group using criteria for new vendor applicants as set forth in Item (1) of this Rule.

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

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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

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(17) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.

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

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

(8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.

(9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).

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

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

(12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.

(13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.

(14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:

(a) a plea of guilty;

(b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;

(c) a plea of no contest, nolo contendere, or the equivalent; or

(d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.

(15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.

(16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:

(a) a SNAP vendor that is disqualified from participation in SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, has not expired; or

(b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of

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Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, has not expired.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item ends the disqualification period applicable to that SNAP vendor earlier than the disqualification period otherwise would have expired. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

(17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.

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

(19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a certified third party processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

(20) A WIC Vendor Application shall include the following information:

(a) The store name, physical address, and hours of operation;

(b) The type of ownership under which the vendor operates;

(c) The names and contact information of owners or officers;

(d) Annual food sales data and percentages for the following tender types: cash, credit, debit, SNAP, and WIC;

(e) The store's SNAP authorization number and history of SNAP participation, if a retail grocery store; and

(f) Other information that the store is required to provide to the State agency in accordance with 7 C.F.R. 246.12.

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

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

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10A NCAC 43D .0708 AUTHORIZED VENDORS

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

(1) Process WIC Program food benefits in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;

(2) Accept WIC Program food benefits in exchange for WIC supplemental foods. Supplemental foods are those foods that satisfy the requirements of 10A NCAC 43D .0501;

(3) Provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on his or her food benefit balance. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of his or her cash-value benefit if the WIC customer pays the difference, as set forth in 7 C.F.R. 246.12(h)(3) (xi);

(4) Transmit only the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities, and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT system and shall not charge or collect sales taxes for the supplemental food provided;

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

(6) Accept payment from the State WIC Program only up to the maximum price set by the State agency for each supplemental food within that vendor's peer group. The maximum price for each supplemental food shall be based on the maximum prices set by the State agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707 of this Section. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;

(7) Accept payment from the State WIC Program only up to the full dollar value of the cash-value benefit;

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

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

(10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;

(11) Excluding free-standing pharmacies, redeem at least two thousand dollars ($2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars ($2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store shall wait 180 days to reapply for authorization;

(12) Ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;

(13) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;

(14) Not transact food benefits in whole or in part for cash, credit, unauthorized foods, or non-food items;

(15) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food benefits, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;

(16) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food benefits;

(17) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. Free-standing pharmacies are not required to maintain a

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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 -and- Skim/lowfat fluid: gallon	2 gallons 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 64 ounce container	4 containers 4 containers
Dried Peas and Beans	1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Tuna	5 to 6 ounce can	6 cans
Bread/Tortillas	16 ounce loaf of bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package
Rice	14 to 16 ounce package	2 packages
Infant Cereal	8 ounce box	6 boxes
Infant Fruits and Vegetables	3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable	64 ounces
Infant Formula	milk-based powder; 11.0 to 14.0 ounce -and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	8 cans 4 cans
Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	10 cans total

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

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

(19) Permit the purchase of supplemental food without requiring other purchases;

(20) Comply with the following EBT provisions:

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(a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program or a third-party processor that has been certified according to criteria established by the EBT Processor selected by the State WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within 24 hours of any periods of time during which they do not maintain an Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor;

(b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program State Rules, federal regulations, and statutes;

(c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);

(d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;

(e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed;

(f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements;

(g) Require an owner, manager, or other authorized store representative to complete training on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;

(h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendor's staff does not approve the WIC transactions for WIC customers under any circumstances;

(i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt, and updated balance of the WIC customer's account;

(j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the types, sizes, and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;

(k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;

(l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.

(21) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;

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

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

(24) Allow monitoring and inspection by State and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and State, and federal WIC Program rules, regulations, and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records shall be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later.

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

(a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;

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

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

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

(26) Submit a current completed WIC Price List when signing this agreement, and within two weeks of any written request by the State or local WIC agency;

(27) Reimburse the State agency in full or agree to a repayment schedule with the State agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor. Failure to reimburse the State agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. Payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);

(28) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food benefits not paid or partially paid by the State agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food benefits;

(29) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food benefits;

(30) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;

(31) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(h)(3)(iii), offered to other customers or requiring separate WIC lines;

(32) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria set forth in 7 CFR 246.12(g)(4), 7 CFR 246.12(h)(3), and the vendor selection criteria of Rule .0707 of this Section; and

(33) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), (15), (17),or (19) of Rule .0707 of this Section during the vendor's period of authorization.

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(34) Permit the State agency to reassess the peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the State agency determines that the vendor is no longer in the appropriate peer group.

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

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10A NCAC 43D .0709 LOCAL WIC AGENCY

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

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

(2) Conduct routine monitoring, as set forth in 7 C.F.R. 246.2 and 7 C.F.R. 246.12(j)(2), of the vendor's performance under the agreement to ensure compliance with the agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a fiscal year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive fiscal years. Any vendor shall be monitored within one week of written request by the state agency;

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

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

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

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10A NCAC 43D .0710 VENDOR VIOLATIONS AND SANCTIONS

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

(1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item (24) of Rule .0708 of this Section for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;

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

(3) two occurrences of receiving, transacting, or redeeming food benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;

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

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

(6) three occurrences of providing unauthorized food items in exchange for food benefits, including charging for supplemental food provided in excess of those listed on the food benefit balance within a 12-month period.

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

(1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in Item (31) of Rule .0708. Each date this violation is detected is a separate occurrence;

(2) One year for three occurrences within a 12-month period of failure to properly transact WIC food benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each improper transaction is a separate occurrence;

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

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

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

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

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

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

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

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

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

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

(13) 180 days for three occurrences within a 12-month period of failure to make EBT point of sale equipment accessible to WIC customers to ensure that EBT transactions are completed in accordance with Rule .0708; and

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

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

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

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

(A) buying or selling food benefits for cash (trafficking);

(B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits;

(C) selling alcohol or alcoholic beverages or tobacco products in exchange for food benefits;

(D) vendor overcharging;

(E) receiving, transacting, or redeeming food benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;

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

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

(H) providing unauthorized food items in exchange for food benefits, including charging for supplemental food provided in excess of those listed on the food benefit balance;

(I) failure to properly transact WIC food benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance;

(J) requiring a cash purchase to transact WIC food benefits; or

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

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

(A) failure to stock the minimum inventory specified in Item (17) of Rule .0708;

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

(C) failure to allow monitoring of a store by WIC staff;

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(D) failure to provide program-related records referenced in Item (24) of Rule .0708 when requested by WIC staff;
(E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;
(F) unauthorized use of the "WIC" acronym or the logo, as defined in WIC Policy Memo #2009-1, which is hereby incorporated by reference, including subsequent amendments and editions, and available free of charge at https://www.fns.usda.gov/wic/clarification-use-wic-acronym-and-logo;
(G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
(H) failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section.

(3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
(A) failure to attend annual vendor training;
(B) failure to submit a WIC Price List as required by Item (26) of Rule .0708;
(C) discrimination on the basis of WIC participation as referenced in Item (31) of Rule .0708.
(D) contacting a WIC customer in an attempt to recoup funds for food benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food benefits;
(E) nonpayment of a claim assessed by the State agency;
(F) providing false, erroneous, or misleading information to the State or local WIC agency;
(G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item (24) of Rule .0708 for an inventory audit;
(H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or
(I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.

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

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

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

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

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

(3) In determining whether to disqualify a WIC vendor for the State-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which show lack of hardship, are found to exist:
(A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-1(2), and another WIC vendor is located within seven miles of the noncomplying vendor;
(B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-1(2), and another WIC vendor is located within three miles of the noncomplying vendor; or

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(C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants are certified to receive WIC food benefits.

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

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

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

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

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

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

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