**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 54 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)**

**10.54.03 Retail Food and Pharmacy Vendors**

Authority: Health-General Article, §§2-104(b), 18-107(a), and 18-108, Annotated Code of Maryland

**Notice of Proposed Action**

[20-063-P]

The Secretary of Health proposes to amend Regulations **.03**, **.04**, **.06—.16**, and **.18** under **COMAR 10.54.03 Retail Food and Pharmacy**.

**Statement of Purpose**

The purpose of this action is to:

(1) Align regulations with federally mandated vendor requirements and current practice;

(2) Standardize language and formatting; and

(3) Update language to account for the implementation of the eWIC benefits system.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 16, 2020. A public hearing has not been scheduled.

**.03 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

**[**(3) “Authorization” means approval by the State agency for a food store, pharmacy only, food store/pharmacy combination, or a military commissary to redeem WIC food instruments as a vendor.**]**

**[**(4)**]** *(3)*“**[**Authorized**]** *Approved* foods” means the types and brands of foods:

(a) Approved by the State agency for use by Program participants; **[**and**]**

(b) Included on the Maryland WIC Authorized Foods List*;**and*

*(c) Included in the Approved Product List (APL)*.

*(4-1) “Approved Product List (APL)” means the electronic list of approved foods maintained by the State agency.*

*(4-2) “Authorization” means approval by the State agency for a food store, pharmacy only, food store/pharmacy combination, or a military commissary to redeem WIC food instruments as a vendor.*

*(4-3) “Benefits” means the foods prescribed and services provided to a participant by the Program.*

(5)—(8) (text unchanged)

(9) “Excess charges” means the amount above the maximum price payable for the food **[**instrument**]** *benefits* charged by a vendor to the Program.

(10) “Exempt infant formulas” means those infant formulas available **[**on WIC checks**]**, which are not categorized as either contract or noncontract, standard infant formulas.

(11) “Food instrument” means **[**a voucher, check, coupon, electronic benefits issuance transfer card (eWIC),**]** *an electronic benefits issuance card*or other document that is used to obtain supplemental foods.

(12)—(19) (text unchanged)

(20) “Medical foods” means **[**formulas**]***WIC-eligible formula* authorized for children and women with special dietary needs.

(21)—(24) (text unchanged)

(25) “Participant” means a**[**:

(a) Pregnant**]***pregnant* woman, *a*breastfeeding woman, *a*postpartum woman, *an*infant, *a breastfed infant of a participant breastfeeding woman,*or *a*child receiving supplemental foods or food **[**instruments**]***benefits* from the Program**[**; and

(b) Breastfed infant of a participant breastfeeding woman**]**.

(26) “Pattern” means two or more vendor violations *of the same provision*.

(27)—(29) (text unchanged)

*(29-1) “PIN” means a personal identification number used to securely access benefits on the food instrument.*

(30) (text unchanged)

(31) “Proxy” means an individual who is designated by a participant or a child, or infant participant’s parent, guardian, or caretaker to receive food instruments and to redeem food **[**instruments**]** *benefits* for the participant and whose name is on file at a local agency.

**[**(32) “Recovery of excess charges” means the process by which the State agency recoups money paid to the vendor in excess of the maximum price payable for the food instrument type.**]**

**[**(33)**]** *(32)—***[**(43)**]** *(42)* (text unchanged)

**[**(44)**]***(43)* “Traffic” means to buy or sell a food instrument *or benefits* for cash.

*(44) “Universal Product Code (UPC)” means a unique barcode assigned to a trade item and used to track items for sale in stores, such as food.*

(45)—(49) (text unchanged)

(50) “Vendor’s price” means the cost of a food package listed in Regulation .06A of this chapter as calculated from actual **[**highest**]** *lowest*shelf prices collected by the State agency during an on-site visit.

(51)—(53) (text unchanged)

**.04 Authorization Requirements.**

A. A store shall obtain authorization to operate as a WIC vendor from the State agency before redeeming food **[**instruments**]***benefits*.

B. A store:

(1) May not redeem WIC food **[**instruments**]***benefits* unless the store is authorized as a WIC vendor by the State agency;

(2) (text unchanged)

(3) Shall have a single, fixed location**[**, except if the authorization of a mobile store is necessary to meet the special needs described in the State agency’s State plan in accordance with 7 CFR §246.4(a)(14)(xiv)**]**.

C. In order to receive authorization from the State agency, a vendor shall:

**[**(1) Submit a completed vendor application to the State agency that includes:

(a) Two signed vendor agreements; and

(b) A signed vendor tax release form.

(2) Hold a current food service facility license issued by a local health department or department of environment, authorization by the SNAP, and, if a food store/pharmacy combination, a current permit to operate as a pharmacy issued by the State Board of Pharmacy;

(3) Operate at a fixed location;**]**

*(1) Submit a completed vendor application package as set forth in Regulation .07 of this chapter to the State agency;*

**[**(4)**]***(2)* (text unchanged)

*(3) Post shelf prices for all WIC-approved foods at, on, or near the food items;*

**[**(5)**]** *(4)* (text unchanged)

**[**(6)**]** *(5)* Maintain the store premises in a sanitary condition *with no evidence of:*

*(a) Excess trash;*

*(b) Vermin; or*

*(c) General lack of cleanliness;*

**[**(7)**]***(6)* (text unchanged)

**[**(8)**]** *(7)* Successfully complete an on-site review **[**pursuant to**]** *as set forth in*Regulation .08 of this chapter; and

**[**(9)**]** *(8)* Have a management representative attend a training session offered by the State agency **[**or a local agency**]**.

D. In order to receive authorization from the State agency, a vendor applicant may not **[**have an owner who has been convicted of fraudulent business practices.**]***:*

*(1) Have owners, officers, or managers that have been indicted for, convicted of, or have had**a civil judgment entered against them for any activity indicating a lack of business integrity;*

*(2) Currently be under disqualification by the State agency or SNAP;*

*(3) Owe money to the State agency; or*

*(4) Derive or derive after commencement of business more than 50 percent of the vendor’s or applicant’s eligible food sales revenue from food purchased with WIC food instruments, with the exception of:*

*(a) A nonprofit entity; or*

*(b) An above 50 percent vendor the State agency has authorized for participant access reasons.*

E. Pursuant to Regulation .19 of this chapter, if the State agency determines that a participant hardship exists, where access to special infant formula and WIC-eligible medical foods are not available through a food/pharmacy combination store, the State agency, at its sole discretion, may authorize a pharmacy only vendor that shall:

(1) Adhere to the requirements set forth in §C(1)**[**, (3), (5)—(7), and (9)**]***and (3)—(8)*of this regulation;

(2) Hold a current permit to operate as a pharmacy issued by the State Board of Pharmacy; **[**and**]**

(3) Only accept WIC food instruments prescribing infant formula and WIC-eligible medical foods*; and*

*(4) Upon request by a participant, provide infant formulas and medical foods within 48 hours, excluding weekends and holidays*.

F. Except for a pharmacy only or military commissary, a vendor applicant shall have actual **[**highest**]** *lowest* current shelf prices that are less than or equal to 125 percent of the peer group average in the vendor applicant’s region during the month of application, as determined by the State agency for each of the food packages set forth in Regulation .06A of this chapter.

**[**G. A vendor applicant or vendor may not apply for authorization if it:

(1) Is currently under disqualification by the State agency or the SNAP;

(2) Is designated as high risk;

(3) Owes money to the State agency; or

(4) Derives or will derive after commencement of business more than 50 percent of the vendor’s or applicant’s eligible food sales revenue from food purchased with WIC food instruments, with the exception of a nonprofit entity, or an above 50 percent vendor the State agency has authorized for participant access reasons.**]**

**[**H.**]***G.* (text unchanged)

**[**I.**]***H.* A vendor applicant may not apply for authorization in order to circumvent sanctions imposed by the State agency on a previous vendor including those stated in **[**§H**]** *§G*of this regulation.

**[**J.**]** *I.* The vendor applicant shall provide to the State agency documents that demonstrate the vendor applicant has submitted the application in good faith including but not limited to:

(1)—(2) (text unchanged)

(3) A copy of the *lease or*deed for the store.

**[**K.**]** *J.* (text unchanged)

*K. A store can be reassessed at any time during the authorization period to ensure that it meets the current vendor authorization requirements as set forth in this regulation.*

*L. A vendor applicant denied authorization three times in a 12-month period may not reapply until after 12 months have passed since the last denial date.*

**.06 Food Packages for Peer Group Price Calculation.**

A. The State agency shall group the food items on the vendor price list form into the following food packages:

(1)—(2) (text unchanged)

(3) Foods for a breastfeeding woman:

(a)—(c) (text unchanged)

(d) **[**144 fluid ounces of single-strength canned juice**]** *36 ounces frozen juice concentrate*;

(e)—(h) (text unchanged)

(4) Foods for a nonbreastfeeding, postpartum woman:

(a)—(c) (text unchanged)

(d) **[**96 fluid ounces of single-strength canned juice**]** *24 fluid ounces of single-strength frozen juice concentrate*; and

(e) (text unchanged)

B. (text unchanged)

C. The State agency shall provide, upon request, the current peer group average in Peer Groups 1 — **[**18**]***19* for each food package in §A of this regulation.

D. (text unchanged)

**[**E. The State agency shall provide, upon request, the current peer group average for all vendors in Peer Group 19 for each food package in §A of this regulation.**]**

**.07 Vendor Application [Packet] *Package* and Dates.**

A. The State agency shall provide an application **[**packet**]** *package* to a vendor that requests it.

B. The application **[**packet**]** *package* shall consist of the following:

(1)—(2) (text unchanged)

(3) The **[**WIC-authorized foods list**]***WIC Authorized Foods List*;

(4) The **[**minimum required stock list**]***Minimum Required Stock List*;

*(5) The Application Checklist;*

*(6) The eWIC Readiness Assessment;*

*(7) The Vendor Application Price List;*

*(8) The Authorized Infant Formula and Medical Foods Supplier Directory;*

**[**(5)**]***(9)* (text unchanged)

**[**(6)**]***(10)* An application for vendor authorization; *and*

**[**(7) The vendor tax release form; and**]**

**[**(8)**]***(11)* (text unchanged)

**[**C. A vendor applicant denied authorization three times in a 12-month period may not reapply until after 12 months have passed since the last denial date.**]**

**.08 On-Site Review of Vendor Applicants.**

A. (text unchanged)

B. Except as provided in §A of this regulation, the State agency shall conduct an unscheduled on-site review of a vendor applicant’s store within 60 days of receipt of an application to ensure that the store meets the requirements for authorization as set forth in Regulation **[**.04C(1)—(7)**]***.04C(1)—(6)* and .04D of this chapter.

**.09 Grant, Retention, and Denial of Authorization.**

A.—B. (text unchanged)

C. Authorization Retained. A vendor retains its authorization until the:

(1)—(4) (text unchanged)

(5) Vendor is determined, in accordance with Regulation .10H of this chapter, to derive more than 50 percent of its eligible food sales from the redemption of WIC food **[**instruments**]***benefits*.

D.—E. (text unchanged)

**.09-1 Price Determinations.**

A. The WIC Program shall calculate**[**:

(1) Average regional prices according to the six regions as set forth in Regulation .03B(31)—(36) of this chapter; and

(2) Peer**]** *peer*group averages according to the peer groups set forth **[**at Regulation .03B(24)**]** *in Regulation .03B(33)—(38)*of this chapter.

B. (text unchanged)

**.10 Food Package Prices After Authorization.**

A. (text unchanged)

B. Upon request of the State agency, a vendor, other than a pharmacy or military commissary, shall submit on the vendor price list form **[**or through the State agency’s online submission system, its highest**]***its lowest* shelf prices for WIC-authorized foods to the State agency.

C. The State agency shall notify a vendor, other than a pharmacy only or a military commissary, that fails to submit its prices on the vendor price list form **[**or through the State agency’s online submission system**]** when requested to do so that, if the price list form **[**or online price submission**]**is not received by the Program within 10 business days of the State agency’s request, the vendor’s authorization shall be **[**disqualified**]***terminated* for 12 months from the date of disqualification.

D. If a vendor, other than a military commissary, submits prices on the vendor price list form that make its food package price more than 125 percent of the peer group average for that food package, or the food package prices are determined by the WIC Management Information System calculation to exceed 125 percent of the peer group average, the State agency shall notify the vendor that:

(1) (text unchanged)

(2) It shall lower its actual **[**highest**]** *lowest* shelf prices for the WIC foods and resubmit the vendor price list form **[**or online price submission**]** to the State agency within 10 days following the notification; and

(3) (text unchanged)

E. If, at any time, a vendor, other than a military commissary, has actual **[**highest**]** *lowest* shelf prices that make any food package price more than 125 percent of the peer group average, the State agency shall notify the vendor that:

(1) The vendor shall lower its actual **[**highest**]***lowest* shelf prices for the WIC foods within 10 days; and

(2) If the vendor’s prices remain so that a food package will cost the Program more than 125 percent of the peer group average, the vendor’s authorization shall be **[**disqualified**]***terminated* for 12 months from the date of disqualification.

F. If, in 2 consecutive reporting months, a vendor, other than a pharmacy only or a military commissary, is determined by the WIC Management Information System calculation to have food package prices that exceed 125 percent of the peer group average, the vendor’s authorization shall be **[**disqualified**]** *terminated* for 12 months from the date of disqualification.

G.—J. (text unchanged)

**.11 Maximum Reimbursement to Vendors.**

A. Food Store, Food Store/Pharmacy Combination, and Pharmacy Only Vendors. The State agency shall establish a maximum price payable for each **[**food instrument**]***WIC-approved food item*, which shall be calculated as follows:

(1) Based on the WIC Management Information System calculation, the State agency shall determine every month the peer group average for each **[**food instrument**]** *WIC-approved food* *item; and*

**[**(2) The State agency shall utilize the semi-annual price submissions by vendors, in accordance with Regulation .10 of this chapter, to determine the maximum price payable for each food instrument; and**]**

**[**(3)**]***(2)* (text unchanged)

B. Military Commissaries. The maximum price payable by the State agency for a food **[**instrument**]***item* redeemed by a military commissary is the price charged by the military commissary.

C. The maximum price payable to vendors that are determined to derive more than 50 percent of their annual sales revenue from the redemption of WIC food **[**instruments**]***benefits* may not exceed the Statewide average price per food **[**instrument**]***item* paid to all other vendors.

**.12 Recovery of Excess Charges.**

A. The State agency, through prepayment and post payment edit review of **[**food instruments**]***WIC redemptions*, shall ensure that excess charges do not occur.

B.—C. (text unchanged)

**.13 WIC-Authorized Foods.**

A. The State agency shall:

(1) Maintain the WIC-authorized foods list; **[**and**]**

(2) Make the list available to all participants and authorized WIC vendors**[**.**]***; and*

*(3) Maintain the APL*.

B. (text unchanged)

C. The WIC-authorized foods list shall be used in conjunction with the **[**WIC food instrument**]***APL* to identify foods items that are eligible for purchase using WIC food instruments.

D. (text unchanged)

E. Authorized vendors shall sell **[**WIC-designated**]***WIC-approved* brands for food categories identified in the WIC-authorized foods list *and the APL*.

**.14 Minimum Required Stock.**

A. A food store or food store/pharmacy combination vendor shall maintain **[**in**]***on* the store*premises, available for immediate purchase by a WIC participant* during regular business hours*,* the following minimum *required*stock:

(1)—(3) (text unchanged)

(4) Unsweetened 100-percent **[**fruit**]** juice:

(a)—(b) (text unchanged)

(5) Frozen concentrate *unsweetened* 100-percent *fruit* juice:

(a)—(b) (text unchanged)

(6) **[**Thirty-two**]** *32*total infant fruits and vegetables:

(a)—(c) (text unchanged)

(7) Infant meats:

(a) **[**31**]***Six* 2.5-ounce jars; and

(b) **[**Two varieties**]***One variety* of plain meat;

(8) Dry cereal:

(a) Corn, wheat, oats, or rice:

(i) Six 12-ounce or larger **[**boxes**]***containers*; and

(ii) (text unchanged)

(b) Whole grain wheat or oats:

(i) Six 12-ounce or larger **[**boxes**]***containers*; and

(ii) (text unchanged)

(c) (text unchanged)

(9)—(13) (text unchanged)

(14) Bread, rolls, tortillas, *pasta,*and rice in two varieties and a total of 4 pounds:

(a)—(b) (text unchanged)

(c) Dry, plain brown rice, 16-ounce packages; **[**or**]**

(d) Soft corn or whole wheat tortillas, 16-ounce packages; *or*

*(e) Whole grain or whole wheat pasta, 16-ounce packages;* and

(15) Infant formula:

**[**(a) 17 13-ounce containers, or containers of the currently authorized size, of liquid concentrate infant formula as specified by the WIC infant formula rebate contract;**]**

**[**(b)**]***(a)* 27 12.4-ounce containers, or containers of the currently authorized size, of powdered infant formula as specified by the WIC infant formula rebate contract; *and*

**[**(c) 19 12.1-ounce containers, or containers of the currently authorized size, of soy-based liquid concentrate infant formula as specified by the WIC infant formula rebate contract; and**]**

**[**(d)**]** *(b)***[**10 12.9-ounce**]***Four 12.4-ounce* containers, or containers of the currently authorized size, of soy-based powdered infant formula as specified by the WIC infant formula rebate contract.

B. (text unchanged)

**.15 Required Vendor Practices.**

A. (text unchanged)

B. General Requirements.

(1) A vendor shall:

(a) **[**Maintain the required minimum stock in the store during business hours**]** *Maintain on the store premises, available for immediate purchase by a WIC participant during regular business hours, the minimum required stock*;

(b) Post the State agency’s WIC sign**[**, or a vendor developed WIC sign that the State agency has approved for use,**]** in a conspicuous place on the store premises and use other materials provided or approved by the WIC program;

(c) Maintain the vendor premises in a sanitary condition*with no evidence of:*

*(i) Excess trash;*

*(ii) Vermin; or*

*(iii) General lack of cleanliness*;

(d)—(e) (text unchanged)

(f) Display the shelf price of a WIC food at*, on,* or near the item;

(g)—(h) (text unchanged)

(i) Attend a WIC training that has been required by the Program for a vendor with a high rate of:

(i) (text unchanged)

(ii) Rejected **[**checks**]***transactions*;

(iii)—(iv) (text unchanged)

(j) (text unchanged)

(k) If a pharmacy only or a food store/pharmacy combination:

(i) **[**Provide special formulas and WIC-eligible medical foods within 48 hours of a request by a participant or the Program**]** *Upon request by a participant or the Program, provide infant formulas and medical foods within 48 hours, excluding weekends and holidays*;

(ii)—(iii) (text unchanged)

(l)—(q) (text unchanged)

(r) Have a representative attend and participate in at least one State or local agency interactive training session each calendar year, if the State agency:

(i) (text unchanged)

(ii) Holds the training session in the vendor’s region; **[**and**]**

(s)If more than 30 days are needed to reopen the vendor’s business, reapply for authorization and be approved as a WIC vendor in order to obtain authorization to operate as a WIC Vendor**[**.**]***; and*

*(t) Maintain an active email account that is monitored no less than once a week*.

(2) A vendor maynot:

(a)—(c) (text unchanged)

(d) Except for a pharmacy or military commissary, **[**redeem less**]***process fewer* than 25 **[**food instruments**]***WIC transactions* in a consecutive 3-month period;

(e)—(f) (text unchanged)

(g) Apply stickers, tags, or labels that have the WIC acronym or logo on WIC-approved products; **[**or**]**

(h) Use manufacturer supplied shelf tags, talkers, or labels that make unauthorized use of the WIC acronym or logo**[**.**]***;*

*(i) Apply WIC-approved shelf tags to nonapproved foods; or*

*(j) Derive more than 50 percent of its annual eligible foods sales from WIC food benefits.*

**[**(3) A vendor who violates the provisions set forth in §B of this regulation is subject to the sanctions in Regulation .16 of this chapter.**]**

**[**(4)**]***(3)* (text unchanged)

**[**(5)**]***(4)* Inventory Invoices.

(a) (text unchanged)

(b) Inventory invoices for infant formula shall only be accepted from those wholesalers, distributors, and retailers listed on Maryland’s *Authorized* Infant Formula *and Medical Foods Supplier* Directory.

*(5) A vendor who violates the provisions set forth in this section is subject to the sanctions in Regulation .16 of this chapter.*

C. Transactional Requirements.

(1) A vendor shall:

(a) Provide authorized foods to an individual redeeming food **[**instruments**]***benefits* only upon presentation of a valid food instrument **[**and WIC identification folder**]**;

**[**(b) Ensure that the individual redeeming a food instrument signs the food instrument in ink in the presence of vendor personnel upon completion of the transaction;

(c) Record the purchase amount on a food instrument in ink before obtaining the signature of the individual redeeming the food instrument;**]**

**[**(d)**]***(b)* Accept the WIC **[**identification folder**]***food instrument with a valid PIN* as identification without requiring another form of identification;

**[**(e) Verify the signature of the individual obtaining the authorized foods by comparing the signature with those on the WIC identification folder;**]**

**[**(f)**]***(c)* (text unchanged)

*(d) Provide the WIC participant with a shopping list of remaining benefits upon request;*

**[**(g)**]***(e)* (text unchanged)

**[**(h)**]***(f)* Accept cents-off coupons from an individual redeeming WIC food instruments for prescribed **[**authorized**]***approved* foods and deduct savings from the purchase price **[**amount entered on the food instrument**]**;

**[**(i)**]***(g)* (text unchanged)

**[**(j)**]***(h)* Accept a *valid*food instrument as payment in full for the prescribed WIC foods purchased;

**[**(k)**]***(i)* Allow participants and proxies authorized to redeem food **[**instruments**]***benefits* a choice of the **[**WIC-authorized**]***WIC-approved* foods in*the participant’s benefits balance*;

**[**(l)**]***(j)* (text unchanged)

**[**(m)**]***(k)* Redeem **[**the**]** valid food instruments presented by a participant or proxy;

**[**(n) Enter the purchase price on a food instrument only at the cash register at the time of the sale; and**]**

*(l) Scan the actual UPC code that is affixed to the item being purchased by the WIC participant;*

*(m) Allow the participant to pay the difference when a fruit and vegetable purchase exceeds the value of the cash value benefit; and*

**[**(o)**]***(n)* Obtain infant formula **[**from only the following manufacturer, distributor, wholesaler, and retailer sources:**]** *only from manufacturers, distributors, and wholesalers listed on Maryland’s Authorized Infant Formula and Medical Foods Supplier Directory, as available on the Program’s website.*

**[**(i) Abbott Laboratories;

(ii) B-Green Cash & Carry;

(iii) Bell’s Wholesale Grocery, Inc.;

(iv) Bozzuto’s, Inc.;

(v) Cardinal Health;

(vi) C & S Wholesale Grocers;

(vii) Delhaize;

(viii) Jetro;

(ix) Lancaster Distribution Center;

(x) McKesson Corporation;

(xi) Mead Johnson;

(xii) Moran Foods, Inc./Save-a-Lot Distribution Center;

(xiii) Nash Finch Company;

(xiv) Nestle USA;

(xv) Nutricia North America;

(xvi) Rite Aid Corporation;

(xvii) Solus Products, LLC;

(xviii) Supervalu, Inc.; and

(xix) Toys R Us, Inc.**]**

(2) A vendor may not:

**[**(a) Redeem an altered food instrument;

(b) Accept a presigned food instrument;**]**

*(a) Ask a participant or proxy for the PIN securing their food instrument;*

**[**(c)**]***(b)* Redeem **[**a food instrument**]** *food benefits* for spoiled or out-of-date food;

**[**(d)**]***(c)* Redeem **[**a food instrument**]** *food benefits* in whole or in part for a non-food item or credit;

**[**(e)**]***(d)* Issue a rain check**[**, that is,**]** *that would*allow an individual redeeming a food **[**instrument**]***benefit* to get, at a later date, an item the vendor does not have at the time the food instrument is presented;

**[**(f)**]***(e)* Transfer cash in the form of change from the food **[**instrument**]***benefit* to an individual redeeming a food instrument;

**[**(g)**]***(f)* (text unchanged)

**[**(h)**]***(g)* Traffic in WIC food instruments*or benefits*;

**[**(i)**]***(h)* Sell alcohol, alcoholic beverages, or tobacco products in exchange for a food instrument *or benefits*; **[**or**]**

**[**(j)**]***(i)* Accept a food instrument*or benefits* in exchange for:

(i)—(iii) (text unchanged)

(iv) A controlled substance as defined by 21 U.S.C. §802**[**.**]***;*

*(j) Manually key in a food instrument number without an actual food instrument being presented; or*

*(k) Scan UPC codes from:*

*(i) Codebooks;*

*(ii) Reference sheets; or*

*(iii) Lists.*

(3)—(4) (text unchanged)

D. Post-Transactional Requirements.

(1) A vendor may not:

**[**(a) Use the WIC vendor identification stamp to stamp the Program-assigned vendor identification number on the face of a redeemed food instrument;**]**

**[**(b)**]** *(a)*(text unchanged)

**[**(c) Deposit for payment only food instruments**]**

*(b) Receive reimbursement only* *for* *benefits* redeemed at the vendor’s store;

**[**(d)**]***(c)* Charge the State agency only for *approved* food received by a participant;

**[**(e) In the case of a food instrument not paid by the bank used by the Program, seek reimbursement from the State agency only;**]**

**[**(f)**]***(d)* (text unchanged)

**[**(g)**]***(e)* Surrender **[**improperly handled**]***lost or stolen* food instruments to WIC representatives upon request.

(2) A vendor maynot:

**[**(a) Deposit or return to the State agency a food instrument bearing the signature of an individual other than the individual who redeemed the food instrument;**]**

**[**(b)**]***(a)—***[**(d)**]***(c)* (text unchanged)

(3) (text unchanged)

**.16 Vendor Sanctions.**

A. The Program may sanction a vendor that fails to comply with a required practice in Regulation **[**.15B(1)(a)—(k) and (q), (2)(b) and (f)—(h), C(1)(a)—(g) and (h)—(n), (2)(a)—(c) and (e)—(f), (3), and D(1)(a)—(b) and (e), and (2)(a)**]***.15B(1)(a)—(k) and (p) and (2)(b) and (e)—(g), C(1)(a)—(n), (2)(a), (b), (d), (e), (j), and (k), and (3), and D(1)(a) and**(d)*of this chapter as follows:

(1) Written warning following each violation; *and*

(2) Disqualification for 1 year for a pattern of violations of the same provisions within a 12-month period**[**; and

(3) Disqualification for 1 year for a combination of six violations within a 12-month period**]**.

B. The Program may sanction a vendor that fails to comply with a required practice in Regulation **[**.15B(1)(l), (n)—(p), and (r), and (2)(c) and (e), C(1)(o), and D(1)(f) and (2)(b)**]** .*15B(1)(l), (n), (o), and (q) and (2)(c) and (i), C(1)(l), and D(1)(d) and (2)(a)* of this chapter by disqualifying the vendor for 1 year.

C. The Program shall sanction a vendor that fails to comply with a required practice in Regulation **[**.15C(2)(i)**]**.*15C(2)(h)* of this chapter by disqualifying the vendor for 3 years.

D. The Program shall sanction a vendor that fails to comply with a required practice in Regulation **[**.15C(2)(h)**]**.*15C(2)(g)* or **[**(j)**]***(i)* of this chapter by disqualifying the vendor for 6 years.

E. The Program shall sanction a vendor that fails to comply with a required practice in Regulation **[**.15C(2)(h)**]***.15C(2)(g)* or **[**(j)**]***(i)* of this chapter by permanent disqualification if the vendor is convicted in a criminal court of charges stemming from those violations.

F. The Program shall sanction a vendor that fails to comply with a required practice in Regulation **[**.15B(2)(a), C(2)(d) and (g), and D(1)(c)—(d) and (2)(c)**]** *.15B(2)(a), C(2)(c) or (f), or D(1)(b) or (c) or (2)(b)*of this chapter by:

(1) (text unchanged)

(2) Disqualifying the vendor for 3 years for two or more violations *of the same provision* in any 12-month period.

G. When a vendor that has previously received a sanction for violation of the provisions of Regulation **[**.15B(2)(a), C(2)(d) or (g), or D(1)(c)—(d) or (2)(c)**]** *.15B(2)(a), C(2)(c) or (f), or D(1)(b) or(c) or (2)(b)* of this chapter, the Program shall impose a **[**sanction that is double that of the last sanction received**]** *6-year disqualification* for violation of the same provision.

H.—I. (text unchanged)

J. The Program shall sanction a vendor that fails to comply with a required practice in Regulation **[**.15B(2)(d)**]***.15B(1)(s) or (2)(d)*of this chapter by terminating the vendor agreement.

K.—L. (text unchanged)

**[**M. Sale of a Vendor’s Store Under Disqualification. If the store under disqualification is sold, the person who sells the store is subject to a civil monetary penalty in an amount to reflect that portion of the disqualification that has not expired, to be calculated using the method set forth in Regulation .19 of this chapter except using 120 for the number of months.**]**

**[**N.**]***M.*—**[**P.**]** *O.* (text unchanged)

**.18 Vendor Appeals.**

A.—D. (text unchanged)

E. A vendor may not appeal the following actions:

(1)—(6) (text unchanged)

(7) The validity or appropriateness of the State agency’s *selection criteria for competitive price, including, but not limited to,*vendor peer group criteria and the criteria used to identify vendors that are above 50 percent vendors or comparable to above 50 percent vendors;

(8) (text unchanged)

(9) Disputes regarding **[**food instrument**]** payments and vendor claims, not including the opportunity to justify or correct a vendor overcharge or other error; or

(10) (text unchanged)

ROBERT R. NEALL
Secretary of Health