



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	<u>12</u> VAC <u>5</u> - <u>195</u>
Regulation title	Virginia WIC Program State Regulations
Action title	Amend regulations to remain consistent with updated Virginia WIC Program policy changes
Final agency action date	January 3, 2013
Document preparation date	November 28, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments were made to the Virginia WIC Program state regulations, the majority of which were made to Part III pertaining to vendor requirements. Many of the amendments reflect the Virginia WIC Program's change in the retailer peer group structure, which was the result of an independent analysis of the existing peer group structure conducted by Mikelson and Associates. The analysis included a recommendation to change the structure to define geographic areas based on a rural or urban designation according to the Isserman model instead of Business Economic Areas, the criteria in use at the time of the report. The Isserman model includes a definition of rural and urban that integrates the 2000 census tract population into the OMB county based definition and the Census rural/urban continuum codes.

In addition, the retailer slotting system, which had been the basis for retailer selection decisions and was tied into the peer group structure, was eliminated. The Virginia WIC Program had

committed to this change during discussions with the Joint Commission on Administrative Rules. The following sections were amended due to these changes in the peer group structure and retailer slotting system:

- 12VAC5-195/Selection Decisions
- 12VAC5-195-330/Adequate Participant Access,
- 12VAC5-195-340/Competitive Pricing,
- 12VAC5-195-360/Selection Decisions, and
- 12VAC5-195-370/Authorization Exception Decisions

A new section, 12VAC5-195-680/Food Application Process, was also added to the Virginia WIC Program regulations. This section was added to formalize the process used by the Virginia WIC Program to solicit, evaluate, and select products for inclusion in the WIC Approved Food List. The content of this section details the application process in which prospective manufacturers, distributors, and suppliers participate to have their products considered for the WIC Approved Food List as well as the process to implement any changes to the list.

Additional amendments were made throughout the document to remain consistent with current WIC Program policies including:

- 12VAC5-195-30/Definitions: This section was amended to remove terms that were no longer used such as “Business Economic Areas”, add terms from new sections including “formula flyer,” and add terms that had been in use but needed clarification including “WIC sales” and “relative.” The term “vendor” was removed and replaced solely with “retailer” for consistency.
- 12VAC5-195-110/Caretaker: This section was modified to reflect policy changes that make the caretaker option more accessible to those caring for WIC eligible infants and children in the absence of a parent or legal guardian.
- 12VAC5-195-150/Alternative Office Hours: The requirement of local agencies to offer a minimum of 16 alternative office hours a month was added.
- 12VAC5-195-350/Price Verification: To reduce the number of retailers negatively affected by rejected food instruments due to non-competitive prices, the variance of the peer group pricing average was increased by 10%.
- 12VAC5-195-460/Conflict of Interest: This section adds clarification regarding conflict of interest requirements for WIC authorized retail management and employees.
- 12VAC5-195-600/Sanctions and Administrative Actions: The sanction schedule was updated to reflect the most current sanction descriptions and related administrative actions.

General language and wording changes were also made for consistency and clarity.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Health Commissioner approved this action to amend the Virginia WIC Program State Regulations, on behalf of the Board of Health when the Board was not in session, on January 3, 2013

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

In federal fiscal year 2011, the Virginia WIC Program provided direct service to 56,085 women, infants, and children. The Virginia WIC Program serves women who are breastfeeding, pregnant or have just given birth; infants less than one (1) year-old and children less than five (5) years-old. WIC participants must be Virginia residents and meet the financial and nutritional requirements set forth by regulations. Financial eligibility is defined as income below 185% of the federal poverty level while nutritional eligibility is defined by risk factors such as a medical problem or an unhealthy diet. Mothers, fathers, and legal guardians may apply for WIC benefits for the children in their care.

The purpose of the program is to assure healthy diets during pregnancy and breast-feeding, infancy and early childhood to age five for eligible families who might otherwise not be able to afford to eat properly. The provision of education for mothers and/or primary care-givers about healthy eating is coupled with vouchers to purchase a defined package of high nutrient foods at community groceries. Increasing attention is being paid to educating families about ways to avoid the risks of childhood obesity while assuring proper nutrition. Breastfeeding is promoted while regular and specially prescribed formulas are provided for infants who are not breastfed.

This regulatory action is necessary so that the WIC Program may continue to operate efficiently and effectively, with a transparent compliance to federal regulations. Without these regulatory amendments, the ability of the Virginia WIC Program to function correctly and serve Virginia's families will be compromised.