



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	<u>12 VAC 5 - 195</u>
<b>Regulation title</b>	Virginia WIC Program state regulations
<b>Action title</b>	Updates to Virginia WIC Program state regulations
<b>Final agency action date</b>	
<b>Document preparation date</b>	

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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### 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 of the regulations which relates to vendor requirements. Many of the amendments resulted from the implementation of the new WIC food package on October 1, 2009. The new WIC food package resulted in significant changes to the WIC program including:

- The addition of fresh fruits and vegetables to the approved food list, which WIC participants obtain by utilizing a cash value voucher (CVV).
- The new requirement that retailers choose "store designated brands" for certain items contained in the approved food list.
- The new requirement that retailers furnish shelf labels to identify which products are "store designated brands."

These programmatic changes required inclusion in the WIC state regulations, specifically in sections 12VAC5-195-390/Approved Food List and 12VAC5-195-580/Performance and administrative monitoring.

Content was also added to the following sections:

12VAC5-195-590. Reimbursements and payment: This section was amended to add language regarding food instruments rejected for payment because of an error made by the depository bank. The current language only addressed food instruments rejected for payment due to an error made by the retail store.

12VAC5-195-670. Full administrative review: This section, which describes in detail the state agency's full administrative review process, was amended to remain consistent with federal regulations which had changed to include additional actions that stores could not appeal for a full administrative review.

In addition to these amendments, numerous definitions were removed from 12VAC5-195-30/Definitions based on recommendations from the Attorney General's Regulatory Reform Task Force.

**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.*

Enter statement here

**Family impact**

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

In federal fiscal year 2008, the Virginia WIC Program provided direct service to an average of 150,820 women, infants and children a month. 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 regulation updates, the ability of the Virginia WIC Program to function will be compromised and so will the health of Virginia's families.

**Periodic review**

*If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>

Enter statement here