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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation(s)</b>	12VAC5-195
<b>Regulation title(s)</b>	Virginia Women, Infants and Children Program Regulation
<b>Action title</b>	Amend regulation following periodic review
<b>Final agency action date</b>	April 2, 2019
<b>Date this document prepared</b>	May 30, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Amendments were proposed to the Virginia WIC Program state regulation following a periodic review. The majority of the amendments were proposed as a result of the WIC program's transition from using paper food instruments to the electronic benefits transfer (EBT) cards. Regulatory text that references the paper food instruments is now obsolete. Additional amendments were made throughout the document to remain consistent with regulatory guidelines and WIC Program policies including:

- 12VAC5-195-20/Purpose: This section was revised to remove regulatory text that references paper food instruments.

- 12VAC5-195-30/Definitions: This section was amended to remove terms that were no longer applicable such as “Image Replacement Document” or references to paper food instruments; to revise terms to include the titles and dates of documents incorporated by reference in the definition such as “Approved Food List”; and to include acronyms such as FNS.
- 12VAC5-195-70/Eligibility requirements: This section was revised to reflect the accurate verification period according to federal regulation.
- 12VAC5-195-80/Proof of identification: This section was revised to reflect a change in policy. The WIC program no longer uses WIC ID folders as proof of identification.
- 12VAC5-195-110/Caretaker: This section was revised to maintain consistent use of “caretaker” instead of “caregiver” and to include an additional hardship factor related to parental/guardian program sanctions.
- 12VAC5-195-140/Food instruments: This section was revised to reflect a change in policy. Lost food instruments, which are currently in the form of EBT cards, can be replaced more than once. Regulatory text that references paper food instruments is obsolete and has been removed.
- 12VAC5-195-180/Fair hearing: This section was revised to improve accuracy regarding the appeal process. There is no involvement of the local agency in the appeal process. Procedures for the appeal process are completed at the state office. Regulatory text has been removed in instances that it is not applicable; not contained in program policy and/or in the federal regulation; or is redundant. The record retention requirement has been updated.
- 12VAC5-195-200/Program abuse and sanctions: This section has been revised to remove regulatory text references to paper food instruments and to remove the “if under \$100” qualifier, as the sanction would be the same if the amount were greater than \$100.
- 12VAC5-195-230/Conflict of interest: This section was revised to add clarification regarding conflict of interest requirements for WIC local agency personnel.
- 12VAC5-195-280/Enrollment procedures: This section was revised to remove regulatory text references to an authorization stamp. Authorization stamps for paper food instruments are obsolete.
- 12VAC5-195-300/General requirements and conditions for authorization: This section was revised to remove the minimum two-year requirement for submitting prices. The requirement for retailers to participate in the program’s direct deposit Automated Clearing House (ACH) process has been revised to include “collection” purposes, which is applicable when the retailer owes the WIC program. The language that references a “signed” WIC food instrument has been replaced with “redeemed” as paper food instruments are obsolete.
- 12VAC5-195-310/Retailer screening for food sales above 50%: This section title was revised for clarity. The language was revised to clarify that new retailers will be reassessed within six months after authorization.
- 12VAC5-195-320/Retailer agreement: This section was revised to reflect a programmatic change regarding the duration period for use of a single uniform retailer agreement.
- 12VAC5-195-390/Approved food list: This section was revised to remove outdated language regarding use of the approved food list in conjunction with the WIC food instrument and to provide clarity regarding using shelf labels for WIC-designated brands.

- 12VAC5-195-400/Authorization stamp: This section was repealed. Paper food instruments and stamp authorizations are obsolete.
- 12VAC5-195-410/Change of ownership: This section was revised to add clarity by removing references to “qualifications”.
- 12VAC5-195-520/Training and education: This section was revised to reflect updated policy by removing the minimum quantity for the mandatory training requirement.
- 12VAC5-195-550/High-risk retailers: The section title was revised to correct punctuation. The language was revised to correctly describe the process for identifying and analyzing high-risk retailers. Language that is inconsistent with the federal regulations has been removed.
- 12VAC5-195-580/Performance and administrative monitoring: This section was revised to provide clarity regarding the authorization consideration letter. References to the paper food instrument and the waiver request for minimum stocking requirements were removed, as they are no longer applicable. The addition of “validation if administration requirements have been met” was included in the onsite monitoring site visit.
- 12VAC5-195-590/Reimbursements and payments: This section was revised to remove references to paper food instruments. Revisions were made to replace “deposited” with “redeemed” and add clarity regarding the electronic benefits card where applicable. Revisions were made to add clarity to peer group and Universal Product Code (UPC) adjustments.
- 12VAC5-195-600/Sanctions and administrative actions: This section was revised to remove references to paper food instruments.
- 12VAC5-195-640/Civil monetary penalties: This section was revised to update the date of the Comptroller’s Policies and Procedures.
- 12VAC5-195-670/Full administrative review: This section was revised to remove references to paper food instruments.
- 12VAC5-195-680/Food application process: This section was revised to reflect updated policy, and to remove text that is no longer applicable. The text for a web link that does not work was removed.
- FORMS: This section was revised to remove the Virginia WIC Program UPC Update Request Form.
- DOCUMENTS INCORPORATED BY REFERENCE: This section was revised to update document titles and dates where applicable. All document links were updated.

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 final action to amend the Virginia Women Infants and Children Program Regulations (12VAC5-195), on behalf of the State Board of Health while the Board was not in Session, on April 2, 2019.

## Periodic Review Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

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The regulation meets the criteria set out in Executive Order 14 and is necessary for the protection of public health, safety and welfare. The purpose of the WIC program is to assure healthy diets during pregnancy and breastfeeding, infancy and early childhood up to age five for eligible families who might not otherwise be able to afford to eat properly. The provision of education for mothers and/or primary caretakers regarding healthy eating is combined with a food instrument that is used to purchase nutritional supplemental foods from community grocery stores that are participating authorized retailers in the program. Participation in the WIC program is voluntary.

No public comments were received during the public comment period following the publication of the Notice of Periodic Review.

There is a continued need for the regulation 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 effectively will be improved. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate or conflict with any known federal or state law or regulation. Regulations are evaluated on an ongoing basis and this regulation was last amended in March 2013.