

SUMMARY OF EXPRESS TERMS

Subpart 60-1 of Title 10 New York Code of Rules and Regulations (NYCRR) is amended as follows:

Section 60-1.1, which defines terms relevant to the WIC program, is updated to reflect the mechanics of eWIC transactions; the definition of “food instrument” is amended to include eWIC cards, and definitions are added for “primary account number (PAN),” “personal identification number (PIN),” and “eWIC stand-beside terminal.” Several definitions are added or expanded to encompass key stakeholders in the NYS WIC program. “Vendor management agency (VMA)” refers to a local agency that contracts with NYS to provide vendor management services. “Vendor applicant” distinguishes prospective WIC vendors (i.e., vendors that are applying or reapplying for WIC authorization) from applicant participants. “Food vendor” is replaced with “vendor,” to explicitly bring under the purview of State regulations approximately 600 pharmacies authorized to redeem WIC benefits in NYS. Finally, the definition of “participant” is updated to include the authorized representative, a role specific to eWIC benefit issuance.

Sections 60-1.7 and 60-1.8 are amended to eliminate participant and vendor violations made obsolete by eWIC, including violations based on check handling procedures or made impossible by eWIC’s automated verification processes. Provisions are added for handling eWIC cards and equipment.

Section 60-1.7 is further amended to require participants to notify local agencies of changes to income or household composition, allowing the State to enforce an obligation already included in the Statement of Participant Rights and Responsibilities,

and to require participants to provide information needed for investigations by any federal, State, or local agencies, or other government or law enforcement entities.

Section 60-1.8 is further amended to align the provision concerning disqualification and civil resolution with the requirements of 7 CFR Part 246.

Section 60-1.9, which concerns program violations and penalties for local agencies, is repealed, as all provisions are enforceable via the local agency contract. Additionally, all references to local agency hearings and local agency disqualification are deleted from 10 NYCRR subpart 60-1. A local agency denied a WIC contract may receive a briefing pursuant to SFL § 163.

Sections 60-1.11 and 60-1.12 are renumbered sections 60-1.10 and 60-1.11 and reorganized such that newly renumbered section 60-1.10 addresses vendor hearings concerned with disqualification or imposition of an administrative fine or civil money penalty, and newly renumbered section 60-1.11 addresses vendor hearings concerned with denial of an application or termination of a contract. This restructuring reflects current NYS administrative procedures.

Section 60-1.13 is renumbered section 60-1.12 and amended such that all federal vendor authorization criteria are incorporated by reference to 7 CFR part 246, and all existing rules pertaining to individual federal criteria are deleted. Vendor limiting criteria, which define the maximum number of vendors the State can monitor given available resources, are also deleted, and paragraphs (a)(2) and (b)(1) are reserved for later use. Newly renumbered section 60-1.12 is further amended to accommodate the streamlined vendor application process; the standard vendor contract term is no longer limited to one

year; and the Commissioner is granted authority to determine “open application” time periods during which vendors may apply or reapply for WIC authorization. Additional provisions permit a vendor to apply at any time, regardless of the “open application” time period in effect, under any of the following circumstances: the vendor is located in an area identified as having inadequate participant access; the vendor seeks to apply within sixty days of acquiring a store that was authorized to redeem WIC benefits under previous ownership; all the vendor’s stores had aggregate sales of at least \$5 million during the previous year and demonstrate eWIC readiness; or the vendor will serve at least twenty-five WIC participants that cannot be adequately served by another authorized vendor located within a one-mile radius due to a barrier stemming from language, ethnicity, nationality, or religious belief.

Pursuant to the authority vested in the Commissioner of Health by sections 700 and 2500 of the Public Health Law, section 60-1.1 and sections 60-1.7 through 60-1.13 of the Official Compilation of Title 10 of the Codes, Rules and Regulations of the State of New York (“NYCRR”) are amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

The title of subpart 60-1 is amended to read as follows:

Subpart 60-1 - WIC Program—Violations and Hearings Involving Applicants, Participants, [Food] Vendor Applicants, and Vendors [, and Local Agencies]

Section 60-1.1 is amended to read as follows:

As used in this Subpart, the following terms shall have the following meanings:

(a) Administrative fine means a fine imposed by the department on a vendor for WIC program violations under the authority of section 12 of the Public Health Law.

[(a)] (b) Administrative law judge means a person designated by the Commissioner of Health to conduct hearings under sections 60-1.6, 60-1.10 and 60-1.11 [and 60-1.12] of this Subpart. The commissioner may delegate to the Administrative Law Judge the power to render final decisions in these matters.

[(b)] (c) Adverse action shall mean the imposition of [monetary penalties] administrative fines under the authority of section 12 of the Public Health Law or civil money penalties under the authority of part 246 of Title 7 Code of Federal Regulations,

suspension or disqualification from authorization to redeem WIC benefits, or [the] denial of [participation in the WIC program] authorization to redeem WIC benefits. It shall not mean nonrenewal of a contract, the term of which has expired [, nor notification to a vendor to cease and desist from depositing WIC checks in the vendor's bank account].

[(c)] (d) Applicant means a person who submits an application to a local agency for its determination of his/her eligibility to receive supplemental foods under the WIC program.

[(d)] (e) Categorically ineligible means not meeting the definition of pregnant [women] person, breastfeeding [women] person, postpartum [women] person, or infant or child as set forth in subdivision [(m)] (q) of this section.

(f) Civil money penalty or CMP means a fine imposed by the department on a vendor for WIC program violations under the authority of part 246 of Title 7 Code of Federal Regulations in lieu of disqualification from the WIC program.

[(e)] (g) Commissioner means the Commissioner of Health of the State of New York.

[(f)] (h) Conference means a meeting prior to a request for a fair hearing, between a representative of a local agency or a vendor management agency and an applicant [or], participant, vendor applicant, or vendor who is aggrieved by the determination or action of such agency, to discuss such determination or action.

[(g)] (i) Department shall mean the New York State Department of Health.

(j) Disqualification means:

(1) for purposes of the participant, the act of ending a participant's WIC program participation, whether for administrative or disciplinary reasons, or

(2) for purposes of the vendor, the act of ending or precluding a vendor's authorization to redeem WIC benefits for disciplinary reasons.

(k) eWIC means the Electronic Benefits Transfer (EBT) system used to issue and redeem WIC benefits in New York State.

(l) eWIC card means the card used to redeem WIC benefits at a vendor.

(m) eWIC stand-beside terminal means point-of-sale equipment including, but not limited to, a barcode scanner, eWIC card reader, PIN pad, and printer provided to a WIC vendor solely for processing eWIC transactions.

[(h)] (n) Fair hearing means the procedure under sections 60-1.6, 60-1.10 and 60-1.11 [60-1.12] of this Subpart by which applicants, participants, vendor applicants, and [food] vendors [and local agencies] may appeal certain determinations or actions of a local agency or [of the State] a vendor management agency.

[(i) FNS means the Food and Nutrition Service of the United State Department of Agriculture.]

[(j)] (o) Food instrument means [a WIC check, drawn on the account of the State Department of Health exchangeable for WIC-approved products.] an eWIC card, voucher, coupon, or other document which is used to obtain supplemental foods under the WIC program.

[(l)] (p) Local agency means an agency which has contracted with New York State to provide WIC benefits to participants.

[(m)] (q) Participant means [a person who is] a pregnant [woman] person, a breastfeeding [woman] person for up to one year postpartum, a postpartum [woman] person up to six months following [delivery] end of pregnancy, an infant under one year of age, or a child between one and five years of age, or their authorized representative, who is receiving supplemental foods or food instruments under the WIC program.

[(n)] Persons with a special nutritional risk condition means pregnant persons at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for supplemental foods, infants under six months of age, and members of migrant farm worker households who plan to leave the jurisdiction of the local agency.]

(r) Personal identification number or PIN means a numeric code used in conjunction with an eWIC card to authenticate a participant's identity during an eWIC transaction.

[(o)] (s) Petitioner means an applicant, participant or his/her [parent or guardian] authorized representative, [food] vendor applicant or [local agency] vendor who requests a fair hearing from the department.

(t) Primary account number or PAN means the sixteen-digit number on the front of an eWIC card.

[(p)] (u) Respondent means a [food] vendor [or local agency] from whom the department seeks [a monetary] an administrative fine or civil money penalty under the provisions of section [60-1.11] 60-1.10 of this Subpart.

(v) Termination means the act of discontinuing a WIC vendor's contract with a vendor management agency for the remainder of the contract period, whether for administrative reasons or for violation of the terms of the contract.

[(k) Food vendor] (w) Vendor means any establishment which accepts WIC food instruments whether contracted to do so or not.

(x) Vendor applicant means any establishment that applies or reapplies to be a WIC vendor.

(y) Vendor management agency or VMA means a local agency that is contracted with the department to perform WIC vendor management activities within a defined geographic area.

[(q)] (z) WIC [food] vendor means a [food] vendor which has a contract in effect with a [local] vendor management agency to supply supplemental foods to persons receiving benefits under the WIC program.

[(r)] (aa) WIC program means the Special Supplemental [Food] Nutrition Program for Women, Infants, and Children authorized by the [Federal] federal Child Nutrition Act of 1966, as amended.

Paragraphs (3) through (6) of subdivision (a) of section 60-1.7 are amended to read as follows:

(3) receives from [food] vendors unauthorized food, cash or credit towards purchase of unauthorized food or other items of value in lieu of authorized supplemental foods;

(4) physically or verbally abuses or threatens physical abuse of State agency, local agency, [food] vendor staff or other participants;

(5) [uses] redeems WIC [food instruments] benefits outside of valid dates;

(6) [participates in the WIC program with] concurrently obtains benefits from more than one certification by a local agency or agencies;

Paragraphs (7) and (11) of subdivision (a) of section 60-1.7 are repealed, and paragraphs (8), (9), and (10) of subdivision (a) are renumbered paragraphs (7), (8), and (9). Newly renumbered paragraph (9) is amended to read as follows:

[(10)] (9) redeems WIC benefits [food instruments] at non-WIC [food] vendors;

New paragraphs (10) and (11) of subdivision (a) of section 60-1.7 are added to read as follows:

(10) fails to notify local agency of income and/or household composition changes;

(11) fails to provide necessary information related to an investigation involving their participation in the WIC program, conducted by any Federal, State, or local agencies, or other government or law enforcement entity.

Section 60-1.8 is amended to read as follows:

60-1.8 [Food vendor] Vendor violations of the WIC program

(a) Any [food] vendor, who, in the course of a WIC transaction involving a food instrument [(WIC check)] commits any of the following acts shall be liable for disqualification from the WIC program [for a period of up to three years] in addition to being liable for [civil penalties of up to \$1,000 per violation] administrative fines under the authority of section 12 of the Public Health Law or civil money penalties under the authority of part 246 of Title 7 Code of Federal Regulations:

(1) the vendor charges the State [or local] agency for foods not received by the participant;

(2) the vendor charges the State [or local] agency prices in excess of those charged to other customers;

(3) the vendor provides cash in exchange for WIC [checks] benefits;

(4) the vendor provides cash for the return of items purchased with a WIC [check] food instrument;

[(5) the vendor fails to verify the signature on the customer's WIC identification card against the required signature on the customer's WIC check for all foods delivered or sold to the customer;]

[(6)] (5) the vendor provides unwholesome items in exchange for [a] WIC [check] benefits, such as but not limited to, items provided past their expiration date and/or spoiled foods;

[(7)] (6) the vendor provides unauthorized items and/or items not [specified on the face of the WIC check in exchange for a WIC check] on the participant's WIC benefit balance at the time of the WIC transaction;

[(8)] (7) the vendor issues a document (rain check) to a person utilizing a WIC [check] food instrument purporting to give that person the right to buy, at a later date, a particular WIC item which the vendor does not have in stock at the time the document is issued;

[(9)] (8) the vendor [forges a customer's signature onto a WIC check] is found in possession of unauthorized food instruments, eWIC primary account numbers, or eWIC personal identification numbers;

[(10)] (9) the vendor [stamps a WIC vendor number onto] processes a WIC [check] food instrument for benefits redeemed [by any other vendor] at another location;

[(11)] (10) the vendor accepts WIC [checks] food instruments without being a WIC [food] vendor;

[(12)] (11) the vendor discriminates against or harasses any person utilizing a WIC [check] food instrument;

[(13)] (12) the vendor fails to [ensure that the amount of purchase is written in the spaced provided on the WIC check] conduct the WIC transaction in the [customer's] presence of the WIC participant or the WIC participant's authorized representative at the time of purchase;

[(14)] The vendor accepts WIC checks before or after the dates indicated on the checks during which the checks are valid;

(15)] (13) the vendor fails to maintain, for a minimum of three years, all invoices and purchase slips for WIC food items, for inspection by authorized Federal, State or [local] vendor management agencies;

[(16)] (14) the vendor fails to allow unobstructed examination of all WIC food instruments, invoices and purchase slips for WIC food items;

[(17)] (15) the vendor fails to have invoices and purchase slips for WIC food items equal to the type and volume of WIC food sold;

[(18)] the vendor fails to surrender WIC stamps upon disqualification or suspension;

(19)] (16) the vendor fails to maintain, on the premises of the authorized location, [a State-issued WIC vendor authorization stamp; or] all eWIC stand-beside terminals certified for use in conducting WIC transactions.

[(20) the vendor deposits WIC checks into a bank account different than the vendor's sole authorized bank account listed on the vendor's contract; or

(21) the vendor stamps a check that was accepted at a location other than the sole authorized location contained in the vendor's contract.]

(b) A [food] vendor shall be liable for any violation of subdivision (a) of this section by his/her employees.

(c) A [food] vendor who accepts WIC food instruments or redeems WIC [checks] benefits in violation of this section, in addition to being liable for any administrative fines [civil penalties] assessed pursuant to section 12 of the Public Health Law or any civil money penalties assessed pursuant to part 246 of Title 7 Code of Federal Regulations, may be required to reimburse the State agency for funds obtained as a result of the transactions.

(d) The imposition of administrative fines assessed pursuant to section 12 of the Public Health Law or any civil money penalties assessed pursuant to part 246 of Title 7 Code of Federal Regulations assessed pursuant to this section, does not preclude the imposition of any fines or other penalties prescribed by applicable State, Federal or local law.

Section 60-1.9 is repealed, and sections 60-1.10 through 60-1.13 are renumbered as sections 60-1.9 through 60-1.12.

The title of newly renumbered section 60-1.9 is amended as follows:

60-1.9 Conferences for [food] vendors

Subdivision (a) of newly renumbered section 60-1.9 is amended to read as follows:

(a) If a local agency or vendor management agency has reasonable grounds for believing that a [participating] WIC vendor has committed an abuse of the WIC program, it shall send written notice to the department advising it of its findings together with any documentation.

Paragraph (6) and the last sentence of subdivision (b) of newly renumbered section 60-1.9 is amended to read as follows:

(6) that if the vendor fails to appear at the conference or to respond in writing to the notice of conference within 15 days to arrange for an alternate date, the vendor will be disqualified from the program.

A copy of the notice of conference shall be sent to the [local] vendor management agency together with a statement that a representative of such agency may participate in the conference.

Subdivision (d) of newly renumbered section 60-1.9 is amended to read as follows:

(d) If the matter is not resolved at the conference, the commissioner or his designee shall send a written notice of conference decision to the [food] vendor informing the vendor of the following:

(1) it has been determined that the specific abuse charged was committed;

(2) that the vendor is disqualified from the WIC program, effective on a specific date for a specified time [not exceeding three years];

(3) that the vendor has a right to request a fair hearing by [contacting, orally or in writing, the Director, Investigative Services Unit, Bureau of Nutrition, New York State Department of Health, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12237, (518) 474-3343,] following the procedure indicated in the written notice of conference decision within 15 days of the date of the notice [of suspension]; and

(4) if a fair hearing is requested, the commissioner may stay the suspension until a decision is rendered after the hearing.

Newly renumbered section 60-1.10 is amended to read as follows:

60-1.10 Fair hearings involving [food] vendors [for violations of sections 60-1.8 of this Subpart and local agencies for violation of section 60-1.9 of Subpart where a monetary penalty is sought] due to disqualification or imposition of an administrative fine or civil money penalty

(a) Any [food] vendor [or local agency] which the department seeks to fine or fine and disqualify from the WIC program for violations of section 60-1.8 [or section 60-1.9] of this Subpart shall be afforded a right to a fair hearing under the terms of this section. [A disqualification without a contemporaneous monetary penalty is governed by the provisions of section 60-1.12.]

(b) A written notice of hearing shall be sent by certified mail to the [applicant] vendor and other parties involved at least 15 days prior to the scheduled date of the hearing. Such notice shall:

- (1) specify the date, time and place of the hearing;
- (2) state briefly the issues which are to be the subject of the hearing;
- (3) explain the manner in which the fair hearing will be conducted;
- (4) apprise the respondent of its right to be represented by an attorney, to testify, present documentary evidence, produce witnesses, cross-examine adverse witnesses, and to examine the case record prior to the hearing; and

(5) state that failure to appear at the hearing shall constitute waiver of the respondent's right to a hearing and that a default order will be issued against the respondent [, fining the respondent up to a maximum of \$1,000 per violation and/or disqualifying the vendor from participating in the WIC program for up to three years and permanently terminating the local agency from participating in the WIC program] affirming the disqualification; and, where the department seeks the imposition of administrative fines under the authority of section 12 of the Public Health Law or civil money penalties under the authority of part 246 of Title 7 Code of Federal Regulations, a

default order may issue, based upon substantial evidence, imposing administrative fines pursuant to section 12 of the Public Health Law or civil money penalties pursuant to part 246 of Title 7 Code of Federal Regulations.

(c) The provisions of section 60-1.6(d) and (h) of this Subpart concerning hearings, administrative law judges, and record of hearings shall apply to fair hearings for [food] vendors [and local agencies] under this section.

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(e) Nothing in this section shall prevent the department from immediately disqualifying any vendor [or local agency] from [participating in] the WIC program provided that written notice of disqualification is given to the vendor at least 15 days before the effective date of the disqualification [and to the local agency at least 60 days before the effective date of disqualification, respectively]. The disqualification may not be stayed during the pendency of the hearing by the administrative law judge without the consent of the department's representative at the hearing. The disqualification shall remain in effect unless an order is issued at the conclusion of the hearing which reinstates the vendor [or local agency].

(f) The department has the burden of proof to establish a violation of section 60-1.8 [or 60-1.9] of this Subpart by substantial evidence.

Newly renumbered section 60-1.11 is amended to read as follows:

60-1.11 Fair hearings involving [food] vendor applicants and vendors [and local agencies where no contemporaneous monetary penalty is sought] due to application denial or contract termination.

(a) A [food] vendor applicant or vendor, upon request, shall be entitled to a fair hearing under this section if its application to supply supplemental foods to WIC program participants is denied, or if it is [disqualified] terminated during the contract period from the WIC program for violation of its contract with the [local] vendor management agency or for high prices or low volume as defined in the vendor's contract [and no contemporaneous monetary penalty under the authority of section 12 of the Public Health Law is sought against it]. A fair hearing shall not be required when a vendor contract has expired and has not been renewed. [Neither the local agency nor the department shall accept an application for WIC participation from a vendor whose contract has not been renewed, for one year from the date of the contract expiration.

(b) A local agency, upon request, shall be entitled to a fair hearing under this section if its application to serve as a local WIC agency is denied or if it is disqualified. A fair hearing shall not be required when a local agency's contract with the State agency has expired and has not been renewed.

(c) (b) If a [local agency or a food] vendor applicant or vendor is denied authorization to redeem WIC benefits by, or [disqualified] terminated from, [participation in] the WIC program, such vendor applicant or vendor [or agency] shall be given written notice promptly of such action, the reasons therefore, the rules and regulations governing [food] vendor [or local agency participation in] authorization by the WIC program, and the right to a fair hearing, and that such hearing may be obtained by the [local agency or]

vendor by [petitioning, orally or in writing, the Director, Investigative Services Unit, Bureau of Nutrition, New York State Department of Health, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12237, (518) 474-3343 within 15 days from the date] following the procedure indicated in the notice of agency action [is served] within 15 days from the date of the notice. Failure to request a hearing within the required 15-day period will result in a waiver of the [food] vendor applicant's or vendor's [or local agency's] right to a hearing.

[(d)A] (c) After a timely request for hearing is received, a written notice of hearing shall be sent by certified mail to the [applicant] petitioner and other parties involved at least 10 days prior to the scheduled date of the hearing. Such notice shall:

- (1) specify the date, time and place of the hearing;
- (2) state briefly the issues which are to be the subject of the hearing;
- (3) explain the manner in which the fair hearing will be conducted;
- (4) apprise the petitioner of its right to be represented by an attorney, to testify, present documentary evidence, produce witnesses, cross-examine adverse witnesses, and to examine prior to and during the hearing the documents and records supporting the action under appeal; and

(5) state that failure to appear at the hearing shall constitute waiver of the petitioner's right to a hearing and that an order will be issued denying or [disqualifying] terminating the petitioner's authorization by [from participation in] the WIC program to redeem WIC benefits.

[(e)] (d) The administrative law judge, in rendering a decision on the [food] vendor[’s] applicant’s application for [participation in] authorization by the WIC program to redeem WIC benefits shall be bound by section [60-1.13] 60-1.12 of this Subpart.

[(f)] (e) Under this section, the burden of proof to [participate] be or remain [in] authorized by the WIC program to redeem WIC benefits shall be on the [local agency or] vendor applicant denied [participation] authorization or [disqualified] the vendor terminated for violations of the vendor’s contract with the [local] vendor management agency or of this Subpart.

[(g)] (f) The provisions of section 60-1.6(d) and (h) of this Subpart concerning hearings, hearing officers, and record of hearings shall apply to fair hearings for vendor applicants and [food] vendors [and local agencies] conducted pursuant to this section.

[(h)] (g) A copy of the fair hearing decision shall be sent to the petitioner, his/her attorney, if any, and other parties involved, within 60 days following the date on which the State agency received the request for a hearing.

[(i)] Following a hearing denying a vendor participation in the WIC program for lack of need, neither the local agency nor the department shall accept from a vendor, for at least one year from the date of the order denying participation, an application to participate in the WIC program. In cases of vendor abuse, neither the local agency nor the department shall accept an application for the period of disqualification up to a maximum of three years from the date of vendor’s disqualification.]

[(j)] (h) Nothing in this section shall prevent the department from immediately [disqualifying] denying authorization to redeem WIC benefits to any vendor applicant or

terminating any vendor [or local agency] from [participating in] the WIC program provided that, in the case of termination, written notice of [disqualification] termination is given to the vendor at least 15 days before the effective date of the [disqualification and to the local agency at least 60 days before the effective date of disqualification, respectively.] termination. A denial of authorization shall take effect upon written notice of the vendor applicant. The [disqualification] denial of authorization or termination may not be stayed during the pendency of the hearing by the administrative law judge without the consent of the department's representative at the hearing. The [disqualification] denial of authorization or termination shall remain in effect unless an order is issued at the conclusion of the hearing which authorizes the vendor applicant or reinstates the vendor [or local agency].

[(k)] (i) This section shall not preclude the department from commencing a subsequent proceeding to assess [a] an administrative fine or civil money penalty against the vendor [or the local agency] pursuant to section [60-1.11] 60-1.10 of this Subpart.

[(l)] (j) This section shall not preclude the department from ordering a [WIC] vendor to immediately cease and desist from [depositing] conducting WIC transactions [checks in the bank]. If the department takes such action, it shall immediately notify the vendor. The vendor may request a hearing in the [matter] manner set forth in subdivision [(c)] (b) of this section. This section shall govern the conduct of such a hearing.

The title of newly renumbered section 60-1.12 is amended as follows:

60-1.12 Vendor Applicant [Enrollment] Authorization Criteria

Subdivision (a), and paragraph (1) of subdivision (a), of newly renumbered section 60-1.12 is amended as follows:

(a) Any vendor applicant that is a food store (excluding pharmacies) [which applies for participation in the WIC program shall be enrolled] may be authorized via a [State Health Department] department approved [one-year] expirable contract if all [of the following criteria are met. If all the criteria are not met, the vendor may not be enrolled.] federal requirements set forth in part 246 of Title 7 Code of Federal Regulations and all State requirements are met, including but not limited to:

(1) Current and valid [food stamp] Supplemental Nutrition Assistance Program (SNAP) authorization.

Paragraph (2) of subdivision (a) of newly renumbered section 60-1.12 is repealed and reserved.

Paragraphs (3), (4), and (5) of subdivision (a) of newly renumbered section 60-1.12 are repealed.

Subdivision (b) of newly renumbered section 60-1.12 is amended to read as follows:

(b) Any vendor applicant that is a pharmacy [which applies for participation in the WIC program shall be enrolled if all the following criteria are met. Any vendor who

meets these criteria should be enrolled] may be authorized via a [State Health Department] department approved [one-year] expirable contract[.] if all federal requirements set forth in part 246 of Title 7 Code of Federal Regulations and all State requirements are met, including but not limited to:

Paragraphs (1) through (4) of subdivision (b) of newly renumbered section 60-1.12 are repealed and replaced with new paragraphs (1) and (2) to read as follows:

(1) *Reserved.*

(2) The applicant pharmacy agrees to order and stock special formulas as requested by the vendor management agency.

Subdivisions (c) and (d) of newly renumbered section 60-1.12 are amended to read as follows:

(c) The [applicant] vendor applicant [or pharmacy] shall have reasonable hours of operation. Reasonable is defined as operating six days per week, eight hours per day.

(d) The [local] vendor management agency, at the direction of the department, shall [have the option of] not [contracting] contract with any vendor applicant who has been previously disqualified from the WIC program or who has abused the WIC program or any other government sponsored program or who has been subject to disciplinary action including, but not limited to, imposition of a civil money penalty.

Subdivision (e) of newly renumbered section 60-1.12 is repealed and replaced with a new subdivision (e) to read as follows:

(e) If the vendor applicant is located in an area with inadequate participant access as defined by the Commissioner and meets the minimum vendor authorization criteria established in section 246.12(g)(3) of Title 7 Code of Federal Regulations, the vendor management agency shall authorize the vendor applicant to redeem WIC benefits.

Subdivision (f) of newly renumbered section 60-1.12 is repealed and replaced with a new subdivision (f) to read as follows:

(f) (1) The Commissioner may determine “open application” time periods during which any vendor applicant may apply or reapply for authorization to redeem WIC benefits, unless the vendor applicant is subject to subdivision (d) of this section.

(2) At any time, a vendor applicant may apply for authorization to redeem WIC benefits by demonstrating to the Commissioner’s satisfaction that:

(i) the vendor applicant will serve twenty-five or more WIC participants that cannot be properly served by another WIC vendor located within a one-mile radius due to a barrier stemming from language, ethnicity, nationality, or religious belief;

(ii) all the vendor applicant’s stores had at least \$5 million in aggregate food sales during the previous year and demonstrate eWIC readiness;

(iii) there exists inadequate participant access, as defined by the Commissioner, in the vendor applicant’s area;

(iv) within sixty days prior to application, the vendor applicant acquired a store that was authorized to redeem WIC benefits under previous ownership; or

(v) an otherwise exceptional circumstance exists that warrants such authorization.

Subdivision (g) of newly renumbered section 60-1.12 is repealed and replaced with a new subdivision (g) to read as follows:

(g) The provisions of the Code of Federal Regulations which have been incorporated by reference in this section have been filed in the office of the Secretary of State of the State of New York, the publication so filed being the document entitled: Code of Federal Regulations, Title 7, part 246 (pages 366 – 479), revised as of January 1, 2018, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, 99 Washington Avenue, Albany, NY 12231 and at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. They may also be purchased from the US Superintendent of Documents, US Government Publishing Office, Washington, DC 20402.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 700 designates the Department of Health as the agency of the state to administer any federal act of Congress, such as The Child Nutrition Act of 1966 (42 USC § 1771 et seq.). The Child Nutrition Act of 1966 established the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which relates to maternal and child health services. Public Health Law (PHL) § 2500 authorizes the Commissioner of Health to act in an advisory and supervisory capacity in matters pertaining to maternal and child health for which funds are, or will be, available. WIC is a discretionary program overseen by the United States Department of Agriculture (USDA)'s Food and Nutrition Services Agency. Section 246.3(b) of title 7 Code of Federal Regulations (CFR) delegates responsibility for “the effective and efficient administration of the program” to States. Federal regulations further specify that States must establish procedures to deter participant violations (7 CFR § 246.12(u)(1)); develop criteria for authorizing WIC vendors (7 CFR § 246.12(g)(3)); and define participant access criteria (7 CFR § 246.12(l)(8)).

Legislative Objectives:

WIC provides breastfeeding support, nutrition counseling, health care referrals, and supplemental foods to eligible women, infants, and children. Although federal WIC grants must be used in accordance with 7 CFR part 246, the State may tailor program operations to best serve participants. Pursuant to PHL §§ 700 and 2500, the Commissioner of Health has authority over policy decisions related to the quality of

maternal and child health services provided to approximately 420,000 WIC participants each month and the distribution of over \$500 million in program funds each year. The proposed amendments are consistent with the legislative objective in that they are designed to provide effective maternal and child health services via prudent use of available funds.

Needs and Benefits:

10 NYCRR subpart 60-1 must be updated to accommodate eWIC, the Electronic Benefits Transfer (EBT) system that will replace paper WIC checks in NYS by fall 2019. Additional amendments eliminate conflicts with State Finance Law (SFL) § 163 and 7 CFR part 246, clarifying rules concerning penalties for vendor violations and hearings. Finally, multiple amendments align State regulations with the streamlined vendor application process and the revised vendor authorization and participant access criteria developed by NYS in response to a 2014 USDA management evaluation and implemented, with USDA approval, in spring 2018.

Section 60-1.1, which defines terms relevant to the WIC program, is updated to reflect the mechanics of eWIC transactions; the definition of “food instrument” is amended to include eWIC cards, and definitions are added for “primary account number (PAN),” “personal identification number (PIN),” and “eWIC stand-beside terminal.” Several definitions are added or expanded to encompass key stakeholders in the NYS WIC program. “Vendor management agency (VMA)” refers to a local agency that contracts with NYS to provide vendor management services. “Vendor applicant” distinguishes prospective WIC vendors (i.e., vendors that are applying or reapplying for

authorization) from applicant participants. “Food vendor” is replaced with “vendor,” to explicitly bring under the purview of State regulations approximately 600 pharmacies authorized to redeem WIC benefits in NYS. Finally, the definition of “participant” is updated to include the authorized representative, a role specific to eWIC benefit issuance.

Sections 60-1.7 and 60-1.8 are amended to eliminate participant and vendor violations made obsolete by eWIC, including violations based on check handling procedures or made impossible by eWIC’s automated verification processes. Provisions are added for handling eWIC cards and equipment.

Section 60-1.7 is further amended to require participants to notify local agencies of changes to income or household composition, allowing the State to enforce an obligation already included in the Statement of Participant Rights and Responsibilities, and to require participants to provide information needed for investigations by any federal, State, or local agencies, or other government or law enforcement entities.

Section 60-1.8 is further amended to align the provision concerning disqualification and civil resolution with the requirements of 7 CFR Part 246.

Section 60-1.9, which concerns program violations and penalties for local agencies, is repealed, as all provisions are enforceable via the local agency contract. Additionally, all references to local agency hearings and local agency disqualification are deleted from 10 NYCRR subpart 60-1. A local agency denied a WIC contract may receive a briefing pursuant to SFL § 163.

Sections 60-1.11 and 60-1.12 are renumbered sections 60-1.10 and 60-1.11 and reorganized such that newly renumbered section 60-1.10 addresses vendor hearings

concerned with disqualification or imposition of an administrative fine or civil money penalty, and newly renumbered section 60-1.11 addresses vendor hearings concerned with denial of an application or termination of a contract. This restructuring reflects current NYS administrative procedures.

Section 60-1.13 is renumbered section 60-1.12. All mandatory federal vendor authorization criteria are incorporated by reference to 7 CFR part 246, and existing rules pertaining to individual federal criteria are deleted. To accommodate the streamlined vendor application process, the standard vendor contract term is no longer limited to one year, and the Commissioner is granted authority to determine “open application” time periods during which vendors may apply or reapply for WIC authorization.

In practice, the streamlined process replaces year-round open enrollment for vendors with a three-year application cycle divided among six vendor contract periods based on geography. Once the process is fully implemented, all vendors assigned to the same vendor contract period will apply, or reapply, for authorization during a designated open application period (OAP) occurring once every three years. This will create a predictable workflow for VMAs and establish a clear timeline for vendors seeking application and reapplication results. The streamlined process also allows chains of ten or more NYS WIC-authorized stores operating under the same federal employer identification number to consolidate all stores under one application and one contract per regional VMA. This will reduce paperwork and establish common contract dates for closely related stores. As addressed below, the streamlined process has implications for vendor limiting and participant access criteria.

Vendor limiting criteria, which define the maximum number of vendors the State can reasonably monitor given available resources, are deleted for both food vendors and pharmacies. Two related “exceptions,” which identify circumstances in which limiting criteria for an applicant food vendor may be waived, are revised as follows: any vendor, including pharmacies, may apply for WIC authorization outside its OAP if the vendor’s stores had aggregate sales of at least \$5 million during the previous year and demonstrate eWIC readiness, or if the vendor seeks to apply within sixty days of acquiring a store that was authorized to redeem WIC benefits under previous ownership.

Participant access criteria define the minimum number of vendors needed to ensure that participants can acquire WIC foods. The proposed amendments strengthen participant access provisions to align with federal regulations; in effect, the State must accept applications from vendors located in areas with inadequate participant access, regardless of OAP, and the State must authorize any vendor needed for participant access, provided the vendor meets the minimum authorization criteria defined in 7 CFR part 246.12(g)(3). A related exception allowing the State to waive certain authorization criteria for vendors that meet a cultural need is revised; such vendors may now apply outside their OAP but must meet all authorization criteria unless they are located in an area identified as having inadequate participant access.

Finally, in alignment with USDA recommendations for effective program management, the proposed regulations grant the Commissioner authority to define participant access criteria.

Costs:

The proposed rules do not directly impose additional costs on the regulated parties. However, vendors using eWIC stand-beside terminals must have a dedicated telephone line or wired internet connection for each device. Telephone and internet service fees vary by region and provider but typically range from thirty to seventy-five dollars per month, per terminal. Vendors redeeming WIC benefits via an integrated cash register system may need to purchase a one-time software upgrade to meet the technical specifications for eWIC. In accordance with 7 CFR section 246.12(h)(3)(xxviii-xxx), these “integrated” vendors are also responsible for third-party payer or other processing fees stemming from eWIC transactions.

Additionally, the vendor community may perceive an opportunity cost associated with the streamlined vendor application process, as proprietors seeking WIC authorization for new stores may be delayed by the three-year application cycle. However, the State has established many exceptions under which vendors may apply for authorization outside their OAP, including participant access need, cultural need, high sales volume, and recent acquisition of a store previously authorized to redeem WIC benefits.

The proposed regulations do not impose additional costs on the agency, the State, or local governments.

Local Government Mandates:

The proposed amendments do not impose additional mandates upon local governments or special districts. Additionally, as the proposed amendments do not affect

the amount of WIC benefits issued and redeemed statewide, local governments are not expected to face increased demand for nutrition assistance or other services.

Paperwork:

Two amendments to section 60-1.7 pertain to reporting obligations for program participants. One compels participants to provide information needed for investigations opened against them by any government or law enforcement agency, while the other codifies an existing expectation that participants report changes to household composition or income. Neither amendment requires filing of formal paperwork.

Vendors using State-issued eWIC stand-beside terminals must provide form W-9, Request for Taxpayer Identification Number and Certification, to the State's eWIC contractor.

Duplication:

7 CFR part 246 establishes parameters for all aspects of WIC program operations; as such, many of the provisions included in 10 NYCRR subpart 60-1 stem from at least one federal rule. The rules cited below correlate with amendments proposed to sections 60-1.7 and 60-1.13.

7 CFR section 246.12(u) requires the State to implement “procedures designed to control participant violations” and sanctions for such violations.

7 CFR section 246.12(g)(3) requires the State to define authorization criteria for WIC vendors.

7 CFR section 246.12(l)(8) requires the State to develop participant access criteria. 7 CFR section 246.12(g) requires the State to authorize vendor applicants as needed to ensure participant access to supplemental foods, provided the vendor applicants meet the minimum authorization criteria defined in 7 CFR part 246.12(g)(3). 7 CFR section 246(12)(g)(8) requires the State to “develop procedures for processing vendor applications outside of its timeframes when it determines there will be inadequate participant access unless additional vendors are authorized.”

Alternatives:

There are no viable alternatives. The proposed regulations are required for eWIC implementation and closely adhere to federal program requirements and USDA recommendations for program management.

Federal Standards:

The proposed rules exceed federal minimum standards only where explicitly permitted by federal regulations, as cited below:

7 CFR section 246.12(l)(2)(i) allows the State to impose sanctions for vendor violations not specified in federal regulations, provided these violations and sanctions are defined in the State’s sanction schedule.

7 CFR section 246.12(g)(3)(ii) requires the State to consider business integrity when evaluating vendor applicants. This rule further specifies that the State may identify additional disqualifying criteria, as where an amendment to section 60-1.13 establishes a history of multiple civil money penalties as grounds for denying vendors authorization to redeem WIC benefits.

Compliance Schedule:

The proposed amendments are to be effective upon publication of a Notice of Adoption in the New York State Register.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

NYS WIC program food benefits, valued at over \$370 million annually, can be redeemed at approximately 2,800 authorized vendors statewide. Of these, about 1,100 are classified as small (1-2 cash register) stores. Small vendors are generally concentrated downstate, with particularly high numbers located in the Bronx (263 vendors), Brooklyn (347 vendors), and Queens (186 vendors). About 96% of small vendors statewide will process eWIC transactions via single-function equipment (i.e., a State-provided stand-beside terminal), and the remaining 4% will use multi-function equipment (i.e., an integrated cash register system capable of processing cash, credit, SNAP, and eWIC transactions).

Amendments are proposed to section 60-1.1 and sections 60-1.7 through 60-1.13 of 10 NYCRR; among these, section 60-1.8, which describes vendor violations and penalties, and section 60-1.13, which delineates vendor authorization criteria, are most directly pertinent to small businesses. Sections 60-1.10, 60-1.11 and 60-1.12, which concern conferences and hearings for vendors, are amended largely to improve internal organization; as such, the proposed changes will have little practical effect on the vendor population and thus do not warrant extended analysis.

None of the amendments proposed to 10 NYCRR subpart 60-1 are expected to have an appreciable impact on local governments; therefore, local governments are not considered in the following analysis.

Compliance Requirements:

Vendors must follow the eWIC transaction procedures defined in section 60-1.8, as amended, and the current NYS WIC vendor contract. Most of the proposed amendments do not change the intent of the original rule; rather, wording is adjusted to incorporate preferred terminology (e.g., “vendor” replaces “food vendor”; “WIC food instrument” replaces “WIC check”). Otherwise, existing provisions are adapted to prevent equivalent fraudulent activities in an eWIC environment. Ultimately, eWIC is expected to lessen any burden stemming from compliance requirements. As specified in 7 CFR section 246.2, a vendor may be found in violation of the WIC program as the result of either an intentional or an unintentional act; because eWIC transactions are largely automated, vendors are at less risk of committing careless procedural violations, such as failure to verify participant ID and signature.

Upon reapplication to the WIC program, vendors must meet all authorization criteria included in newly renumbered section 60-1.12 (formerly section 60-1.13). Specifically, where vendors were previously subject to a business integrity review only upon initial application, 7 CFR section 246.12(h)(3)(xxi) requires the State to apply the same authorization criteria to all vendors, regardless of prior participation in the WIC program. Additionally, vendors are subject to more stringent business integrity standards, as the proposed regulations identify a history of multiple civil money penalties within the preceding six-year period as grounds for denying a vendor contract. No changes are proposed to the participant access criteria currently in effect. However, a related exception allowing the State to waive certain authorization criteria for vendors that meet a cultural need is revised; such vendors may now apply outside their OAP but must meet

all authorization criteria unless they are located in an area identified as having inadequate participant access. The State will continue to accept applications from vendors located in areas with an identified participant access need regardless of the OAP in effect; such vendors will continue to be evaluated based on the minimum authorization criteria defined in 7 CFR part 246.12(g)(3).

Finally, the streamlined process represents a significant shift in program operations. Timing of application or reapplication will be driven by the vendor's designated vendor contract period. Therefore, proprietors seeking WIC authorization for new stores may face delays, depending on the location of the store and the dates of the relevant OAP.

Professional Services:

The proposed amendments do not require the regulated parties to seek any additional professional services.

Compliance Costs:

The proposed regulations do not directly impose any additional costs on small vendors. However, costs associated with the federal eWIC mandate are included in the following analysis. Vendors using eWIC stand-beside terminals must have a dedicated telephone line or wired internet connection for each device. Telephone and internet service fees vary by region and provider but typically fall in the range of thirty to seventy-five dollars per month, per terminal. Vendors that redeem WIC benefits via an

integrated cash register system may need to purchase a one-time software upgrade in order to meet the technical specifications for eWIC. In accordance with 7 CFR section 246.12(h)(3)(xxviii-xxx), these "integrated" vendors are also responsible for third-party payer or other processing fees stemming from eWIC transactions.

Additionally, the vendor community may perceive an opportunity cost associated with the streamlined vendor application process, as proprietors seeking WIC authorization for new stores may be delayed due to the constraints of the three-year application cycle. However, the State has established many exceptions under which vendors may apply for authorization outside their OAP, including participant access need, cultural need, high sales volume, and recent acquisition of a store previously authorized to redeem WIC benefits. Furthermore, the three-year application cycle is supported by federal regulations; as stated in 7 CFR section 246.12(g)(8), "The State agency may limit the periods during which applications for vendor enrollment will be accepted and processed, except that applications must be accepted and processed every three years."

Economic and Technological Feasibility:

The proposed rules do not directly impose any economic or technological burdens on small vendors. As previously described, the federal eWIC mandate may generate minimal additional expenses for vendors. Vendors will likely also need to train staff on correct procedures for eWIC transactions, including use of stand-beside terminals.

Minimizing Adverse Impact:

In compliance with federal regulations, the State provides single-function eWIC equipment to qualified vendors free of charge and pays associated transaction fees. Additionally, the State will ease the vendor community's transition to the streamlined application process with ongoing education efforts. The streamlined process has already been introduced via vendor bulletin and WIC stakeholder forum, and additional messaging will alert vendors to upcoming OAPs. The State's contracted VMAs will also provide currently authorized vendors with reapplication materials well in advance of their designated OAP. Finally, as already described, the State has established several exceptions that permit vendors to apply for authorization outside their designated OAP.

Small Business and Local Government Participation:

The NYS WIC program communicates regularly with authorized vendors via vendor bulletins, a listserv, and websites maintained by the NYS Department of Health and the State's contracted VMAs. Additionally, the State hosted a face-to-face meeting designed to introduce eWIC to leaders of relevant trade groups; State and eWIC contractor staff were in attendance to answer policy and technical questions. The State also sought feedback from trade group leadership prior to implementing the revised NYS WIC vendor contract in April 2018; the contract was amended largely in preparation for eWIC rollout, and many of the provisions included therein are represented in section 60-1.8, as amended. Finally, quarterly stakeholder forums allow individual vendors to

communicate directly, in real time, with State staff and representatives of the eWIC contractor.

For rules that either establish or modify a violation or penalties associated with a violation:

Most amendments proposed to section 60-1.8 do not affect the substance of the original rules and thus do not require extended analysis. Beyond this, in compliance with 7 CFR section 246.12(1)(2)(i), all sanctions imposed by the State effectively include a cure period. The State may only impose a sanction based on a pattern of violations, and the State must provide the vendor with written notification of an initial finding prior to documenting additional instances to constitute a pattern.

The proposed regulations clarify existing rules concerning civil penalties but do not change them; that is, vendors found to have committed certain serious program violations have been, and will continue to be, subject to mandatory federal penalties.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 44 counties have a population of less than 200,000 based on the United States Census estimated county populations for 2010 (<https://www.census.gov/quickfacts>).

Allegany	Hamilton	Schoharie
Cattaraugus	Herkimer	Schuyler
Cayuga	Jefferson	Seneca
Chautauqua	Lewis	St. Lawrence
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	Schenectady	Yates
Greene		

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based on the United States Census estimated county populations for 2010.

Albany	Monroe	Orange
Broome	Niagara	Saratoga
Dutchess	Oneida	Suffolk
Erie	Onondaga	

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Across all 53 counties identified as rural or partially rural, approximately 107,000 participants are served by 43 local agencies each month. The identified counties also encompass about 800 authorized WIC vendors overseen by three vendor management agencies (VMAs). None of the amendments proposed to subpart 60-1 of 10 NYCRR are expected to have an appreciable impact on local governments in either rural or non-rural areas; therefore, local governments are not considered in the following analysis.

Neither local agencies nor VMAs are subject to any additional reporting or recordkeeping requirements as a result of the proposed amendments. Section 60-1.9, which describes program violations and penalties specific to local agencies, is repealed; however, this has little practical impact, as all compliance standards are clearly established and enforceable via the State's contract with each agency.

Two amendments to section 60-1.7 pertain to reporting obligations for program participants. One compels participants to provide information needed for investigations opened against them by any local, government, or law enforcement agency, while the other codifies an existing expectation that participants report changes to household composition or income. Additional amendments to section 60-1.7 incorporate preferred terminology (e.g., "vendor" replaces "food vendor") and otherwise adjust wording to accurately describe eWIC transactions (e.g., "food instrument" replaces "WIC check"). These amendments do not change the substance of the rules and thus have little effect on participant compliance requirements.

Some vendors are subject to a minor additional reporting requirement, as those using State-issued eWIC stand-beside terminals must provide form W-9, Request for Taxpayer Identification Number and Certification, to the State's eWIC contractor. Apart from this, eWIC is expected to lessen any compliance burden for vendors, as transactions are largely automated and thus reduce vendors' risk of committing careless procedural violations. Vendors must also meet all authorization criteria included in newly renumbered section 60-1.12 (formerly section 60-1.13) upon reapplication to the NYS WIC program. Specifically, where vendors were previously subject to a business integrity review only upon initial application, 7 CFR section 246.12(h)(3)(xxi) requires the State to apply the same authorization criteria to all vendors, regardless of prior participation in the WIC program. Additionally, vendors are subject to more stringent business integrity standards, as the proposed regulations identify a history of multiple civil money penalties within the preceding six-year period as grounds for denying a vendor contract. Finally, it should be noted that the timing of future applications or reapplications will be driven by the vendor's designated vendor contract period. Therefore, proprietors seeking WIC authorization for new stores may face delays, depending on the location of the store and the dates of the relevant open application period (OAP).

Costs:

The proposed amendments do not impose any additional costs on local agencies, VMAs, or program participants in either rural or non-rural areas, nor do they directly impose additional costs on vendors. However, costs associated with the federal eWIC mandate are included in this analysis. About 37% of vendors in rural areas will process

eWIC transactions via one or more State-provided stand-beside terminals, each of which must have a dedicated telephone line or wired internet connection. Associated service fees vary by region and provider but typically fall in the range of thirty to seventy-five dollars per terminal, per month. About 63% of vendors in rural areas will operate integrated cash register systems capable of processing cash, credit, SNAP, and eWIC transactions. Vendors using integrated cash registers may need to purchase a one-time software upgrade to meet the technical specifications for eWIC. In accordance with 7 CFR section 246.12(h)(3)(xxviii-xxx), these ‘integrated’ vendors are also responsible for third-party payer or other processing fees stemming from eWIC transactions.

Additionally, vendors in both rural and non-rural areas may perceive an opportunity cost associated with the streamlined vendor application process, as proprietors seeking WIC authorization for new stores may be delayed due to the constraints of the three-year application cycle. However, the State has established many exceptions under which vendors may apply for authorization outside their OAP, including participant access need, cultural need, high sales volume, and recent acquisition of a store previously authorized to redeem WIC benefits.

Minimizing Adverse Impact:

The proposed regulations do not exacerbate challenges commonly associated with rural areas, such as population sparsity, small community size, limited access to financial and technical assistance, and underdeveloped services delivery systems. As such, there is

no need to consider rule exemptions or different reporting or compliance requirements for stakeholders in rural areas.

Rural Area Participation:

The NYS WIC program communicates regularly via bulletins, listservs, and websites targeted to various stakeholder groups in both rural and non-rural areas. Online forums for local agencies and vendors, both held quarterly, allow for direct, real-time communication with State staff and other relevant parties, such as representatives of the State's eWIC contractor. The State also engages leadership of relevant trade and advocacy groups to expand the reach of its communications and solicit feedback on policy changes.

JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that there will not be a substantial adverse impact on jobs or employment opportunities.