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DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

7 CFR Part 246

[FNA-2026-0595]

RIN 0584-AE85

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program

AGENCY: Food and Nutrition Administration (FNA), Department of Agriculture (USDA).

ACTION: Final rule with request for comment.

SUMMARY: This final rule considers public comments submitted in response to the proposed rule to remove barriers to online ordering and internet-based transactions in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) published on February 23, 2023. USDA FNA is issuing this regulatory action to support State innovation and develop and implement modernized systems, while underscoring program integrity. It allows for the use of new technologies to improve the WIC shopping experience while increasing access to healthy foods for WIC participants. This final rule also complements the Program's complete transition to electronic benefit transfer (EBT) by streamlining and modernizing certain WIC food delivery regulations to support current technology and future innovation, and introduces measures to support a modern, data-driven program that uses new technologies for food delivery.

DATES:

Effective Date: This rule is effective December 7, 2026. Online comments submitted through the Federal eRulemaking Portal must be received on or before January 5, 2027 to be assured of consideration.

Implementation Dates: See section VI of the SUPPLEMENTARY INFORMATION.

Compliance Dates: This rulemaking consists of multiple provisions. Compliance for each provision is referenced in section VI of the SUPPLEMENTARY INFORMATION section of this final rule and detailed in the section-by-section analysis.

- Severability. If any provision of such section promulgated through this final rule, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program" (FNA-2026-0595; RIN 0854-AE85) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable and not affect the remainder thereof.

ADDRESSES: The Food and Nutrition Administration, USDA, invites interested persons to submit written comments on this final rule. USDA seeks comment on the impacts to stakeholders, specifically State agencies and their Management Information Systems (MIS), Electronic Benefit Transfer (EBT), and vendor system partners. Comments may be submitted to the Federal eRulemaking Portal at http://www.regulations.gov. Follow the online instructions for submitting comments. All comments submitted in response to this final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNA will make the comments publicly available on the internet via http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Allison Post, Supplemental Nutrition and Safety Programs, Food and Nutrition Administration, USDA, 201 14th Street SW, Washington, DC 20227, 703-457-7708 or sm.fn.WICPolicy@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

This rule sets forth regulatory flexibilities, encourages innovation, and modernizes WIC food delivery regulations. The rule ensures WIC participants have the same shopping options as non-WIC shoppers to transact their WIC benefits as the retail marketplace innovates and evolves. This rule also clarifies requirements so that State agencies can effectively carry out a modern, data-driven program that uses current technologies for food delivery. This final rule considers public comments on the proposed rule "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program" (88 FR 11516) published on February 23, 2023, referred to as "the proposed rule." The changes finalized in this rule better serve families across the country by improving the WIC shopping experience and ensuring that WIC participants have access to healthy foods, while maintaining security and oversight measures at the federal and State agency levels. This rule:

1) Removes barriers to online shopping and internet-based transactions in WIC, including a current prohibition of the authorization of internet-based vendors. This provides State agencies the flexibility to determine how to offer online shopping to participants in a way that maintains program integrity. The revisions support oversight measures and policies appropriate for current technologies, and adaptable for future ones (e.g., Europay, Mastercard, and Visa ("EMV") chip cards, mobile apps), as well as security requirements to support program integrity as the retail marketplace innovates.
2) Streamlines and modernizes WIC food delivery requirements to reflect the Program's complete transition to electronic benefit transfer (EBT), supports current technology and

future innovation, and expands opportunities for WIC participants to utilize innovations in the retail grocery industry. The revisions allow State agencies to use new types of food instruments (e.g., mobile payments) and provide State agencies with more flexibility in the issuance of WIC benefits.

3) Updates reporting requirements to reflect a modern, data-driven program.

II. Background

This part provides an overview of the WIC Program and key terms used throughout this preamble.

A. Overview of the WIC Program

The WIC Program is administered by 88 WIC State agencies, including the 50 States, 32 Indian Tribal Organizations, the District of Columbia, and 5 U.S. Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands).[1] WIC is an evidence-based public health program, with a long history of improving health outcomes for nutritionally at risk and income-eligible pregnant, breastfeeding, and non-breastfeeding postpartum women, and infants and children up to age five. In fiscal year (FY) 2025, WIC served an average of 6.9 million participants per month.[2] As of the most recent published estimates (2023), WIC participants included around 40 percent of all infants in the United States.[3]

The USDA provides grants to WIC State agencies to provide supplemental foods, referrals to health care and other social services, and nutrition education, including breastfeeding promotion and support, to WIC participants. WIC participation is associated with purchasing healthier foods

[1] The number of WIC State agencies operating as of September 2026.

[2] U.S. Department of Agriculture Food and Nutrition Administration, "WIC Data Tables," 2026. https://www.fna.usda.gov/pd/wic-program.

[3] U.S. Department of Agriculture, Food and Nutrition Service, "National- and State-Level Estimates of WIC Eligibility and WIC Program Reach in 2023: Final Report, Volume I," pp. 65, by Courtenay Kessler et al. Project Officer Grant Lovellette, Alexandria, VA: December 2025. https://www.fna.usda.gov/research/wic/eer-2023.

and improved diets for pregnant women and children and has been shown to reduce prevalence of childhood obesity.[4, 5] According to their participant category and nutritional needs, WIC participants receive supplemental foods on a monthly basis from one of seven evidence-based food packages. The amounts and categories of foods provided in each package are intended to supplement participants' diets and provide specific nutrients known to be lacking in the diets of WIC's target population.

WIC participants typically access supplemental foods through a retail food delivery system. In such systems, a WIC shopper goes to a WIC-authorized vendor (i.e., a retail grocery store authorized by the State agency), selects foods available in their benefit balance, and uses an electronic benefit transfer (EBT) card to purchase the items. In FY 2023, there were approximately 37,368 WIC-authorized vendors nationwide and, as of August 2024, all WIC State agencies completed the transition from paper vouchers to EBT. This rule does not fully remove references to paper food instruments because when the proposed rule was published in early 2023, there were still State agencies in the midst of implementing EBT. The Department intends to use a future rulemaking to update WIC regulations to reflect that EBT is now the sole benefit delivery method in the retail food delivery system.

WIC State agencies are responsible for making sure the distribution of WIC-authorized vendors in their geographic area provides sufficient access to WIC foods for participants, and vendors stock an adequate amount and variety of WIC foods. The regulatory changes in this final rule aim to reduce some of the burden associated with shopping for WIC foods, and support State agency vendor management operations in maintaining strong program integrity efforts. The

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[4] Caulfield LE, Bennett WL, Gross SM, Hurley KM, Ogunwole SM, Venkataramani M, Lerman JL, Zhang A, Sharma R, Bass EB. Maternal and Child Outcomes Associated With the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Comparative Effectiveness Review No. 253. (Prepared by the Johns Hopkins University Evidence-based Practice Center under Contract No. 75Q80120D00003.) AHRQ Publication No. 22-EHC019. Rockville, MD: Agency for Healthcare Research and Quality; April 2022. DOI: https://doi.org/10.23970/AHRQEPCCER253.

[5] Kenney EL, Lee MM, Barrett JL, Ward ZJ, Long MW, Cradock AL, Williams DR, Gortmaker SL. Cost-effectiveness of Improved WIC Food Package for Preventing Childhood Obesity. Pediatrics. 2024 Jan; 153. https://doi.org/10.1542/peds.2023-063182.

Department recognizes that the development and expansion of online shopping is a novel and developing component in WIC. In order to protect both participants and taxpayer funds, the Department is committed to ensuring all available resources are deployed toward increased oversight and prevention of potential vendor fraud and abuse.

B. Introduction of Key Terms

The following are key terms used throughout this final rule preamble:

- "WIC shopper" means a person shopping using WIC benefits (i.e., a WIC participant, proxy, or a parent or caretaker of an infant or child participant).
- "Online shopping" means the general use of an online, internet-based ordering system, platform, or site. It can encompass online ordering with or without internet-based transactions (i.e., the transaction can occur via the internet, in store, curbside, or at the point of delivery).
- "Online ordering" means the process a customer (including a WIC shopper) uses to select food items for purchase via an internet-based ordering system, platform, or site.
- "Transaction" means the process by which a WIC shopper exchanges their WIC benefits for supplemental foods.
- "Internet-based transaction" means a transaction where the WIC payment is completed through the payment section of the online ordering system, platform, or site. This terminology is being used in lieu of "online transaction" to avoid confusion with transactions that occur using online EBT technology.
- "Redemption" means the process in which a vendor submits records of electronic benefit transactions for redemption and the State agency (or its financial agent) makes payment to the vendor.

III. Approach to Rulemaking and Status of WIC Online Shopping

This rulemaking finalizes regulatory changes in consideration of public comments received on the proposed rule published February 23, 2023. In developing the proposed rule, the Department considered technical materials developed by a wide variety of WIC stakeholders, lessons learned from the Supplemental Nutrition Assistance Program (SNAP) online shopping projects that began in 2019, as well as feedback from WIC State agencies, Indian Tribal Organizations, and participants. The following technical resources informed the Department's identification of regulatory barriers to online shopping and provisions in this rulemaking:

- Blueprint for WIC Online Ordering: Through a cooperative agreement with FNA, The Center for Nutrition and Health Impact (CNHI), an independent non-profit research institute, developed a comprehensive plan for implementing online shopping in WIC. This Blueprint, which initially identified waivers to federal regulations necessary to begin online shopping projects and provided guidance to begin implementing, has since been revised and republished in May 2026, with up-to-date information to support WIC State agencies as they develop their WIC online shopping projects.[6]
- The Task Force on Supplemental Foods Delivery: This task force convened WIC providers, retailers, manufacturers, EBT processors, advocacy organizations, and WIC participants to develop an online shopping Recommendation Report for the Department.[7]

The Department initially supported WIC State agencies in pursuing online shopping projects by issuing waivers under the American Rescue Plan Act (ARPA, P.L. 117-2) authority, which allowed FNA to waive regulatory barriers to support outreach, innovation and modernization in WIC and the WIC Farmers' Market Nutrition Program (FMNP). Online shopping waivers were issued through September 2024 and remain in effect to support ongoing projects. With these waivers, the Department provided State agencies with the necessary regulatory flexibility and technical assistance to pursue online shopping projects, regardless of whether or not they

[6] https://www.wicshopplus.org/the-blueprint

[7] https://www.fna.usda.gov/wic/food-delivery-task-force-recommendations-report

received a subgrant from CNHI. The Department recognizes and appreciates the WIC State agencies and authorized retailers that have developed different ways to provide online ordering to WIC participants. Through the cooperative agreement with CNHI, 22 WIC State agencies have received subgrants to pursue online shopping including the necessary development of internet-based transactions.

This final rulemaking permanently removes regulatory barriers to allow State agencies to implement online shopping in WIC and eliminates the need for waiver flexibility; therefore, the online shopping waivers will be superseded by regulation once this rulemaking is effective. Additional waivers supporting mobile pay and remote issuance will also be superseded by this rulemaking once effective.

IV. Proposed Rule Comment Summary

The proposed rule published in the Federal Register on February 23, 2023, with a 90-day comment period closing on May 24, 2023. During this time, USDA received 1,664 comments. Five form letter campaigns comprised 881 submissions. There were 752 unique comments of which 216 were substantive, providing specific input on the topics included in this final rule. A total of 31 comments were either duplicates or out of the scope of this rule, as they did not provide feedback related to topics in this final rule. The comments came from a variety of sources, including WIC State and local agencies, state representatives, professional organizations and associations, advocacy groups, health care professionals, universities, the food industry, WIC participants, and private citizens. USDA worked in collaboration with a data analysis company to code and analyze the public comments using a commercial web-based software product. This analysis provided data showing support for or opposition to each proposed change. Over 1,070 commenters provided broad support for revisions to the regulations while approximately 10 commenters provided general comments in opposition to the proposed rule. The Final Summary of Public Comments is available online at www.regulations.gov in docket

FNS-2022-0015. The Final Summary of Public Comments includes the specific number of comments in support or opposition to each provision in the proposed rule, with a detailed narrative describing the key points made by commenters. USDA used the Final Summary of Public Comments and a supplementary review of individual comments to finalize provisions within this final rule. USDA refers to the Final Summary of Public Comments for numbers of comments received on each provision, with general summaries of comments provided in the preamble of this final rule.

As required under the Administrative Procedure Act, FNA considered all relevant, timely-submitted comments received on the proposed rule. Some comments addressed topics out of scope for the revisions and therefore are not addressed in this final rule.

V. Discussion of Final Rule

The following is a discussion of the provisions set forth in the proposed rule, a summary of the comments received that addressed these provisions, and the Department's rationale for either retaining or modifying the proposed provisions in the final rule. Provisions not discussed in this preamble did not receive significant or substantial public comments and are retained in this final rule as proposed.

This preamble communicates the rationale for modifications to the proposed rule codified in this final rulemaking. The Department re-examined the goals of this rulemaking while reviewing the comments to determine the continued applicability of each proposed change. Unless otherwise stated in the preamble of this final rule, the rationales included in the preamble of the proposed rule are regarded as a basis for the final regulations. Therefore, an understanding of the rationales for the final regulations may require reference to the preamble of the proposed rule.

USDA appreciates the many comments expressing support for the proposed revisions and urging USDA to implement the changes included in the proposed rule. USDA agrees the changes improve access to healthy foods and the efficiency of the WIC shopping experience while

ensuring State agencies have the flexibility to oversee new types of vendors and to maintain program integrity and security. Before addressing each provision specifically, the following is a summary of overarching themes related to online shopping that the Department is acknowledging broadly.

(i) Technical assistance to support online shopping: the Department received numerous comments requesting guidance and technical assistance to support the implementation of online shopping in WIC.

The Department is committed to providing ongoing technical assistance and guidance to State agencies to ensure they have the support and resources necessary to implement online shopping and can do so while preserving program integrity. The Department is developing best practices, lessons learned, and technical resources to support State agencies in the implementation of online shopping using the many recommendations and ideas stakeholders provided during the public comment period for the proposed rule.

(ii) Internet vendor authorization: Many commenters expressed concern the State agency-by-State agency approach to internet vendor authorization would be lengthy and cumbersome, and instead recommended the Department adopt a national authorization process for online shopping, including national monitoring and management, similar to that of SNAP.

The Department notes there is a significant difference in how SNAP and WIC are authorized in legislation. The Child Nutrition Act expressly delegates responsibility for vendor authorization, monitoring, and oversight to WIC State agencies. Therefore, the Department did not propose a national process related to the authorization of WIC internet vendors.

(iii) Costs of technology innovations and online shopping: Many comments discussed concerns around the cost of adopting new technologies and stated the need for more federal funding to implement the various changes included in this rulemaking.

The Department notes the majority of the changes in this rulemaking either, 1) increase options and flexibilities for State agencies in vendor management activities without increased costs, or 2) provide the opportunity for State agencies to pursue new technologies at their discretion. The Department recognizes funding is a consideration for State agencies and therefore is not requiring implementation of any new technologies at this time. This rulemaking allows State agencies the opportunity to determine an appropriate and feasible timeline to implement new technologies. The Department recognizes the costs associated with authorizing internet vendors, largely due to the EBT and MIS changes necessary to allow new types of transactions and is therefore prioritizing flexibility and has recently supported State agencies through various funding opportunities, including subgrant opportunities from CNHI.

(iv) Modernizing offline EBT systems: Some commenters questioned how State agencies with offline EBT systems (i.e., chipped EBT cards in which benefits cannot be used or issued online) would be able to implement some of the provisions in this rule, such as those related to online shopping or issuing benefits remotely. Commenters asked for technical assistance and funding to help transition to online EBT systems.

The Department recognizes that offline EBT systems will not be able to operate WIC online shopping or issue benefits remotely. The Department is actively working with all offline State agencies to transition to online EBT systems so that they can also take part in these opportunities. The Department also highlights that neither online shopping nor remote benefit issuance are requirements for State agencies under this rulemaking. This rule creates the necessary flexibilities for the State agencies that are interested and able to develop online shopping and encourages the flexible issuance of benefits where possible.

(v) Impact to small vendors and accessibility: Some commenters expressed concerns that implementing online shopping would be especially challenging for small vendors.

To support small vendors, CNHI conducted a survey and hosted listening sessions to hear directly from small, Tribal, and rural vendors, and farmers and farmers' markets, to understand the perceptions, experiences, and potential barriers vendors face in implementing online shopping.[8] The Department recognizes different types of support and guidance may be needed to initiate WIC online shopping. USDA is committed to gathering feedback and learning from implementation projects to develop technical resources and assistance.

Commenters also noted that access to online shopping through the inclusion of alternative languages to English, as well as alternative online formats for persons with disabilities are key to ensuring all participants can access online shopping opportunities. The Department will explore opportunities to provide ongoing technical assistance to ensure that State agencies are encouraging vendors to equip their online platforms to meet the needs of their participants.

Following this summary of overarching themes, the Department presents a summary comparison of the proposed and final provisions of this rule with detailed discussion on each following.

Section	Summary of Proposed Revision	Summary of Final Revisions Based on Public Comment
1. Remove Barriers to Allow for Online Ordering and Internet Based Transactions	Clarify which vendor agreement provisions apply only to paper food instruments and modernize the purchase price provision to be inclusive of EBT transactions. (section 1.a.i)	Finalize as proposed.
	Remove the requirement that WIC shoppers must sign printed food instruments in the presence of a cashier. (section 1.a.ii)	Finalize as proposed.

[8] Akers, L, Anderson-Steeves ET, Crespo-Bellido M, Ángel-López M, Vest D, Nitto AM, Hill JL. WIC Online Shopping Brief Report: Small, Tribal, and Rural Vendors and Farmers and Farmers Market (STRFM) Study. Prepared for: USDA Food and Nutrition Service. December 2024. https://www.wicshopplus.org/resource-library/wic-online-shopping-strfm-brief-report.

Section	Summary of Proposed Revision	Summary of Final Revisions Based on Public Comment
	Remove the requirement to use a personal identification number (PIN) in lieu of a signature. (section 1.a.iii)	Finalize as proposed.
	Create new provisions to allow WIC State agencies to explore and identify options to authenticate EBT transactions and require vendors, farmers, and farmers' markets to authenticate EBT transactions in accordance with State agency policy. (section 1.a.iv)	Modify to remove reference to Department standards that are not yet published and require FNA approval to use an authentication method other than PIN.
	Create a new definition for "brick-and-mortar vendor." (section 1.b.i)	Finalize as proposed.
	Create a new definition for "internet vendor." (section 1.b.ii)	Modify to clarify the transactions at each internet vendor must be assigned to that internet vendor.
	Create a new definition for "mobile vendor." (section 1.b.iii)	Modify to clarify the transactions at mobile vendors must be assigned to that specific vendor.
	Update the definition of "above-50-percent vendor" to be applicable to all vendor types. (section 1.b.iv)	Finalize as proposed.
	Modernize the current definition of "vendor" by removing the requirement that vendors must have a single, fixed location, simplifying the definition of vendor, and clarifying that all vendors must be authorized separately. (section 1.c.i)	Modify to remove the reference to SNAP and clarify each entity must be separately authorized.
	Remove a clause in the definition of "vendor" requiring a special needs justification for mobile vendors and remove associated language from the State Plan requirements. (section 1.c.ii)	Finalize as proposed.
	Clarify that cash refunds are still prohibited and update the exchange policy to accommodate recalls, ensuring that WIC shoppers are treated the same as other customers in the event of a recall. (section 1.d.i)	Modify the refunds provision to clarify the different types of cash refunds that are prohibited and modify the exchange provision to reflect changes from the Implementation of the Access to Baby Formula Act of 2022 and Related Provisions Final Rule[9] by clearly defining

[9] Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions (88 FR 86545). https://www.federalregister.gov/d/2023-26641.

Section	Summary of Proposed Revision	Summary of Final Revisions Based on Public Comment
		a supplemental food recall in 7 CFR § 246.2.
	Allow for the return of electronic benefits to a participant's balance when items in an online order are not fulfilled and for the use of returned electronic benefits. (section 1.d.ii)	Modify to allow returns for purchases that took place at any vendor type, not just online orders.
	Require State agencies to provide participants with no less than seven (7) days to transact returned electronic benefits, which could go beyond the last date of use (LDTU). (section 1.d.iii)	Modify to clarify that State agencies must allow participants to use returned electronic benefits through the end of the benefit issuance month. Make the use of returned electronic benefits after the last date of use (LDTU) a State agency option and set a maximum of seven (7) days for benefit use beyond the LDTU. The Department is requesting comment on the impacts this would have on stakeholders and their systems if this flexibility were to be a requirement.
	Update the definitions of "routine monitoring" and "compliance buy" to remove the on-site requirement. (section 1.e.i)	Finalize as proposed.
	Introduce virtual visits as an allowable type of preauthorization visit. (section 1.e.ii)	Finalize as proposed.
	Prohibit vendors, farmers or farmers' markets from charging State agencies fees associated with WIC purchases and permit WIC shoppers to pay such fees. (section 1.f.i)	Modify to apply the prohibition to all fees associated with a WIC purchase (e.g., delivery, service, convenience, bag fees) for any vendor type, not just online shopping fees, to ensure consistent treatment of all vendor types.
	Clarify costs associated with home food delivery and direct distribution to ensure State agencies still pay for the cost of transporting food under these two food delivery systems. (section 1.f.ii)	Modify to further clarify that food funds can be used to pay for the cost of transporting foods in home food delivery and direct distribution but cannot be used in retail food delivery systems.

Section	Summary of Proposed Revision	Summary of Final Revisions Based on Public Comment
2. Streamline and Modernize WIC Food Delivery	Allow the remote issuance of electronic benefits by separating the benefit issuance provisions for paper food instruments and cash-value vouchers from electronic benefit issuance and updating signature requirements. (section 2.a.i)	Modify to ensure State agencies have procedures for recipient proof of receipt to ensure program integrity measures, and to clarify that signatures are required only when benefits are received in person.
	Create new definitions of "electronic benefits," "cash-value benefit," and "cash-value voucher" to reflect a modern WIC Program. (section 2.a.ii)	Finalize as proposed.
	Expand the definition of "food instrument." (section 2.b)	Finalize as proposed.
	Allow State agencies to develop and test new WIC food instrument types. Clarify uniform food delivery systems and system combinations. (section 2.c.i)	Modify to clarify that State agencies can have more than one food instrument type within a food delivery system at a time.
	Remove the requirement for State agencies to collect shelf price data, as EBT data are a sufficient replacement. (section 2.d)	Modify to clarify that State agencies can use existing EBT data for vendors applying for re-authorization.
	Allow State agencies using a non-retail, home food delivery system to ship supplemental foods to a location designated by participants and approved by the State agency. (section 2.e)	Modify to allow State agencies to confirm delivery location of supplemental foods as an additional measure of program integrity.
	Extend vendor application and agreement periods from three to five years.	FNA will not finalize as proposed; no change to current provision.
3. Meet the Needs of a Modern, Data Driven Program	Update the reporting requirements for WIC food delivery systems, including the timing of reporting and information required. (section 3.a)	Modify to remove the proposed requirement for quarterly submissions, maintaining the current annual minimum.
	Increase the staffing standards for the position of the WIC Food Delivery Coordinator.	FNA will not finalize as proposed; no change to current provision. State agencies may optionally implement more stringent standards at the State level.
	Add staffing standards to create a WIC Quality Improvement Coordinator.	FNA will not finalize as proposed; no change to current provision. State agencies may optionally implement more stringent standards at the State level.

Section	Summary of Proposed Revision	Summary of Final Revisions Based on Public Comment
4. Request for Public Comment on Key Topic Areas	The Department requested comment on whether there is a need to authorize vendors that sell a specific subset of supplemental foods (e.g., dairies, bakeries, produce sellers) but would not meet the minimum variety and quantity of supplemental foods, as required by WIC regulations. (section 4.a)	Due to feedback received discussing concerns related to cost containment, program integrity, and the impact on small vendors, the Department will not allow exceptions to minimum stocking requirements for authorizing specialty vendors in this rulemaking.

1. Remove Barriers to Allow for Online Ordering and Internet-Based Transactions

This final rule allows vendors and WIC shoppers to complete internet-based transactions, creates new definitions for internet and mobile vendors, modernizes the definition of brick-and-mortar and above-50-percent vendors, allows vendors to return benefits to a participant's benefit balance, allows State agencies to develop virtual methods of oversight, permits WIC shoppers to pay fees associated with WIC purchases, and clarifies that State agencies may use non-WIC funds to pay fees associated with WIC purchases.

a. Allow vendors and WIC shoppers to complete internet-based transactions [§§ 246.12(h)(3)(v), (vi), and (xxxii), 246.12(v)(1)(iv), and 246.12(bb)(2)]. The changes to provisions in this section that clarify which vendor agreement provisions apply only to paper food instruments and modernize the purchase price provision, § 246.12(h)(3)(v) and (vi), are finalized as proposed. The provisions that allow vendors, farmers and farmers' markets, and WIC shoppers to complete internet-based transactions by removing requirements that WIC shoppers must sign food instruments, or enter a personal identification number (PIN), in the presence of a cashier, § 246.12(h)(3)(v) and (vi), and § 246.12(v)(1)(iv), are also finalized as proposed. The provisions requiring vendors, farmers and farmers' markets to authenticate transactions in accordance with State agency policies, § 246.12(h)(3)(xxxii) and §

246.12(v)(1)(iv), are finalized as proposed, and the provision requiring State agencies to develop policies on transaction authentication methods, § 246.12(bb)(2), is finalized with modifications.

i. Clarify which vendor agreement provisions apply only to paper food instruments and modernize the purchase price provision to be inclusive of EBT transactions. (§ 246.12(h)(3)(v) and (vi))

This final rule codifies the change from "printed" to "paper" at § 246.12(h)(3)(vi) as proposed to clarify which vendor agreement provisions apply only to paper food instruments. This final rule also codifies proposed revisions to the purchase price provision at § 246.12(h)(3)(v) to ensure the requirement that WIC shoppers are made aware of the total purchase price before transactions are completed continues to be applicable to EBT transactions.

Commenters expressed general support for the changes that clarify which provisions apply to paper food instruments versus EBT transactions, especially the requirement that participants be made aware of the purchase price before the transaction is completed, affirming these requirements enable WIC participants to make informed choices and ensure program integrity. No comments were opposed.

Some commenters requested flexibility on how State agencies meet the requirement that participants be made aware of the total purchase price, and recommended the Department require vendors ensure the price of produce for online purchases does not increase during fulfillment so that the amount of cash-value benefits transacted is not higher than what the participant agreed to during the shopping process.

The Department does not define in regulation how vendors must ensure participants are made aware of the total purchase price. Vendors should make WIC participants aware of prices in the same ways they show all other customers prior to the completion of the transaction, while still

meeting the WIC receipt requirements outlined in the WIC EBT Operating Rules.[10] The Department will incorporate feedback on best practices on handling produce during the fulfillment process into future policy guidance.

ii. Remove the requirement that WIC shoppers must sign in the presence of a cashier. (§ 246.12(h)(3)(vi))

This final rule codifies revisions as proposed at § 246.12(h)(3)(vi) to remove the requirement that WIC shoppers must sign printed food instruments in the presence of a cashier.

This change received overwhelming support, with commenters stating this change will enhance convenience for participants and reduce burdens associated with the current WIC shopping experience. The Department agrees this change supports modernization of the WIC Program and the changing retail landscape, and makes WIC shopping less burdensome, which also supports greater benefit utilization. No comments were opposed.

iii. Remove the requirement to use a personal identification number (PIN) in lieu of a signature. (§ 246.12(h)(3)(vi))

This final rule codifies revisions as proposed at § 246.12(h)(3)(vi) to remove the requirement to use a PIN in lieu of a signature.

Many comments supported removing the requirement to use a PIN in lieu of a signature, stating it would allow State agencies to modernize alongside the grocery industry as PIN authentication is just one of many authentication models employed in the commercial marketplace. The Department agrees that allowing for new types of authentication methods facilitates security innovation in the WIC Program.

[10] https://www.fna.usda.gov/wic/ebt/technical-implementation-guide-operating-rules

An opposed commenter expressed concern that eliminating the PIN requirement could lead to fraud. The Department clarifies this change does not remove the State agency's responsibility to ensure a secure transaction, nor the requirement for transaction authentication, but instead eliminates regulatory barriers, supporting State agency innovation, and allows State agencies to use new types of transaction authentication methods to better reflect industry modernization. The Department expects State agencies that do not choose to use new transaction authentication methods will continue to use the PIN as the required transaction authentication methodology for their jurisdiction. Modifications to the provision at § 246.12(bb)(2) establish this expectation by requiring State agencies to receive written approval to adopt an authentication method other than the PIN. The Department will provide further detail on expectations for transaction authentication in forthcoming guidance, discussed in section 1.a.iv below.

Some commenters stated the differences in WIC and SNAP PIN requirements could lead to confusion among participants using both programs, as all SNAP online purchase transactions still require the PIN. Commenters encouraged the Department to implement uniform authentication standards and payment models across all programs that use EBT. The Department agrees there is value in consistency across SNAP and WIC and works to achieve this where possible while allowing for new types of authentication methods when feasible and appropriate. With the implementation of new technologies in WIC, the Department encourages State agencies to continue educating participants on the use of any modern food instruments and how to transact their WIC benefits.

iv. Create new provisions to allow WIC State agencies to explore and identify options to authenticate EBT transactions and require vendors, farmers, and farmers' markets to authenticate EBT transactions in accordance with State agency policy. (§§ 246.12(bb)(2), 246.12(h)(3)(xxxii) and 246.12(v)(1)(iv))

This final rule codifies a new provision at § 246.12(bb)(2) requiring that State agencies have appropriate transaction authentication policies for the specific technologies they choose to allow in their jurisdiction, with modifications to remove reference to FNA standards that have not yet been developed. The Department has also modified this provision to establish PIN authentication as the default authentication method. As discussed above, the expectation that State agencies utilize a PIN until more modern technology meets or exceeds the security of a PIN is reinforced by codifying specific reference to the PIN in the amendatory text.

This final rule also codifies a new provision as proposed requiring vendors to authenticate transactions in accordance with State agency policies at § 246.12(h)(3)(xxxii), and that transactions at farmers and farmers' markets also occur in accordance with the procedures established by the State agency at § 246.12(v)(1)(iv).

Multiple commenters expressed support for these changes, agreeing they will allow State agencies flexibility to create a plan that works for their participants and a variety of modern vendors, while ensuring program integrity. No comments were opposed.

The Department appreciates the extensive feedback that commenters provided regarding the transaction authentication standards referenced in the proposed rule, including the recommendations on the content of the standards and on where the standards will be posted. Because the standards are not yet published, the Department is removing the reference to them in this final rule. The Department will, however, still develop guidance on transaction authentication for State agencies that incorporates this feedback. Commenters recommended that transaction authentication standards be developed via the Technical Standards Workgroup (TSW) to ensure they can continue to be updated on an ongoing basis with stakeholder feedback as technology evolves. The Department agrees that input from the WIC community is important for the development of standards in the evolving retail marketplace. Therefore, transaction

authentication standards will be developed and finalized via the TSW to allow for maximum engagement with affected parties and partners.

Commenters requested that the implementation of the provisions related to new transaction authentication methods not be required until the Department's transaction authentication standards are published.

The Department recognizes the development of transaction authentication standards will take time and does not want to prevent State agencies from exploring modernization initiatives. Because FNA has not yet published such standards, the Department has removed the regulatory reference to the FNA standards as noted above. While the provisions in this section will be effective upon publication of the final rule to allow State agencies to take advantage of the flexibilities created in this rulemaking, State agencies will not be expected to wait for publication of final transaction authentication standards to continue their online shopping projects. Following this rulemaking, the Department will provide interim guidance on transaction authentication. The Department encourages State agencies to explore new payment technologies and expects that State agencies will continue to use PIN authentication until more modern technology meets or exceeds the security of a PIN.

Some commenters questioned how these changes would impact industry partners, such as vendors and EBT processors. They expressed concerns that competing transaction standards across WIC State agencies could result in challenges for multi-state retailers, and that current EBT contractual provisions may not allow new transaction authentication methods.

As discussed above, the Department will develop transaction authentication standards for State agencies, with interim guidance provided following this rulemaking, to support implementation of new technologies and encourage uniformity across State agencies. The Department recommends vendors continue to work closely with the State agencies in which they are authorized to ensure they are following all respective State agency specific policies. The

Department also recognizes each State agency has different procurement policies and procedures and recommends that State agencies continue to work closely and maintain open communication with their procurement offices and EBT contractors as they pursue any new technologies.

Some commenters stated that participants should be able to use their EBT cards with farmers or farmers' markets and purchase farm fresh produce online. WIC regulations currently allow State agencies to authorize farmers and farmers' markets to accept cash-value benefits (CVB). The Department encourages all State agencies to allow participants to transact their CVB with farmers and at farmers' markets to support the purchase of local produce. With the changes from this rulemaking, authorized farmers and farmers' markets will be allowed to sell their produce online.

b. Create new types of vendors [§ 246.2]. The provisions to define "Brick-and-mortar vendor" and "Above-50-percent vendor" are finalized as proposed. The provisions to define "Internet vendor" and "Mobile vendor" are finalized with modifications to ensure all vendors are authorized separately and transactions that take place at each vendor are assigned specifically to that vendor.

There was a significant discussion from commenters regarding the new vendor types, and while many commenters supported the proposed definitions, other commenters shared concerns and requests for clarification from the Department. The following discussion is related to overarching concerns regarding the new vendor types. A discussion on the specific definitions for each vendor type follows.

Commenters requested guidance from USDA on how the creation of new vendor types will impact various State agency vendor management activities such as selection criteria, peer groups, preauthorization, above-50-vendor assessment, cost containment, monitoring, training, and

sanctions. Many commenters also provided recommendations for how vendor management activities should take place for the new vendor types. Some commenters requested clarification on whether the authorization of internet and mobile vendors is a State agency option.

The Department recognizes adding new vendor types warrants revised approaches to vendor management. The Department appreciates the feedback and recommendations on how to adequately manage the new vendor types and will incorporate this feedback into the development of guidance and technical assistance, expanding on current efforts to develop guidance and technical assistance based on lessons learned from online shopping projects. While the Department confirms the authorization of internet and mobile vendors is a State agency option, the Department also encourages State agencies to consider authorizing these new vendor types to better serve families across the country, including in rural areas.

Many commenters strongly agreed with the Department's proposal that all vendors, regardless of type, must adhere to all regulations pertaining to vendors and discussed the importance of applying consistent and fair program requirements regardless of vendor type. However, some commenters disagreed and recommended different requirements by vendor type, such as different federal selection criteria or minimum stock for internet and mobile vendors than brick-and-mortar vendors.

The Department recognizes that different vendor types will inherently have different training, monitoring, and investigative needs, and the specific ways in which vendor management activities take place may be different. However, the State agency must hold all vendors to the same federal accountability measures and minimum requirements to ensure effective management and oversight. Therefore, the Department maintains that all authorized vendors, no matter the type, are subject to federal regulations governing authorized WIC vendors, but that State agencies may tailor their vendor management approach depending on vendor type. For example, State agency training for internet vendors may include new content for web designers,

such as online shopping navigation and pricing, and may focus less on transaction details which may not be applicable for an internet vendor using automated product compliance controls. Further, as discussed in section 1.e, the Department is introducing virtual methods of oversight to provide State agencies with the appropriate tools for monitoring all vendor types. While different vendor types do not have distinct requirements, vendors of different types may be able to show compliance with requirements in distinct manners. For example, an authorized internet vendor sourcing orders from multiple fulfillment locations would not need to demonstrate that each fulfillment location meets stocking standards so long as the vendor can prove to the State agency that their online ordering operations as a whole meet those standards. Similarly, internet vendors may have different mechanisms for demonstrating compliance with inventory audits, which are just one State agency option for investigating their vendor population.

Some commenters stated that the word "store" as used throughout the current regulations appears to refer to a single, fixed location, and therefore would only apply to brick-and-mortar stores. Commenters requested clarification of the Department's application of the word "store" considering the new vendor types that do not have single, fixed store locations.
The Department clarifies that the word "store" as used throughout the regulation is synonymous with the term "vendor" and applies to brick-and-mortar, internet, and mobile vendors.

Many commenters requested the inclusion of a "hybrid vendor" defined by the Task Force Report as a "physical store location that also operates a virtual platform,"[11] so internet vendors do not have to be separately authorized if they fulfill orders from a brick-and-mortar vendor. Commenters requested a similar inclusion for mobile vendors.

[11] Task Force on Supplemental Foods Delivery in the WIC Program - Recommendations Report, page 16 (September 2021). https://www.fna.usda.gov/wic/food-delivery-task-force-recommendations-report.

The Department appreciates the input from commenters and thoroughly considered the Task Force report as well as the public comments recommending the inclusion of "hybrid vendor" as another vendor type. While the Department recognizes the fulfillment of many online orders may come from brick-and-mortar vendors, the Department determined "hybrid vendors" are not feasible due to challenges they would pose for cost containment and program integrity. State agencies must be able to apply cost containment methods to brick-and-mortar vendor operations independently from any affiliated internet operations as prices for food purchased online are often higher than prices for food purchased in-store.[12] To ensure vendors are charging State agencies appropriate and reasonable prices for WIC foods and are remaining cost competitive relative to peer vendors, State agencies must authorize internet, mobile, and brick-and-mortar vendors separately, regardless of any association. Further, State agencies must maintain the ability to take administrative action against individual vendors at fault for violations when they occur. If the State agency found a violation associated with the internet operations of a "hybrid vendor" while the brick-and-mortar operations remained in compliance, the State agency would be required to take action against both entities together if they were under one authorization. Such action could limit participant access if the brick-and-mortar operations were no longer authorized. By separating the authorizations by brick-and-mortar operations from internet operations, the State agency is better equipped to manage program integrity. Finally, it is an important component of vendor management and cross program integrity efforts that WIC and SNAP can take reciprocal administrative action against vendors when a vendor commits a violation. For these reasons, the Department decided the use of a "hybrid vendor" is not feasible for the WIC Program and maintains that brick-and-mortar, internet, and mobile vendors are the only three vendor types and must be separately authorized, with their own distinct vendor identification numbers (vendor IDs).

[12] Roerink, A.M. (June 2021). Grocery E-Commerce – Opportunity Remains. Produce Business, 37(6), p.12. https://producebusiness.com/issue/produce-business-june-2021/.

i. Create a new definition for “brick-and-mortar vendor.” (§ 246.2)

This final rule codifies the new definition of “brick-and-mortar vendor” as proposed, requiring this type of vendor to be defined separately and distinctly from internet or mobile vendors. Multiple commenters supported the proposed definition and reasoned that permitting new types of WIC vendors enhances program modernization, and expanding vendor definitions supports small businesses and participant access. No comments were opposed.

Some commenters requested clarification if brick-and-mortar vendors can offer online ordering, that is, when a WIC participant places an order through the internet and then comes to the store to swipe their EBT card and pick up their order. Online ordering with curbside payment and pick-up remains allowable with the new vendor types. In this scenario, the transaction is occurring at the brick-and-mortar store, so this transaction would be assigned to the brick-and-mortar vendor.

ii. Create a new definition for “internet vendor.” (§ 246.2)

This final rule codifies the new definition of “internet vendor” with modifications to clarify transactions that take place at the internet vendor must be assigned to the internet vendor, and each internet vendor must be separately authorized.

Many commenters supported the creation of a new definition for internet vendor, stating it will enhance access to healthy foods for participants and could facilitate the use of more modern retail solutions. No comments were opposed.

Some commenters requested the language used in the brick-and-mortar vendor definition indicating “transactions that take place at a brick-and-mortar vendor must be assigned to that vendor” should be applicable to internet vendors as well. Further, multiple commenters requested

clarification on the meaning of "location" for each vendor type, as the brick-and-mortar vendor explicitly specifies the meaning of a "single, separate location" for the vendor.

For internet vendors, the location of the transaction is online, which could include the online ordering system, platform, or site used by an internet vendor to transact benefits. To ensure consistency in the authorization of vendor types, the Department added language to the definition to indicate that all transactions taking place via an online ordering system, platform, or site must be assigned to the authorized internet vendor. This is to ensure all vendor types are held to the same requirements and that transactions are properly assigned. A similar change was made to the definition of "mobile vendor." The Department recognizes that internet vendors may use different eCommerce platform providers, eCommerce Marketplaces, or delivery partners to transact WIC benefits. These third-party platforms may not be authorized as vendors themselves, and all transactions that take place on these platforms must be assigned to the internet vendor authorized to transact WIC benefits.

Some commenters requested clarification on whether an internet vendor can have any affiliation with a brick-and-mortar vendor, while others requested a new definition of "internet only vendor" for vendors that have no affiliation with a brick-and-mortar storefront.

The Department reiterates that internet vendors provide authorized supplemental foods to participants through internet-based transactions, regardless of their affiliation with any physical store. This includes, but is not limited to:

- Vendors operating only online with no physical storefront,
- Vendors operating online and fulfilling from a brick-and-mortar vendor, and
- Vendors operating online and fulfilling from a warehouse and a separately authorized brick-and-mortar vendor.

Regardless of where the order is fulfilled from or if the order is delivered to the participant or picked up in a physical store, the vendor type depends on the location of the transaction.

Therefore, if the transaction happened online then it must be assigned to the internet vendor. This is consistent with SNAP's authorization and management of internet retailers.

iii. Create a new definition for "mobile vendor." (§ 246.2)

This final rule codifies the new definition of "mobile vendor" with modifications to clarify transactions that take place at the mobile vendor must be assigned to the mobile vendor, and each mobile vendor must be authorized separately.

Multiple commenters supported the proposed definition, stating that allowing mobile vendors will enhance participant access to healthy foods. No comments were opposed.

Some commenters requested the language used in the "brick-and-mortar vendor" definition indicating "transactions that take place at a brick-and-mortar vendor must be assigned to that vendor" should be applicable to mobile vendors as well. Further, multiple commenters requested clarification on the meaning of "location" for each vendor type, as the definition of a brick-and-mortar vendor explicitly specifies there is a "single, separate location" for the vendor.

For a mobile vendor, the location of the transaction is the truck, bus, pushcart, or other mobile vehicle at which the transaction takes place. To ensure consistency in the authorization of vendor types, the Department added language to the definition to indicate that all transactions that take place at a mobile vendor must be assigned to that authorized mobile vendor. This is to ensure all vendor types are held to the same requirements and transactions are properly assigned.

Multiple commenters expressed concern about the feasibility for mobile vendors to operate the WIC Program, including their ability to meet minimum stocking requirements, manage updating the authorized product list (APL), and use EBT systems. Commenters also recommended prices for mobile vendors be restricted to the same prices as brick-and-mortar vendors.

The Department clarifies authorizing mobile vendors is an option, not a requirement, for State agencies. If a State agency chooses to authorize this type of vendor, all vendor requirements

must be met. The Department highlights that State agencies have flexibility in managing their vendor populations and can set different minimum stocking requirements by peer group, as long as they meet the federal minimum stocking requirements defined at § 246.12(g)(3)(i). State agencies that choose to authorize mobile vendors as a new vendor type must meet all vendor regulations, including cost containment.

iv. Update the definition of "above-50-percent vendors" to be applicable to all vendor types. (§ 246.2)

This final rule codifies the revised definition of "above-50-percent vendor" as proposed to ensure any type of authorized vendor could also be classified as an above-50-percent vendor if it meets the conditions of the definition.

Commenters expressed general support for the new definition.

An opposed comment requested the "above-50-percent vendor" classification not apply to internet vendors for fear it would inhibit small vendors starting their internet presence with WIC. Other commenters stated that assessing for above-50-percent status would not be relevant for internet vendors as their statewide sales operations would be so large that they would never derive more than half of their sales from WIC.

Assessing for and monitoring above-50-percent vendors is an important part of the WIC Program's efforts to ensure State agencies can continue containing costs and avoiding fraudulent activity. The Department believes it remains important to evaluate all vendors, including internet and mobile vendors, for above-50-percent vendor status to ensure vendors that derive more than 50 percent of their annual sales revenue from WIC are appropriately monitored to prevent fraud. While it may be the case for some internet vendors, the Department cannot say with full certainty that all internet vendors will operate statewide and process enough in online sales to not meet the above-50-percent threshold. Therefore, it will remain a requirement for all vendor types to be assessed for "above-50-percent vendor" status.

The Department received a comment requesting clarification on whether an above-50-percent vendor is considered a vendor type, similar to how brick-and-mortar, internet, and mobile vendors are all types of vendors, or if instead it is a classification of vendor.

The Department clarifies an above-50-percent vendor is not a vendor type, but a classification of vendor. Any vendor that meets the definition of above-50-percent vendor, regardless of type, must be classified as an above-50-percent vendor.

Finally, a commenter recommended that USDA include a definition of "regular vendor" to account for vendors not classified as above-50-percent vendors.

The Department considered this request but concluded it was unnecessary and may cause additional confusion. The regulations at § 246.12 refer to "regular vendors" only when making comparisons to above-50-vendor vendors. As a "regular vendor" is any type of vendor that is not classified as an above-50-vendor, it is the assumed normal classification and does not need further defining.

c. Modernize the definition of "vendor" to be inclusive of new vendor types. [§§ 246.2 & 246.4(a)(14)(xv)]. The provision revising the definition of vendor at § 246.2 is finalized with modifications to streamline the definition and remove the SNAP reference while maintaining that all vendors, regardless of type, must be separately authorized. The provision requiring State agencies to justify the need for mobile stores in their State Plans at § 246.4(a)(14)(xv) is removed as proposed.

i. Remove the requirement that vendors must have a single, fixed location, simplify the definition of vendor, and clarify that all vendors must be authorized separately. (§ 246.2)

This final rule codifies the revised definition of vendor at § 246.2 allowing State agencies to authorize the vendor types included in this final rule by removing the requirement that vendors

must have a single, fixed location and that State agencies must delineate the different business structures of vendor applicants. The Department modified the provision to streamline the definition and removed the reference to SNAP.

Comments were overwhelmingly supportive of removing the requirement that State agencies may only authorize vendors with a single, fixed location. Commenters also supported simplifying the definition of vendor by replacing current regulatory language delineating different business structures that a vendor may have (i.e., a sole proprietorship, partnership, cooperative association, corporation, or other business entity) with the term "business entity." Commenters asserted this would benefit State agencies and vendors by decreasing the burden of determining the business structure during the vendor application process. No comments were opposed. Commenters generally supported the requirement that all vendors be authorized separately to support vendor management activities.

Some commenters stated the new vendor definition complicated whether each vendor, regardless of type, must be separately authorized, and recommended the definition be more concise. Some expressed concern about how to interpret the entity to be authorized as an internet or mobile vendor, as the proposed definition only discussed separate "store" locations. Some commenters expressed concern about the general reference to SNAP authorization in the definition, with some stating the reference should be either further clarified or removed.

The Department added "each store, internet retailer, and mobile vehicle constitutes a unique vendor and must be authorized separately" to the revised definition of vendor to clarify the unique entity that must be separately authorized as a vendor, regardless of affiliation with other vendors. This will require internet and mobile vendors to be separately authorized from brick-and-mortar vendors, which will support State agency vendor management activities such as authorizing, monitoring, and sanctioning individual vendors without impacting other authorized vendors that may be under the same responsible entity.

The Department agrees with streamlining the definition by removing the reference to SNAP authorization. At the time of the proposed rule, the Department believed that tying one SNAP authorization to one WIC authorization per State agency would be the most efficient way to ensure that cross-program integrity efforts could continue without interruption following the introduction of internet vendors. However, the WIC online shopping projects have since demonstrated that doing so may limit State agency options and flexibility for effectively managing their internet vendor population.

Requiring State agencies to authorize internet vendors separately from brick-and-mortar vendors (as discussed above in section V.1.b.ii) is sufficient to allow for ongoing coordination of vendor/retailer activities between WIC and SNAP (e.g., reciprocal disqualifications, etc.) and enables WIC vendor integrity efforts to move forward consistently. Removing the reference to SNAP authorization in the vendor definition provides WIC State agencies the flexibility to authorize internet vendors using a method that best meets their vendor management needs. The separate authorization of each unique vendor is consistent with how the WIC Program currently authorizes vendors, and the separate authorization of internet vendors from brick-and-mortar vendors aligns with SNAP's authorization practices.

The Department would like to highlight that § 246.12(g)(9), which requires the State agency to collect a vendor applicant's SNAP authorization number if the vendor applicant is authorized in SNAP, is maintained in this final rule, which will continue to support State agency ability to ensure cross-program integrity efforts.

Commenters requested clarification on whether § 246.12(h)(1)(i) remains applicable, which permits State agencies to use a single agreement to cover multiple vendors operated by the same responsible entity (e.g., chain stores).

The Department confirms § 246.12(h)(1)(i) remains applicable, and a vendor representative may obligate more than one vendor (e.g., a single agreement to cover multiple vendors), as long as

each vendor itself is authorized separately, and the agreement specifies all vendors covered by the agreement. Any administrative action the State agency applies must only be applied to the specific vendor with which the violation was found. This allows the State agency to, for example, disqualify a single store of a large chain without impacting other stores that are in compliance. This will continue to support State agencies in ensuring adequate participant access to vendors throughout their jurisdictions. As § 246.12(h)(1) is maintained in this final rule, State agencies can continue to sanction multiple vendors for a vendor violation committed by owners, officers, or managers of the responsible entity if the State agency determines that the vendor violation involves multiple vendors. Requirements related to changes in ownership of the vendor, per § 246.12(h)(3)(xviii), will apply to all vendors under the responsible entity as is currently required.

Some commenters expressed concern that the separate authorization of internet vendors would substantially increase the number of authorized vendors and associated vendor management activities.

The Department reiterates that an internet vendor completing internet-based WIC transactions through an online ordering system, platform, or site must be authorized as a unique vendor. However, the Department clarifies that a State agency may choose to authorize an internet vendor that fulfills its orders from any number of brick-and-mortar stores, fulfillment centers, or warehouses to serve throughout a State agency’s entire jurisdiction as a single authorized vendor. The Department believes this will mitigate a State agency's vendor count increasing exponentially and allow retailers sourcing orders from multiple fulfillment locations the flexibility to participate in WIC in a minimally burdensome manner. The Department further notes an authorized internet vendor sourcing orders from multiple fulfillment locations would not need to show that each fulfillment location meets federal and State agency selection criteria, such as the minimum variety and quantity of supplemental foods, so long as the vendor can prove that

their online ordering operations as a whole meet those criteria. State agencies retain the option to authorize each fulfillment location that meets the definition of a vendor and all federal and State agency selection criteria as a unique internet vendor, if that approach allows them to best manage and oversee their internet vendor population.

ii. Remove a clause in the definition of "vendor" requiring a special needs justification for mobile vendors and remove associated language from the State Plan requirements. (§§ 246.2 and 246.4(a)(14)(xv))

This final rule codifies the removal of the requirement in the definition of vendor at § 246.2 for State agencies to justify mobile vendors in the State Plan at § 246.4(a)(14)(xv).

This change received overwhelming support, with commenters stating this will allow State agencies to authorize mobile vendors more efficiently and will remove the burden of justifying authorization. Commenters suggested this change will better serve WIC participants with barriers to accessing brick-and-mortar vendors. No comments were opposed.

d. Allow vendors to return electronic benefits to a participant's benefit balance [§§ 246.12(h)(3)(ii) No substitutions, cash, credit, cash refunds, or exchanges, (ii)(A) and (C), § 246.12(x)(2)(iii), and § 246.12(x)(4) Return of benefits, (4)(i), (4)(ii), and (4)(iii)]. The provisions clarifying cash refunds are still prohibited, § 246.12(h)(3)(ii) No substitutions, cash, credit, cash refunds, or exchanges, and (ii)(A), are finalized with modifications to clarify further what types of cash refunds are prohibited. The provision to update the exchange policy to accommodate recalls, § 246.12(h)(3)(ii)(C), is finalized with modifications to reflect changes from the Implementation of the Access to Baby Formula Act of 2022 and Related Provisions Final Rule by clearly defining a supplemental food recall in 7 CFR § 246.2. The provision to allow vendors to return electronic benefits to a participant's balance, § 246.12(x)(4) Return of benefits, is finalized with modifications to allow returns with any vendor type, not just internet

vendors, and to include timeframes in which benefits must be returned in § 246.12(x)(4)(i) and (ii), and to clarify State agencies must provide at least until the end of the original benefit issuance period for participants to use returned electronic benefits, and that it is a State agency option to allow participants to transact returned benefits after the last date of use (LDTU) for up to seven (7) days after the LDTU, § 246.12(x)(4)(iii). The provision describing the last date of use, § 246.12(x)(2)(iii), is finalized with modifications to reflect this new flexibility of using returned benefits after the last date of use.

i. Clarify that cash refunds are still prohibited and update the exchange policy to accommodate recalls, ensuring that WIC shoppers are treated the same as other customers in the event of a recall. (§ 246.12(h)(3)(ii) No substitutions, cash, credit, cash refunds, or exchanges, (ii)(A), and (ii)(C))

This final rule codifies the revised provision regarding prohibition of cash refunds, § 246.12(h)(3)(ii) No substitutions, cash, credit, cash refunds, or exchanges, and (ii)(A), with modification to specify the types of refunds for supplemental foods that are not allowable. This final rule also codifies the provision § 246.12(h)(3)(ii)(C) explaining the requirement for exchanging supplemental foods to ensure all customers, including WIC shoppers, are treated the same in the event of a supplemental food recall, as defined at § 246.2.

Multiple commenters supported the clear prohibition of cash refunds, and no comments were opposed. One commenter noted there are other types of refunds commonly used beyond cash that should also be prohibited, such as store credit and gift cards.

The Department agrees that refunds other than cash should not be provided in exchange for supplemental foods and modified § 246.12(h)(3)(ii)(A) accordingly to include a prohibition on cash-like refunds, including but not limited to store credit and gift cards.

Many commenters supported the new provision at § 246.12(h)(3)(ii)(C) requiring vendors to treat all customers, including WIC shoppers, the same in the event of a supplemental food recall.

Commenters referenced the infant formula recall of 2022 and how the changes would help ensure that WIC participants can be treated like all other customers.

One commenter understood this new provision to conflict with the updated prohibition on cash refunds at § 246.12(h)(3)(ii)(A), and other commenters requested clarification on what is considered a "substitute product." Others expressed concern that customers would be charged for new items in the replacement process.

The Department clarifies that under ordinary circumstances, cash refunds are not allowed in WIC. Vendors are only allowed to provide cash refunds when supplemental foods are recalled, as described in § 246.12(h)(3)(ii)(C), and only if 1) doing so aligns with store policies and 2) cash refunds are also provided to non-WIC customers impacted by the recall. Similarly, if the vendor provides replacement products or store credit during a recall, this provision requires WIC participants to be allowed those same courtesies.

Following publication of the Implementation of the Access to Baby Formula Act of 2022 and Related Provisions Final Rule, which codified the definition of recall at § 246.2 as it pertains to supplemental foods, the Department modified the provision at § 246.12(h)(3)(ii)(C) to clarify this provision only applies during a supplemental food recall, rather than any type of supply chain disruption. The Department will not strictly define "substitute product" or require the vendor or State agency to approve substitute products for supplemental foods in the event of a recall. The Department believes doing so would negate the intent of this provision, that vendors treat WIC participants the same as non-WIC shoppers in the event a supplemental food is recalled. Vendors treating WIC participants the same as any non-WIC shopper in the instance of a supplemental food recall includes not charging participants for replacement items.

ii. Allow for the return and use of returned electronic benefits. (§ 246.12(x)(4) Return of benefits, (4)(i), and (4)(ii))

This final rule codifies provisions for the return of electronic benefits to a participant's benefit balance at § 246.12(x)(4) Return of benefits, with modifications to allow for the return and use of electronic benefits for all WIC shoppers regardless of vendor type and clarifies the timeframes in which benefits must be returned in § 246.12(x)(4)(i) and (ii). Many commenters supported these provisions with no comments opposed.

The Department originally proposed that benefits only be returned in instances when an online order is not fulfilled. Multiple commenters discussed concerns related to this provision as proposed, stating that WIC participants shopping in-store do not have the option to make returns and suggesting the return of benefits should not only apply to those shopping online. Commenters also discussed the technical infeasibility of only allowing returns for online orders, and that if implemented as proposed, the burden of confirming the original transaction took place online would fall on each individual cashier.

The Department recognizes and agrees with the concerns raised by commenters. With the proposed provision, the Department intended to ensure WIC participants shopping online have recourse in the event an item is missing or incorrectly fulfilled and that the State agency is only charged for foods received by the participant. The Department modified this provision to allow for the return of electronic benefits for all vendor types. This is intended to promote an improved WIC shopping experience for participants, to ensure vendors are treated consistently regardless of vendor type, and to accommodate the technical capabilities of vendor systems. If the State agency authorizes internet vendors, they must also allow for the return of electronic benefits for all other vendor types, to include transactions that take place at a brick-and-mortar or mobile vendor. If a State agency does not authorize internet vendors, they have the option – but are not required – to allow for the return of electronic benefits for other authorized vendor types.

Some commenters expressed concern with the lack of required timeframe for an internet vendor to initiate the return of electronic benefits. The Department agrees that a required timeframe for the return of electronic benefits will help ensure participants can use returned electronic benefits within a reasonable timeframe. Therefore, the Department modified the provision to include language requiring the timeframes in which the vendor must process the return of electronic benefits. If the participant returns an item in-person, regardless of where the item was purchased, the vendor must process the return of electronic benefits immediately so that the participant has the option to use their benefits while at the store. For post-delivery returns, such as those returned via mail or for an order that was incorrectly fulfilled or not fulfilled at all, the vendor must process the return of electronic benefits within two (2) company business days after receipt of the returned item or indication of an incorrectly fulfilled or unfulfilled item. This aligns with SNAP policies for returning items ordered online.

One commenter noted current regulations require State agencies to issue a three-year sanction to vendors that charge for food not received, without exceptions for returned electronic benefits. The commenter is correct that per § 246.12(l)(1)(iii)(E), the State agency must disqualify a vendor for three years for a pattern of charging for supplemental foods not received by the participant. The Department highlights that each State agency develops their own definition of a pattern for each violation, with discretion over what constitutes a pattern including frequency of violation, time periods, and dollar amounts. As discussed above, the Department added language requiring vendors to initiate the return of electronic benefits within two (2) days of indication that an order was unfulfilled. So, for example, if the State agency determines there is a pattern of unfulfilled orders from a given vendor and the electronic benefits are not being appropriately returned to the participant's balance, the State agency may use its definition of pattern to identify this as a violation and take appropriate follow up action per § 246.12(l)(1)(iii)(E).

Some commenters stated that as EBT, MIS, and vendor systems exist now, it is not possible to return electronic benefits to the participant's balance. The Department understands that currently, systems do not allow for the return of electronic benefits because of the previous regulatory prohibition. With this final rulemaking, the Department encourages system updates to accommodate the return of electronic benefits, a requirement for State agencies authorizing internet vendors and an option for all others.

Many commenters highlighted the need for guidance on managing substitutions when an order is submitted but the specific item requested is not available when the order is fulfilled.
The Department agrees and intends to work with State agencies to develop guidance and provide best practices for managing substitutions separate from this rulemaking.

iii. At State agency option, allow participants the flexibility to transact returned electronic benefits up to seven (7) days beyond the last date of use (LDTU). (§§ 246.12(x)(2)(iii) and 246.12(x)(4)(iii))

This final rule codifies a State agency option to allow participants to use returned electronic benefits up to seven (7) days beyond the LDTU at § 246.12(x)(4)(iii) and makes related modifications to the last date of use provision at § 246.12(x)(2)(iii). This is a modification from the proposed rule which *required* State agencies to provide this flexibility. This final rule requests comment specifically on the impacts of requiring the return of benefits after the LDTU to better understand the costs and burdens that these required flexibilities could have on stakeholders and their systems.
Multiple commenters expressed support for this provision noting it allows participants time to use electronic benefits returned to their benefit balance.

The Department originally proposed that State agencies must allow returned benefits to be available for participant use for a minimum of seven (7) days after the return, which could extend into the next benefit period. Many commenters expressed concerns related to the technical challenges of allowing for the use of electronic benefits after the LDTU, explaining this would require significant changes to MIS and EBT systems, and could impact vendor systems. Many commenters strongly recommended that returned electronic benefits only be allowed for use within the current benefit period to implement this change more easily and cost-effectively. Multiple commenters also said the instances in which participants would need to use returned benefits after the LDTU would be rare and that these situations were better mitigated with continued participant education that encourages participants to use their electronic benefits well before the benefit LDTU.

The Department recognizes the technical challenges of allowing the use of returned electronic benefits after the LDTU and does not want these to be a barrier to innovating the WIC shopping experience, including implementing online shopping. Due to the concerns raised and the desire to support State agencies implementing online shopping, the Department modified the minimum amount of time State agencies must provide participants to use returned electronic benefits from "no less than 7 calendar days" to "the remainder of the benefit issuance month." Electronic benefits that are returned to a participant's balance must be available for use within the original benefit issuance month, but the State agency is not required to allow use of returned electronic benefits beyond the LDTU. This minimum amount of time better aligns with program operations and benefit issuance systems. To support those State agencies with providing greater flexibility to their participants, the Department is making the use of returned electronic benefits after the LDTU allowable as a State agency option. The Department recognizes that for State agencies that do not take this option, there may be some participants who will have a reduced amount of time to transact their returned benefits if they are returned in the last few days of the benefit issuance month. However, the Department agrees with public comment that the instances in

which participants would need to use returned benefits beyond the LDTU would be rare and are better mitigated with continued participant education. In these situations, where State agencies do not opt to allow the use of returned benefits beyond the LDTU, the Department notes that all participants maintain the ability to exchange identical authorized supplemental foods per § 246.12(h)(3)(ii)(A).

To support State agencies in implementing this flexibility in the long term, the Department is requesting comment regarding the impact on stakeholders if State agencies were required to allow the use of returned electronic benefits beyond the LDTU. The Department requests input that includes a discussion of:

- The technical changes that would be necessary to allow this functionality,
- The cost of changing the MIS and EBT systems to allow this functionality,
- The cost of this type of change for vendor systems,
- The specific impact on reporting and infant formula rebates and contracts, and
- Any other comments or concerns related to this type of functionality.

The Department appreciates specific, detailed comments on the use of returned electronic benefits beyond the LDTU and will use feedback received to inform future rulemaking.

Commenters also requested clarification on whether there was a maximum number of days beyond the LDTU in which a participant may use returned electronic benefits, expressing concern that as proposed, returned electronic benefits would be available in the benefit balance indefinitely.

It is a core tenet of the WIC Program that benefits are intended to be used within the month they are issued, and it would be inconsistent with that tenet for benefits to be available indefinitely. The Department has modified the provision to establish a maximum of seven (7) days that returned electronic benefits can be used after the LDTU for State agencies that allow this flexibility. This provides uniform direction for State agencies regarding how long returned

electronic benefits may be available for participants to transact, should State agencies pursue this option.

Commenters discussed issues of fairness with the provision as proposed, stating that participants facing transaction challenges in-store do not have an opportunity to use their electronic benefits beyond the LDTU in the event of issues such as vendor system problems, card errors, or family crises. As a solution to this issue, many commenters requested a full rollover of all unredeemed electronic benefits to the next month.

The Department clarifies that because the return of electronic benefits is allowed for all vendors and not just internet vendors, the option for using returned benefits beyond the LDTU applies to all participants, not just those using online shopping. Additionally, it is important to note this provision is addressing a specific situation that applies to those electronic benefits that have been transacted but subsequently returned to the participant's benefit balance. This provision is not permitting the "rollover" of electronic benefits that were never transacted. Other scenarios that impact benefit transaction, such as issues related to vendor system problems and card errors, are out of the scope of this rulemaking.

Some commenters expressed concern about the over-issuance of electronic benefits if participants are allowed to transact electronic benefits from one issuance month during the following issuance month. The Department clarifies that this is not over-issuance as the State agency is not issuing benefits in excess of the participant's maximum quantities of supplemental foods but is instead extending the dates of use for validly issued electronic benefits.

e. Allow State agencies to develop virtual methods of oversight [§§ 246.2 and 246.12(g)(5) and (j)(6)(ii)(B)]. Provisions in this section allowing virtual methods of routine monitoring, compliance buys, and preauthorization visits are finalized as proposed.

i. Update the definitions of "routine monitoring" and "compliance buy" to remove the on-site requirement. (§ 246.2)

This final rule codifies revisions to the definitions at § 246.2 of "routine monitoring" and "compliance buy" as proposed to remove the requirement that routine monitoring visits and compliance buys must occur on-site.

Multiple commenters expressed general support for allowing State agencies to develop virtual methods of oversight, stating that it will be necessary to support the authorization of internet vendors. Commenters also stated it would support consistent monitoring in the face of environmental challenges and referenced the success of virtual monitoring during the COVID-19 pandemic. No comments were opposed.

Commenters requested clarification on whether on-site monitoring is still an option, or if all oversight must take place virtually.

The new definitions do not require State agencies to use virtual methods of oversight, they instead provide State agencies the opportunity to develop virtual methods of oversight to ensure that monitoring and investigative methods are appropriate for the types of vendors authorized (e.g., internet vendors) and environmental conditions. With this change, State agencies can pursue new types of monitoring and investigative methodologies, yet still retain discretion over how these activities are implemented.

Commenters requested clarification on if the new vendor types change the requirements regarding monitoring and compliance, specifically the number of monitoring and compliance activities the State agency must complete each fiscal year.

The only changes to routine monitoring and compliance buys in this rulemaking are to remove the on-site requirement. The number of monitoring and compliance investigation activities that the State agency must complete remains the same.

ii. Introduce virtual visits as an allowable type of preauthorization visit. (§ 246.12(g)(5))

This final rule codifies revisions as proposed to introduce virtual visits as an allowable type of preauthorization visit at § 246.12(g)(5). Commenters supported this provision, stating the proposed change is effective and will reduce costs, and the flexibility proved helpful in supporting State agencies in continued authorization of vendors during the COVID-19 pandemic. No comments were opposed.

Some comments sought clarification on whether virtual preauthorization visits were a requirement and asked the Department to define a virtual visit.

As with virtual options for routine monitoring and compliance buys made possible through this rulemaking, virtual preauthorization visits are not a requirement, but an option for the State agency to use to authorize new vendor types efficiently and to respond to environmental conditions appropriately. The Department clarifies virtual preauthorization visits can be used for any vendor type and are not just for internet vendors. The Department does not define a virtual visit in regulation but clarifies the purpose of the preauthorization visit is to verify the information provided on the vendor application, and to ensure the vendor applicant meets the selection criteria used by the State agency to select vendors for program authorization. This applies to internet and mobile vendors the same as it applies to brick-and-mortar vendors.

f. Prohibit vendors, farmers or farmers' markets from charging State agencies fees associated with WIC purchases and permit WIC shoppers to pay such fees [§§ 246.12(h)(3)(xxxiii) and (v)(1)(ix) and 246.14(b)(1)(i)]. The finalized provisions prohibiting vendors at § 246.12(h)(3)(xxxiii) and farmers or farmers' markets at § 246.12(v)(1)(ix) from charging State agencies fees associated with online shopping are modified to include the prohibition of charging fees associated with any WIC purchase, not just online shopping purchases. The provisions clarifying that State agencies can still pay costs associated with home food delivery and direct distribution at § 246.14(b)(1)(i) and (c)(4) are modified to clarify that State agencies can

continue using food funds to pay for the cost of transporting food under these two food delivery systems, as opposed to the retail food delivery system in which State agencies cannot use food funds to pay for the cost of transporting food.

i. Prohibit vendors, farmers, and farmers' markets from charging State agencies fees associated with WIC purchases and permit WIC shoppers to pay such fees. (§§ 246.12(h)(3)(xxxiii) and 246.12(v)(1)(ix))

This final rule codifies the provision at § 246.12(h)(3)(xxxiii) prohibiting vendors from charging State agencies fees associated with online ordering and with modifications to clarify this prohibition applies to all vendors and fees associated with WIC purchases to ensure consistency for vendors and shoppers. The provision at § 246.12(v)(1)(ix) regarding farmers and farmers' markets is finalized with similar modifications to reflect the prohibition on all fees, rather than just online shopping fees. This final rule also codifies in both provisions that participants must be allowed to pay such fees using a different form of tender.

Many commenters supported these provisions, expressing that State agencies should not pay online shopping fees as online shopping is a customer preference. Commenters also supported the requirement that participants be allowed to pay these fees using another tender type, if the same fees are charged to non-WIC shoppers, to ensure WIC customers are treated the same as non-WIC customers.

As the proposed provision only prohibited vendors from charging fees associated with online ordering, some commenters recommended modification to include fees charged by other WIC vendor types, such as bag fees or convenience fees. Commenters stated that to ensure vendor types are treated equally, any fees vendors charge shoppers as part of or in addition to their purchase should not be charged to State agencies.

The Department agrees the prohibition of vendors charging State agencies fees associated with WIC purchases should not be dependent on the type of vendor. To ensure State agencies hold all

vendor types to the same federal regulatory requirements, the Department modified the regulatory language to reflect that vendors must not charge State agencies for any fees associated with a WIC purchase, including but not limited to delivery, service, convenience, or bag fees. If there is a fee associated with the purchase, the participant must have the opportunity to pay that fee using another tender type. To ensure the same policy applies to farmers and farmers' markets, related changes were made to § 246.12(v)(1)(ix). These provisions are not applicable to EBT costs, including operational costs, interchange fees, and third-party processing fees. The regulations related to EBT fees are governed by § 246.12(h)(3)(xxviii), (xxix), (xxx), § 246.12(aa)(3) and (4) and remain unchanged by this rulemaking.

The Department requested specific feedback on whether State agencies should have the option to pay for fees associated with online shopping in a retail food delivery system with either (1) non-federal funding at State agency discretion and/or (2) federal funding in situations where it is deemed necessary to meet special needs. The Department appreciates the robust discussion provided by commenters and addresses this below.

Many commenters requested State agencies retain discretion on the use of non-federal funds to pay for such fees. Commenters shared that the use of federal funds under special circumstances would be particularly helpful for rural, remote, isolated, under-resourced, and participants with disabilities, and those impacted by disasters and public health emergencies, if targeted appropriately. Some commenters, however, stated that expanding the food package and serving all eligible participants should be the focus of discretionary federal WIC funds, and expressed concern about adequately containing the costs and ensuring program integrity if paying such fees using federal funds was deemed necessary.

The Department appreciates concerns regarding access to WIC benefits and efficient use of taxpayer funds. The Department also acknowledges State agencies are best suited to understand the unique needs of their participant population and believes State agencies should have

flexibility to use non-WIC funds when available. Therefore, the Department confirms that non-WIC funds can be used at State agency discretion. This includes but is not limited to funds provided to the State agency by state, tribal or territorial governments, funds provided from non-profit organizations, or non-WIC federal funds available to the State agency, if it is an allowable use of those funds.

The Department thoroughly considered the comments regarding the special circumstances under which it would benefit participants to use federal WIC funds to pay these fees, especially to support access for participants in rural and remote locations or participants with disabilities. However, the Department also recognizes the concerns related to the limited federal funding available and the many questions related to how costs would be adequately contained, and ensuring program integrity if federal funds were to be used to pay such fees. Therefore, to maintain the integrity of the WIC Program and ensure that federal WIC dollars continue to be used for only food costs and the administration of WIC, the Department finalizes that federal WIC funds may not be used to pay these fees.

Some commenters requested the Department amend the equal treatment provision at § 246.12(h)(3)(iii) to allow for preferential treatment of WIC shoppers so that vendors can waive delivery fees for WIC customers. Some commenters likened delivery fees to sales taxes, and requested the Department create a similar regulation to § 246.12(h)(3)(vii) which prohibits the collection of sales tax on WIC foods.

The equal treatment provision at § 246.12(h)(3)(iii) has implications for program integrity and vendor management, both of which support cost containment in the WIC Program. Any revision to the equal treatment provision is out of the scope of this rulemaking. The Department acknowledges the collection on sales tax on WIC foods is prohibited, pursuant to the Child Nutrition Act at 42 U.S.C. § 1786(c)(4). However, sales tax generates revenue for government services and is inherently different from the costs associated with shopping, such as delivery

fees, which are fees charged by the vendor to provide a service. If the Department were to prohibit vendors from charging these fees altogether, it could force vendors to cover a cost that they do not cover for non-WIC shoppers and discourage vendors from providing online shopping options for WIC.

ii. Clarify costs associated with home food delivery and direct distribution to ensure State agencies still pay for the cost of transporting food under these two food delivery systems. (§ 246.14(b)(1)(i))

This final rule codifies the provision § 247.14(b)(1)(i) with modifications clarifying that WIC State agencies operating home food delivery or direct distribution food delivery systems may continue using the food grant to pay for the cost of transporting food under these delivery systems. Commenters expressed general support for the clarifications, and no comments were opposed.

One comment recommended revising the provision on the grounds that it was difficult to understand.

The revisions to § 246.14(b)(1)(i) are intended to differentiate the costs that the State agency can charge to the food grant by food delivery system. To summarize, food funds can be used to pay for:

- Supplemental foods purchased by participants using WIC electronic benefits in a retail food delivery system, and/or
- The acquisition of supplemental foods provided to State agencies, local agencies, or participants, whichever receives the supplemental foods first, in a home food delivery system or a direct distribution delivery system.

The edits clarify that in a retail food delivery system, participants, not State agencies, purchase supplemental foods from retail vendors and that food funds cannot be used to pay for the delivery of those foods. In home food delivery and direct distribution systems, food funds can

continue to be used to pay for shipping supplemental foods to State or local agencies, or participants, whichever receives the supplemental foods first.

2. Streamline and Modernize WIC Food Delivery

This final rule permits the remote issuance of electronic benefits to a participant's benefit balance, expands the definition of food instrument, updates the uniform food delivery systems provision to support State agency innovation, streamlines food delivery operations by recognizing that EBT data are a sufficient replacement for routine shelf price collection, and allows State agencies using a non-retail, home food delivery system to ship supplemental foods to a location designated by participants.

a. Permit the remote issuance of electronic benefits to a participant's benefit balance [§§ 246.4(a)(23), 246.7(f)(2)(iv), and 246.12(r)(2), (4), and (5)]. The provisions clarifying that paper food instruments must be picked up in person when in-person nutrition education or certification appointments are scheduled, § 246.12(r)(4), is finalized as proposed. The provision updating processing timeframes to support the remote issuance of benefits, § 246.7(f)(2)(iv), and the State Plan provision discussing remote benefit issuance policies, § 246.4(a)(23), are finalized as proposed. The provision allowing for the remote issuance of benefits and mailing of EBT cards at § 246.12(r)(5) is finalized with modifications that ensure the State agency has adequate program integrity measures in place for proof of participant receipt when EBT cards are issued remotely, and the provision at § 246.12(r)(2) describing signature requirements for benefit issuance is finalized with modifications that clarify a signature is only required when benefits are received in person.

i. Allow for the remote issuance of electronic benefits by separating the benefit issuance provisions for paper food instruments and cash-value vouchers from electronic benefit

issuance, and update signature requirements. (§§ 246.12(r)(2), (4) and (5), and 246.7(f)(2)(iv))

This final rule codifies revisions separating paper food instrument and cash-value voucher issuance requirements from EBT card and electronic benefit issuance requirements. Changes to § 246.12(r)(4) describing the paper food instrument and cash-value voucher pick up are finalized as proposed. The EBT card and electronic benefit issuance provision, § 246.12(r)(5), is finalized with modifications requiring the State agency to have program integrity procedures in place for EBT cards that are issued remotely. This final rule codifies signature requirements for benefit issuance at § 246.12(r)(2), modifying the language to more explicitly state that a signature is required only when benefits are received in person. Updates to the processing timeframe requirements to support remote benefit issuance at § 246.7(f)(2)(iv) are finalized as proposed. Many commenters offered significant support for changes supporting remote benefit issuance, stating it would allow for benefit administration in the event of a disaster or other public health emergencies and would provide maximum flexibility for WIC participants and staff. No comments were opposed.

Commenters requested clarification as to when participants could receive EBT cards and electronic benefits remotely, stating the language was unclear.

The Department clarifies that State agencies may mail EBT cards and issue electronic benefits remotely under any circumstances, including when the participant is scheduled for in-person appointments, as long as participants are still offered nutrition education in accordance with § 246.11(a)(2), the EBT cards and electronic benefits are issued within the processing timeframe requirements at § 246.7(f)(2)(iv), and the integrity of the program is not jeopardized.

Some commenters requested clarification of when participants must sign for the receipt of food instruments, cash-value vouchers, or authorized supplemental foods. The comments noted that

language in the proposed rule did not explicitly state when signatures are required. Other comments expressed concern regarding how State agencies can ensure program integrity when EBT cards are mailed and benefits are issued remotely, as the participant is not receiving the EBT card in-person.

To clarify when a signature is required, the Department modified language at § 246.12(r)(2) to specify a participant must sign for the receipt of their food instruments/benefits only when receiving them in person. When food instruments are mailed and/or benefits are issued remotely, a signature is not required.

The Department agrees it is important to maintain integrity while allowing for remote benefit issuance. While signatures are not required when EBT cards are mailed and benefits are remotely issued, the Department added language in § 246.12(r)(5) to clarify State agencies must have procedures in place to ensure receipt of the EBT card by the intended recipient. WIC State agencies have discretion in developing procedures, and the Department expects State agencies to utilize best practices and lessons learned from remote issuance previously available through time-limited waiver authority. The Department intends to assist State agencies by sharing such best practices and providing additional technical assistance, as needed, to ensure the security of mailed EBT cards.

ii. Create new definitions of "electronic benefits" and "cash-value benefits" and update the definition of "cash-value voucher." (§ 246.2)

This final rule codifies as proposed the new definitions at § 246.2 of "electronic benefits" and "cash-value benefits" to clearly define the benefits available to participants in the modern WIC Program. The rule codifies as proposed the revised definition of "cash-value voucher" to differentiate this type of paper food instrument from the newly defined "cash-value benefits," which are a type of electronic benefit.

Commenters largely supported these changes, stating the new and updated definitions provide important flexibility.

Commenters recommended that all instances of "cash-value voucher" throughout the regulations be updated to "cash-value benefit" to reflect the new definition. Other commenters expressed concerns that without appropriate edits to existing mandatory sanction language, inadvertent gaps will inhibit State agencies' ability to sanction vendors and recommended amending the sanctions provisions to reflect the new definitions.

The intent of this rule is to remove barriers to online shopping and take the first step in modernizing the language to reflect today's program. Due to the nature of this rulemaking, the Department could not fully update all regulations to reflect the new definitions. The Department intends to fully update and modernize the language, including updating regulations from "cash-value voucher" to "cash-value benefit" and the mandatory sanction language, in future rulemaking. However, the Department recognizes the need for consistent application of the definition of "electronic benefits" to ensure program integrity with respect to sanctions, and therefore affirms the remaining regulatory language enables State agencies to issue appropriate sanctions in the instances of vendor violations related to food instruments, cash-value vouchers, WIC electronic benefits, and supplemental foods.

b. Expand the definition of food instrument [§ 246.2]. This final rule codifies the proposed definition of "food instrument" in § 246.2 to allow WIC State agencies to explore and adopt new food instrument technologies.

Many commenters supported the updated definition of food instrument, stating this would enhance program flexibility and that updates allowed by this change could draw in younger WIC participants, mitigate stigma associated with the checkout process, and decrease program costs. No comments were opposed.

Some commenters recommended removing the word "food instrument" altogether, while others included recommendations to allow specific technology types, such as mobile wallets, near field communication (NFC) and quick response (QR) technology. Commenters also urged alignment with the SNAP mobile payments pilot.[13]

The Department decided not to name types of allowable technologies so as to not limit future innovation. Maintaining the term "food instrument" allows the Department to be inclusive of any future technologies beyond the EBT card. Where possible, the Department works to implement WIC and SNAP consistently. However, this rulemaking only governs regulations related to the WIC Program. With the implementation of new technologies, the Department will glean information from pilot projects in SNAP to inform technology development in WIC.

c. Update the uniform food delivery systems provision to support State agency innovation [§§ 246.2 and 246.12(b)]. The definition of "electronic benefit transfer" at § 246.2 is finalized as proposed to clarify that it is a benefit delivery method and not a food delivery system, and the food delivery provision at § 246.12(b) is finalized with modifications, allowing State agencies to permanently use more than one food instrument throughout a food delivery system.

i. Allow State agencies to develop and test new WIC food instrument types and clarify uniform food delivery systems and system combinations (§ 246.12(b)).

This final rule codifies the proposed uniform food delivery systems provision at § 246.12(b) to clarify that there are three food delivery systems – retail, home food delivery, and direct distribution. Modifications to the provision allow State agencies to make permanent new food instruments as long as the food instrument type is uniform and described and approved in the State Plan.

[13] SNAP Mobile Payment Pilot. https://www.fna.usda.gov/snap/mobile-payment-pilot.

Many commenters supported allowing State agencies to develop and test new WIC food instrument types within a single food delivery system (e.g., retail food delivery system). Supporters stated that this could enhance access to nutritious foods and provide State agencies with the ability to address the needs of different participants. No comments were opposed.

Multiple comments were concerned the conditions placed on the development and implementation of new food instruments would prevent State agencies from maintaining more than one food instrument type permanently. Commenters requested clarification from the Department about the intent of this provision and recommended that more than one food instrument type be allowed permanently.

The intent of this provision is to allow State agencies to explore new food instrument types to meet the needs of their diverse vendor and participant populations and to modernize benefit delivery as the grocery and payment industries innovate. For that reason, the Department has revised the language in this provision to clarify that State agencies can have more than one food instrument type (e.g., an EBT card and a mobile wallet) within a single food delivery system. State agencies may introduce and make permanent new food instrument types but must keep the technology and functionality uniform within each type of food instrument. The Department will still require the use of new food instrument types to be described in the State Plan and approved by FNA per § 246.4(a)(14)(i).

Many commenters supported updates clarifying State agencies may use a combination of retail, home food delivery, and direct distribution systems. Supporters stated that allowing all three food delivery systems mitigates barriers to participant access related to geographic limitations and cited feedback from WIC participants expressing support for home food delivery options. Commenters also supported updates to the definition of electronic benefit transfer (EBT) clarifying it is a benefit delivery method, not a food delivery system. Supporters said these

changes facilitate a better understanding of the definition of the term EBT and would allow for future modernizations.

Some comments requested clarification on the meaning of "procedurally uniform" and whether it relates to food instrument types, authorization processes, or transaction procedures.
The Department clarifies the meaning of "procedurally uniform" extends to the management of each food delivery system, as well as the use of food instruments by participants, to be consistent throughout the entire jurisdiction of the State agency. The intent of this is to ensure that State agencies are consistently applying vendor management and food delivery operations and procedures, and that the participant's experience using each food delivery system remains consistent throughout the State agency's jurisdiction.

d. Remove the requirement for State agencies to collect shelf price data, as EBT data are a sufficient replacement [§ 246.12(g)(4) Vendor selection criteria: competitive price, (g)(4)(ii)(B), and (g)(9)]. The removal of shelf price collection requirements in § 246.12(g)(4) Vendor selection criteria: competitive price, and (g)(4)(ii)(B), which allows State agencies to use EBT redemption data instead of shelf prices to monitor vendor compliance, is finalized with modifications that clarify State agencies re-authorizing currently authorized WIC vendors can use existing EBT data for price analysis. This final rule also removes the requirement at § 246.12(g)(9) that State agencies obtain shelf price data at vendor authorization if they have access to EBT data.
Many commenters provided support for these changes, stating they could mitigate burden and save time for State agencies and vendors. Other supporters asserted that using EBT data is more efficient and accurate for pricing trend analysis. No comments were opposed.

Some commenters highlighted that currently, State agencies can use an applicant vendor's EBT data if they are re-applying for authorization and questioned whether this would remain allowable under the revised regulation.

The Department clarifies that State agencies may continue using EBT data for an applicant vendor that is reapplying for authorization and made conforming edits to regulatory text.

Multiple commenters sought more information as to how pricing will continue to be monitored so that WIC participants are not charged more for foods than non-WIC participants.

The Department agrees with commenters on the importance of ensuring that vendors are not charging WIC participants higher prices than non-WIC shoppers. The Department clarifies the purpose of shelf price collection was to ensure cost competitiveness of a vendor applicant and that authorized vendors remained cost competitive when compared to vendors within their peer groups. With EBT, State agencies receive current data about vendors' prices in real time and can consistently ensure vendors are meeting cost competitiveness. While the regulatory requirement for collecting shelf prices is removed, the requirement to ensure cost competitiveness remains. The Department encourages State agencies to continue using EBT data in combination with effective peer groups, regular routine monitoring, and compliance investigations to ensure that participants are not being charged inappropriate prices for WIC supplemental foods.

Some commenters pointed out that by removing the requirement for shelf prices to be collected every six months, the Department also removed any timeframe requirement in which State agencies must collect price data and requested clarification if any timeframe requirements for analyzing price data remain.

The Department removed the requirement to collect shelf prices every six months where State agencies have EBT data, as updated EBT data is available to the State agency in real time. While the Department is not imposing a requirement for how often this data must be monitored, the

practice of sound cost containment requires ongoing monitoring of EBT prices. The Department expects this monitoring to continue according to the timeframes defined in § 246.12. State agencies remain responsible for having procedures in place to ensure authorized vendors do not increase prices to levels that would make them ineligible for authorization by the program, per § 246.12(g)(4)(iii).

e. Allow State agencies using a non-retail, home food delivery system to ship supplemental foods to a location designated by participants and approved by the State agency [§§ 246.2 and 246.12(m)]. This final rule codifies revisions to the definitions of "home food delivery contractor" and "home food delivery system" in § 246.2 and § 246.12(m) with modifications to allow participants receiving supplemental foods under a home food delivery system to designate the location of food delivery. As an additional measure of program integrity, the provisions are finalized with modifications to allow State agencies to approve the location of delivery so that supplemental foods are delivered to a reasonable location.

Many commenters supported this change, stating that it promotes access and convenience for participants in remote areas, and works to enhance food access for participants. Other commenters shared this would promote flexibility and choice for participants, especially those in vulnerable communities.

A few commenters shared concerns that this change leaves the program vulnerable to fraud and benefit misuse, and recommended changes to the description of where food can be delivered in home food delivery systems. These commenters suggested State agencies should have the opportunity to confirm supplemental foods are being delivered to a reasonable location as an additional measure of program integrity. Commenters also asked if participants are required to designate the location of the delivery.

The Department confirms the intent of this provision is to accommodate State agencies whose participants cannot receive foods at their home and agrees allowing the State agency to designate or approve the participant's preferred delivery location supports this intent and provides for continued program integrity. In response, the Department made appropriate modifications to the regulatory language. The Department also clarifies the participant is not required to designate the location of the delivery and that State agencies retain the option to designate the location of the delivery.

Many commenters requested clarification on whether this provision applies to delivery options for participants using online shopping. The Department clarifies this provision is specifically for home food delivery food systems and does not apply to participants using online shopping in a retail food delivery system.

The Department will not adopt the proposed revisions to § 246.12(g)(8) and § 246.12(h)(1)(i), which proposed to increase the maximum length of vendor agreement periods in § 246.12(h)(1)(i), and the minimum frequency that State agencies must accept and process applications in § 246.12(g)(8), from three to five years. The Department received extensive feedback, and while many commenters supported these changes, asserting the alleviation of administrative burden on State agencies would lead to improved program efficiency, other commenters expressed concern this could negatively impact participant access if State agencies with five-year application periods only review vendor applications with that frequency. Other commenters encouraged USDA to not allow State agencies to limit application periods to every five years.

The Department will not finalize these two proposed revisions in this rulemaking. Therefore, the minimum frequency that State agencies must accept and process applications in § 246.12(g)(8),

and the maximum length of vendor agreement periods in § 246.12(h)(1)(i) will remain at three years.

The Department notes that State agencies may and are encouraged to continue to reassess compliance with vendor selection criteria on an ongoing basis to ensure that vendors are adequately serving the WIC Program. State agencies retain the discretion to accept vendors at any time or establish application periods, with procedures for processing vendor applications outside of their timeframes.

3. Meet the Needs of a Modern, Data-Driven Program

The final rule updates reporting requirements necessary for federal oversight but will not adopt the proposed staffing standards for the food delivery coordinator role or new WIC State agency staff position.

a. Update reporting requirements for federal oversight [§ 246.12(j)(5)]. The provision in this section updating the reporting requirements for WIC food delivery systems is finalized with modifications at § 246.12(j)(5) to better reflect what WIC State agencies report to the Food Delivery Portal, and to maintain the current requirement that State agencies report data annually.

Multiple commenters expressed general support asserting this will support the WIC Program's transition to an enhanced data collection system.

Multiple opposed commenters stated that allowing the Department to request quarterly data submissions would create a larger administrative burden on State agencies and their staff.

The Department appreciates the feedback provided by stakeholders on the impact this change would have on State agencies. After further analysis of the burden estimate associated with this change, as well as a thorough review of the public feedback provided on the Agency Information

Collection Activities: Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Food Delivery Portal (FDP),[14] the Department will not include the ability to request quarterly data submissions for federal reporting in regulation at this time. Therefore, the frequency of federal reporting requirements will be maintained as annual, and the Department is confident that the continued submission of annual data is sufficient to ensure federal oversight.

The Department proposed revisions to § 246.3(e)(3) to update the WIC Food Delivery Coordinator standard and to create a new WIC State agency staff position, the WIC Customer Service Coordinator.

The Department received extensive feedback on the proposed staffing standards and appreciates input from various stakeholders on the impact the standards may have on State agencies and the program. Some commenters expressed concern related to the stringency of the standards and potential to limit the pool of candidates from which they can hire. Other commenters recommended the Department not regulate the education and experience of these positions but instead describe the roles and associated responsibilities, leaving education and experience requirements to State agency discretion. The Department believes it is vital that State agencies have staff with the skills necessary to successfully operate the modern WIC Program. While the Department is working to provide increased opportunities for State agency staff to build the necessary skills, including providing opportunities for technical assistance and digital services capacity building, the Department acknowledges the concerns raised and to retain State agency flexibility and discretion in hiring decisions, the Department will not finalize the proposed provisions in this rulemaking. State agencies may optionally implement more stringent standards at the State level. Additionally, the Department may consider options to address the above concerns in future rulemaking.

[14] Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Food Delivery Portal (FDP) (89 FR 14622). https://www.federalregister.gov/d/2024-04064.

4. Request for Public Comment on Key Topic Areas of Proposed Rule

a. Exceptions to minimum stocking requirements.

The Department received significant feedback and input from stakeholders related to the specific request for public comment on whether there is a need to authorize vendors that sell a specific subset of supplemental foods (e.g., dairies, bakeries, produce sellers) but would not meet the minimum variety and quantity of supplemental foods, as required by WIC regulations (i.e., two different fruits, three different vegetables, and at least one whole grain cereal per § 246.12(g)(3)(i)).

Given the overwhelming majority of comments shared concerns about the implementation of this change, including the impact it would have on State agency costs and oversight capacity, as well as the possible negative impact on small vendors, the Department will not introduce any changes to the minimum stocking requirements in this rulemaking. Commenters shared concerns that specialty stores sell fewer options at higher prices than non-specialty counterparts which would likely mean higher food costs, impacting peer grouping and cost-containment. Commenters also shared concerns about the extra workload for State agencies to authorize and monitor additional vendors that will likely have only a small amount of WIC transactions, and that retaining minimum stocking requirements helps make it more challenging for bad actors to fraud the program. Some commenters expressed concern that specialty stores would create competition with small vendors who struggle to meet requirements currently, potentially resulting in small vendors leaving the program. Due to these concerns, the Department will not introduce any changes to the minimum stocking requirements in this rulemaking. The Department will use the feedback provided to inform any future rulemaking related to exceptions to minimum stock and specialty vendors.

VI. Implementation

As most of the changes in this rule are optional and increase flexibility for State agencies, the Department proposed that the final rule would take effect 30 days after publication, except for the provisions related to the return of electronic benefits which State agencies would have 18 months to implement. The Department requested comments in the proposed rule on the administrative burden associated with the proposed implementation timeline.

Commenters generally highlighted time, limited resources, and extensive system changes needed to successfully implement some of the provisions in this final rule, especially those related to developing new transaction authentication policies. The Department reiterates that this rulemaking in large part introduces optional flexibilities that State agencies can choose to pursue on their own timeline and based on their capacity and interest. However, the Department acknowledges that several provisions will require all State agencies to update vendor agreements, policies, and procedures, and that many State agencies are currently using waivers to offer flexibilities that will be codified in this rulemaking. The Department is therefore extending the implementation deadline for the final rule to 90 days after publication, or no later than February 4, 2027, except for the provisions related to the return of electronic benefits.

Among the implementation challenges that commenters discussed were the EBT and MIS updates necessary to enable the return of electronic benefits. To provide WIC State agencies the time to develop and refine the technological solutions needed to allow for the return of electronic benefits, State agencies have until 24 months after the publication of the final rule, or no later than November 6, 2028, to comply with § 246.12(x)(4) Return of benefits (x)(4)(i), (x)(4)(ii) and (x)(4)(iii).

The final rule's effective date remains 30 days after publication, or December 7, 2026, as proposed. State agencies may choose to implement the rule's provisions in advance of the implementation deadlines listed above, following the effective date.

VII. Procedural Matters

Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be economically significant under Executive Order 12866 section 3(f)(1) and was reviewed by the Office of Management and Budget (OMB). Executive Order 14192 directs agencies to ensure the cost of new regulations does not place unnecessary burdens on the public. This final rule is an enabling regulation and therefore a deregulatory action under Executive Order 14192. The rule provides WIC State agencies with the flexibility to expand shopping options and explore new payment technologies, thereby resulting in potential time savings for participants and more efficient operations for State agencies.

Regulatory Impact Analysis

As required for all rules that have been designated as economically significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this rule. The complete RIA follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

Need for Action

To ensure that participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) have access to the same shopping options as non-WIC shoppers, with the expansion of online shopping in the retail grocery industry and the development of new payment types, the Department is removing barriers to online shopping and modernizing certain food delivery regulations in the WIC Program through this rulemaking. This rule complements the

Program's complete transition to electronic benefit transfer (EBT) and aims to meet the needs of a modern, data-driven program that uses current technologies for food delivery. These changes are expected to improve the WIC shopping experience while increasing access to healthy foods for WIC participants.

Costs

The Department estimates that the provisions under this rule will reduce costs for some stakeholders and increase costs and/or transfers for other stakeholders (Table 1).

The Department estimates that allowing WIC online shopping will increase federal WIC food spending, in the form of transfers, by a total of $315 million over the 5-year estimate period of FY 2027 to FY 2031. This is driven by an understanding that shoppers sometimes pay higher prices for online groceries and an expectation that online shopping will moderately increase WIC benefit redemption by making the WIC shopping experience more convenient for some participants.

The Department estimates that the rule will also result in around $32 million in net WIC State agency savings from FY 2027 to FY 2031. State agency savings will be driven by a large reduction in State agency reporting burden and recordkeeping burden, which is estimated to result in a savings of $50 million over 5 years and is largely attributable to the removal of shelf price collection requirements for EBT State agencies.[15] These savings will be partially offset by an estimated $18 million in total 5-year expenses required to update State agency systems to

[15] In a comment, one State agency noted that, since they have an exemption allowing them to forego collecting shelf prices, this provision does not result in administrative savings for them. Nevertheless, the Department recognizes this provision as a cost savings to State agencies in this analysis because this regulatory change makes the temporary savings permanent. This is consistent with how the Department has valued both savings and costs associated with making temporary program changes permanent via regulation in the past; see, for example, the Child Nutrition Program Integrity final rule (available online at https://www.federalregister.gov/documents/2023/08/23/2023-17992/child-nutrition-program-integrity) or the Revisions in the WIC Food Package final rule (available online at https://www.federalregister.gov/documents/2024/04/18/2024-07437/special-supplemental-nutrition-program-for-women-infants-and-children-wic-revisions-in-the-wic-food).

enable online transaction of WIC electronic benefits in State agencies adopting online shopping during this time.

In State agencies that allow WIC online shopping, WIC participants who choose to redeem at least some of their food benefits online are expected to save time by reducing how often they travel to purchase groceries in-store. Over 5 years from FY 2027 to FY 2031, the amount of travel time WIC participants save by replacing one in-store shopping trip with an online order per month is expected to be valued at a total of $103 million. This time savings will increase as more State agencies offer online shopping and as more participants choose redeem benefits online. Similarly, the provision allowing remote issuance of benefits also generates notable time savings to WIC participants by enabling less frequent visits to WIC clinics to reload their benefits between regular appointments. This time savings is estimated to be worth $92 million over 5 years for WIC participants.

Finally, the removal of shelf price collection requirements is also expected to significantly reduce burden on WIC vendors. The Department estimates that the reductions in vendor reporting burden under the rule will save WIC vendors $18 million over 5 years.

Table 1: Summary of Estimated Impacts on Transfers and Costs, FY 2027-2031

	Fiscal Year (millions)					
	2027	**2028**	**2029**	**2030**	**2031**	**Total**
Federal Transfers						
Impact of online shopping on federal WIC food spending	$ 33.5	$ 41.8	$ 59.0	$ 78.8	$ 101.4	**$ 314.5**
State Agency Costs						
Systems development and maintenance for online shopping	$ 2.8	$ 1.9	$ 3.1	$ 4.7	$ 5.2	**$ 17.7**
Changes to reporting and recordkeeping burden	-$ 9.5	-$ 9.8	-$ 10.0	-$ 10.2	-$ 10.4	**-$ 49.9**

WIC Vendor Costs						
Changes to administrative burden	-$ 3.4	-$ 3.5	-$ 3.6	-$ 3.7	-$ 3.8	**-$ 18.0**
WIC Participant Costs						
Time savings of online grocery shopping	-$ 11.0	-$ 13.7	-$ 19.4	-$ 25.9	-$ 33.3	**-$ 103.4**
Changes to administrative burden	-$ 17.6	-$ 18.0	-$ 18.4	-$ 18.9	-$ 19.3	**-$ 92.3**

Notes: All monetary figures are adjusted for annual inflation.

Benefits

The provisions under this rule modernize the ways that WIC participants can receive and transact their electronic benefits. An estimated 14 percent of the U.S. population lives in low-income census tracts with limited access to food stores,[16] and 21 percent of WIC participants report using a means of transportation other than their own personal car to travel to a vendor to use their WIC benefits.[17] By comparison, 95 percent of higher income households (above 185 percent of the federal poverty line) use their own vehicle to travel to a grocery store.[18] Once at the vendor, participants also report challenges shopping for WIC foods. Recent USDA survey data indicate that finding the right WIC-approved products in stores, WIC-approved products being out of stock, and feeling embarrassed shopping for WIC foods are some of the most cited challenges among WIC participants who report difficulties shopping for WIC supplemental foods.[19] Online

[16] Rhone, A., Williams, R., & Dicken, C. (June 2022). Low-Income and Low Foodstore-Access Census Tracts, 2015–19, EIB-236, U.S. Department of Agriculture, Economic Research Service. Available online at: https://www.ers.usda.gov/publications/104157.

[17] Magness, A., Williams, K. Gordon, E., Morrissey, N., Papa, F., Garza, A., Okyere, D., Nisar, H., Bajowski, F., & Singer, B. (2021). Third National Survey of WIC Participants: WIC Participant Satisfaction and Shopping Experience: Brief Report #6. Prepared by Capital Consulting Corporation and 2M Research Services. Contract No. AG-3198-K-15-0077. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Karen Castellanos-Brown. Available online at: https://www.fna.usda.gov/wic/third-national-survey-wic-participants.

[18] Ver Ploeg, Michele, Lisa Mancino, Jessica E. Todd, Dawn Marie Clay, and Benjamin Scharadin. Where Do Americans Usually Shop for Food and How Do They Travel To Get There? Initial Findings From the National Household Food Acquisition and Purchase Survey, EIB-138, U.S. Department of Agriculture, Economic Research Service, March 2015. Available online at: https://www.ers.usda.gov/publications/pub-details/?pubid=79791.

[19] Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., Bellows, D. (2022). WIC Food Cost-Containment Practices Study. Prepared by Insight Policy Research, Contract No. AG-3198-C-15-

shopping may alleviate some of these issues for WIC participants and has the potential to provide benefits during supply chain disruptions.

Enabling online shopping in WIC under this rule is expected to ensure that WIC participants have access to innovations in the retail marketplace while maintaining program integrity, and to increase participant purchases of supplemental foods. Online shopping may also expand WIC participants' choices when they shop, particularly for authorized substitutions needed to meet certain dietary restrictions that may not be readily available at the closest WIC-authorized grocery stores. The rule will further make WIC more convenient and accessible by encouraging State agencies to remotely issue electronic benefits and mail EBT cards whenever possible, potentially reducing the number of clinic visits that WIC participants are required to make. The rule also includes provisions that will streamline and modernize WIC food delivery by promoting innovation and ensuring that State agency reporting requirements reflect a modern, data-driven program. These provisions provide necessary measures to ensure that State agencies can deliver a more efficient and effective program for WIC participants.

Finally, preliminary evidence suggests online ordering generally supports higher diet quality or more healthful food purchasing decisions among SNAP participants.[20, 21] To the extent that this rule facilitates healthier food shopping among WIC participants, this rule is likely to lead to better nutrition outcomes for WIC participants.

0022. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ruth Morgan. Available online at: https://www.fna.usda.gov/wic/wic-food-cost-containment-practices-study.

[20] Avelino DC, Duffy VB, Puglisi M, Ray S, Lituma-Solis B, Nosal BM, Madore M, Chun OK. Can Ordering Groceries Online Support Diet Quality in Adults Who Live in Low Food Access and Low-Income Environments? Nutrients. 2023 Feb 8;15(4):862. https://doi/org/10.3390/nu15040862. PMID: 36839221; PMCID: PMC9964317.

[21] Kuan, I., Liu, Y., Jones, J., Zhou, P. (2025). "SNAP Online Purchasing and the Healthfulness of Food Purchases." *Applied Economic Perspectives and Policy* 47(3): 914–932. https://doi.org/10.1002/aepp.13528.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this final rule does not have a significant impact on a substantial number of small entities. The provisions of this final rule primarily affect WIC State agencies and WIC-authorized vendors. Otherwise, all other provisions apply to all State agencies administering the WIC Program, regardless of size, and largely can be implemented at State agency option. The Department does not expect this final rule to have a significant impact on small State agencies. Large retailers may be able to implement WIC online shopping more readily than other store types. However, the Department does not expect the final rule to have a lasting or significant negative impact on smaller WIC vendors as WIC sales represent a relatively small share of these stores' revenue. The Department does not routinely track data necessary to determine how WIC benefit redemptions vary by most vendor characteristics, including indicators for whether the store is a small business or independent grocer. USDA's ERS estimated, by merging WIC and SNAP redemption databases, that 76 percent of WIC retail redemptions occurred in larger stores (super stores, supermarkets, or large grocery stores) in FY 2012; however, the study's definition of supermarkets and large grocery stores is inclusive of many independent grocers.[22] The Department does not have data on the extent to which small businesses and independent grocers have implemented online shopping to date, but is aware of products on the market being employed by independent grocers to provide online ordering currently for WIC participants (with in-store or curbside transactions).

If smaller WIC vendors (such as convenience stores or small and medium grocery stores) do not adopt online shopping solutions, then they may see some of their WIC revenues lost to larger

[22] Tiehen, L. and Frazão, E. Where Do WIC Participants Redeem Their Food Benefits? An Analysis of WIC Food Dollar Redemption Patterns by Store Type, EIB-152, U.S. Department of Agriculture, Economic Research Service, April 2016. Available online at: https://www.ers.usda.gov/publications/44076.

retailers that provide online shopping. According to ERS data, in FY 2012, small grocery stores, medium grocery stores, and convenience stores accounted for 2.9 percent, 3.5 percent, and 3.8 percent of WIC retail redemptions, respectively. For example, the 3.8 percent of total WIC benefits transacted at convenience stores in FY 2012 amounts to about $228 million. U.S. convenience stores reported an estimated $193 billion in total in-store sales, not including fuel, in 2012, suggesting that WIC redemptions represented only about 0.12 percent of non-fuel sales for convenience stores that year.[23] As WIC sales make up a relatively small fraction of the total revenue of smaller stores, and especially convenience stores, the Department expects any lost revenue for smaller vendors that do not adopt an online shopping solution to be relatively minor.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more (adjusted annually for inflation) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments, or the private sector of $100 million or

[23] Statista. "Sales of the convenience store industry in the United States from 2011 to 2020, by format" 27 January 2022. Available online at: https://www.statista.com/statistics/308767/sales-of-the-us-convenience-store-industry-by-format/.

more (adjusted annually for inflation) in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance under Number 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV). Since WIC is State-administered, USDA's FNA Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the executive order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or

policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNA has reviewed the final rule, in accordance with the Agriculture Improvement Act of 2018, "2018 Farm Bill," Section 12403, Civil Rights Analyses, to identify and address any major civil rights impacts the final rule might have on participants on the basis of race, sex, national origin, disability, or age. The requirements outlined in the final rule aim to remove barriers to online ordering and internet-based transactions, streamline and modernize WIC food delivery, and meet the needs of a modern, data-driven program that uses current food delivery technologies. The changes impact WIC State agencies, including ITOs, WIC local agencies and clinics, and WIC vendors in ways that are expected to increase equity and access for WIC participants and enhance the overall shopping experience.

In particular, the final rule allows State agencies to authorize new types of vendors and explore modern payment technologies and authentication methods. To comply with revised regulations and implement the changes, staff at State agencies, local agencies, and WIC clinics will need to update operations and communicate these changes to participants. The rule will increase the number of WIC-authorized vendors by allowing different types of vendors (e.g., internet and mobile vendors) to participate in WIC, while also reducing administrative burdens on vendors through the elimination of certain collection requirements. As a result, this rule will benefit participants by expanding participant shopping options and reducing in-person requirements.

To mitigate potential impacts on vital program access for populations with limited English proficiency and persons with disabilities, FNA will provide State agencies with technical assistance aimed at ensuring that online shopping platforms and communications about program changes are available in appropriate languages and in alternative formats for persons with disabilities. FNA will also support State agencies as they work to engage small vendors in online shopping in the WIC Program. After reviewing the potential impacts, FNA does not believe the final rule will result in civil rights impacts on specific groups of WIC participants and applicants. However, the FNA Civil Rights Division will propose further outreach and mitigation strategies to alleviate any unforeseen impacts, if deemed necessary.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On November 30, 2021, FNA provided opportunity for consultation on the rule to discuss key issues related to the proposed rule. Tribal leaders were generally supportive of online ordering for WIC, which may increase access to food benefits for those with limited access to a physical store. Once the proposed rule was published in the Federal Register, FNA encouraged stakeholders representing ITOs to provide input on whether the proposed rule poses any adverse tribal implications. FNA requested and received public comment on the impacts on small and Tribal stores in response to the proposed rule, which included the importance of continuing to support small, Tribal-owned stores and brick-and-mortar vendors, and their concern for the barriers that fees related to online ordering could pose to participants using WIC online shopping. FNA is committed to providing targeted technical

assistance to support small, Tribal-owned stores and brick-and-mortar vendors and will continue to explore additional opportunities for engagement. The Department considered all comments, including those received by ITOs. No Tribes requested additional consultation after the proposed rule was published. We are unaware of any current Tribal laws that could be in conflict with this final rule. If a Tribe requests consultation in the future, FNA will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule revises existing information collection requirements currently approved under OMB Control Number 0584-0043, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping Burden" (expiration date August 31, 2027), and contains new requirements for the same information collection. These information collection requirements are subject to review and approval by OMB.

The Department published the proposed rule, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program" in the Federal Register on February 23, 2023 (88 FR 11516). The proposed rule requested public comment on proposed changes in the information collection burden that would result from this rule. The Department received approximately 20 comments on the proposed information collection requirements and associated burdens. Commenters also provided feedback on the burden associated with activities not impacted by this rule, which were incorporated as adjustments into this burden. Based on

public comment feedback, the Department revised the burden estimates for this final rule as follows:

- Travel time for vendor visits: The Department received feedback that a 20-minute round trip travel time for visiting vendors for various activities was an underestimate. Therefore, the Department is adjusting the estimated travel time for round trip vendor visits to 30 minutes and incorporated this edit into the various activities involving vendor visits.
- On-site preauthorization visits: To reflect the feedback received related to travel time for State agencies visiting vendors, the Department adjusted the total burden for this activity from 60 minutes to 70 minutes (1.17 hours).
- Vendor applications and agreements: The Department proposed the burden for this activity to be 40 minutes (0.67 hours) per vendor applicant. However, multiple commenters stated that this underestimated the amount of time necessary to complete a full review and completion of vendor applications and agreements. Based on the feedback, the Department adjusted the estimated burden to 120 minutes (2 hours) per vendor applicant for this activity to account for the increased estimate of review and processing of applications and agreements.
- On-site routine vendor monitoring: To reflect feedback from stakeholders that routine monitoring takes longer than the proposed 80 minutes including travel time, the Department adjusted the estimated burden to 100 minutes (1.67 hours) per vendor for this activity to account for both increased estimates in travel time and the routine monitoring activities that take place.
- Virtual routine vendor monitoring: The Department proposed the burden for this activity to be 60 minutes per vendor. However multiple commenters stated that routine monitoring, including remote monitoring, is likely to take longer. Based on this feedback,

the Department increased the estimated burden to 70 minutes (1.17 hours) per vendor for this activity to account for an increased estimate.

- On-site compliance investigations: To reflect feedback from stakeholders that on-site compliance investigations take longer than 120 minutes per vendor, the Department increased the estimated burden to 300 minutes (5 hours) per vendor for this activity to account for both increased estimates in travel time and the activities that take place.
- Virtual compliance investigations: The Department proposed the burden for this activity to be 120 minutes per vendor. Multiple commenters stated that compliance buys take a significantly longer amount of time, even if done remotely. Based on this feedback, the Department increased the estimated burden to 270 minutes (4.5 hours) per vendor for this activity, removing the 30-minute travel time accounted for in the on-site compliance investigations burden.
- System updates to allow online shopping, including return of benefits: The Department did not initially include the burden associated with updates to State agency systems (EBT and MIS) and vendor systems necessary to implement online shopping. Commenters discussed the significant cost and impact related to these necessary changes and based on feedback provided by State agencies currently implementing online shopping projects, FNA estimates that, on average, State agencies will need to spend 50 hours modifying their EBT and MIS to enable online shopping. The Department estimates that internet vendors will also have a 50-hour burden to update their systems to implement online shopping and incorporated that into this burden estimate.
- Development of transaction authentication policies: The Department proposed the burden for this activity to be 25 hours per State agency. Commenters stated that this was an underestimate and did not take into consideration the hours that it will take a State agency to clear these types of policies through State level review. Based on this feedback, and to account for modifications to this provision that require State agencies to receive written

approval from FNA to adopt an authentication method other than the PIN, the Department increased the estimated burden to 50 hours for this activity.

The Department appreciates the feedback provided and incorporated it into the estimates for the final burden. The Department did not change the estimated burden based on public comment feedback for the following provisions:

- Shelf price exemptions: Some State agencies stated that because they utilize shelf price exemptions and do not collect shelf prices, they would not be realizing the benefits of the new provision and therefore the burden estimate was inaccurate. While FNA recognizes that some State agencies have already realized the benefits of not collecting shelf prices through the use of exemptions, the goal of this burden assessment is to recognize the decrease in burden hours from an overall regulatory perspective. As this rulemaking permanently removes the requirement to collect shelf prices, the burden reflects the impact on all State agencies, regardless of if they had an exemption.
- Participant travel time to clinic: One commenter stated that the participant travel time to the clinic for benefit pick-up was underestimated. The Department recognizes that the travel time for participants in the commenter's State agency may be different than the Department's estimate. However, the Department's estimate was based on a survey data[24] that represents an accurate sample of participants nation-wide, rather than in just one State agency. Therefore, the Department maintains its estimate for participant benefit pick up travel time.
- Reporting requirements: Some commenters stated that the estimated burden impact of quarterly reporting submissions to Food Delivery Portal (FDP) were underestimated. The

[24] This estimate is based on the amount of time WIC participants reported traveling to the WIC clinic. U.S. Department of Agriculture, Food and Nutrition Service, "Appendix G. Program Experiences Survey Tables." Third National Survey of WIC Participants, Alexandria, VA: 2021, Table 5c.2. Available online at: https://www.fna.usda.gov/wic/third-national-survey-wic-participants.

Department has reviewed this feedback and will incorporate changes to the burden related to FDP in a separate burden revision under OMB Control Number 0584-0401.

The Department has made several additional changes to the estimated burden:

- Baseline numbers: The baseline number of hours currently approved under OMB Control Number 0584-0043 have been updated since the proposed rule was published, due to the regular revision of the WIC Program Information Collection Request (ICR). The impact of this final rule on the overall WIC Program information collection burden therefore reflects estimated changes to the updated baseline numbers.
- Updated program data: Since the WIC Program ICR was last approved, there has been a decrease in the number of State agencies, an increase in the number of vendors, and an increase in the number of participants. The estimated burden associated with this final rule is calculated using the most recent available program data. Changes to the burden estimates from updated program data are classified as "program adjustments," while changes to the burden as a result of the final rule are classified as "program changes."
- Revised estimates of online shopping uptake: In the proposed rule, the Department estimated that 80 State agencies would implement online shopping and that each State agency would authorize approximately 5 internet vendors, resulting in 400 internet vendors. These estimates were based on the number of State agencies with online EBT systems and SNAP's experiences with online shopping. The Department is revising these numbers to estimate that approximately half of WIC State agencies (44) will implement online shopping in the first five years following the rule's publication and that each State agency will authorize 2 to 3 internet vendors, resulting in 110 internet vendors. These updated estimates are based on experiences with ongoing WIC online shopping projects.
- Correction of error in a previous submission: The currently approved burden for State agency recordkeeping activities related to vendor incentive items has an inaccurate number of above-50-vendors. A more accurate, updated number is used in this revision

and therefore the change in burden hours associated with vendor incentive items reflects both program changes from the final rule and adjustments from the updated program data.

- Additional implementation burden: The Department has also added a one-time implementation burden associated with activities that FNA may ask State agencies that are changing their food delivery systems to complete, such as status reports, additional trainings, and reviewing guidance materials.
- Adjusted for provisions that were not finalized: The Department is not adopting the proposed revisions that would have increased the maximum length of vendor agreement periods and the minimum frequency that State agencies must accept and process vendor applications from three to five years. Therefore, the burden associated with vendor agreements and applications have been adjusted to no longer reflect this decreased frequency.

As summarized above, this final rule changes the information collection requirements that were proposed in the proposed rule. The revisions to the existing information collection requirements and the introduction of new information collection requirements that will take effect with the final rule will result in an overall decrease in burden hours for State and local agencies, applicants for Program benefits and businesses responding to these requirements. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the Federal Register announcing OMB approval.

1. Revisions to OMB Control Number 0584-0043

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping Burden.

OMB Number: 0584-0043

Expiration Date: August 31, 2027

Type of Request: Revision of a currently approved collection.

Abstract: This is a revision of existing information collection requirements approved under OMB Control Number 0584-0043 that are affected by this rulemaking. This final rule removes regulatory barriers to online ordering and internet-based transactions in the WIC Program, streamlines and modernizes WIC food delivery, and meets the needs of a modern, data-driven program that uses current technologies for food delivery. This final rule impacts the burden associated with reporting requirements for State agencies, individuals and households, and vendors, as well as the burden associated with recordkeeping requirements for State agencies and vendors. The burden estimates affected by the rule have also been updated to include the most recent available program data, resulting in changes to the number of State agencies (a decrease from 89 to 88), vendors (an increase from 37,267 to 37,368), and participants (an increase from 6,243,960 to 6,866,085) since the last submission of OMB Control Number 0584-0043. The average burden per respondent and the annual burden hours are summarized and explained below.

a. Burden Revisions Related to Internet Vendor Authorization, Monitoring and Oversight, And Training

The final rule allows State agencies to authorize internet vendors, in addition to brick-and-mortar vendors and mobile vendors. In FY 2023, the most recent available year, there were 37,368 WIC-authorized vendors. Using the new definitions, all vendors authorized under current WIC regulations are classified as brick-and-mortar vendors except for one mobile vendor. FNA estimates that 110 internet vendors in 44 State agencies will be authorized initially following the rulemaking (this estimate takes into consideration recent experiences with online shopping projects and the fact that, due to technological constraints, offline EBT systems would not be

able to support online transactions), increasing the total number of WIC-authorized vendors from 37,368 to 37,478 vendors. In the proposed rule, the Department had estimated that 400 internet vendors would be authorized by 80 State agencies. These estimates were based on SNAP's experiences and have been adjusted to better reflect information from the WIC online shopping grant projects.

Due to public comment feedback on the proposed rule, the Department removed the requirement for State agencies to justify their use of alternative food instruments in the State Plan. Instead, State agencies will have to indicate via a checkmark which food instrument types they are using as part of the annual State Plan submission. This check mark will have a negligible impact on the estimated burden hours needed to submit the annual State Plan and therefore there is no change to the burden associated with State Plan submissions due to this final rule. There is a decrease in the number of burden hours associated with State Plan submissions due to the decrease in the number of WIC State agencies since the previous ICR submission.

WIC regulations at § 246.12(g)(5) require that State agencies visit a vendor prior to their initial authorization in the Program. As noted above, based on feedback on the proposed rule, the Department is estimating that during an on-site preauthorization visit, State agency staff spend approximately 40 minutes verifying information provided by the vendor applicant, and 30 minutes traveling to and from the vendor, for a total of 70 minutes. The adjusted travel time, combined with the decrease in the number of WIC State agencies, results in an increase in the currently approved burden associated with on-site preauthorization by 237.32 total hours. The final rule allows initial preauthorization visits of internet vendors to take place virtually, therefore not requiring travel time for State agency staff. Therefore, the initial authorization of 110 internet vendors would add 73.48 reporting burden hours for both State agencies and vendors.

The proposed rule included a provision to increase the maximum length of vendor agreements and the minimum frequency that State agencies must accept and process applications from three to five years. The final rule does not include this change. Therefore, the only program change reflected in the State agency burden associated with reviewing vendor agreements is the added burden for internet vendors' applications and agreements (72.60 burden hours). In response to the proposed rule, FNA received feedback that the current estimate for reviewing, processing, and approving vendor applications was too low and therefore the Department adjusted the estimated burden from 40 minutes to 120 minutes. This adjustment, combined with the increase in the number of WIC-approved vendors since the previous ICR submission, increases the burden estimate by 16,447.74 hours. Taking the program change and the adjustments into account, the burden associated with this activity would increase by 16,520.34 hours over the currently approved burden, from 8,215.14 hours to 24,735.48 hours.

Additionally, the estimated burden for vendors to submit applications and agreements and the estimated burden for State agencies to maintain records of vendor applications and agreements would increase by 36.30 hours each due to the addition of internet vendors. The increase in the number of WIC-authorized vendors since the previous ICR submission also increases these burdens by 33.33 hours. Taken together, the program change and the adjustments to the number of vendors result in net increases in the vendor reporting burden and State agency recordkeeping burden associated with vendor applications and agreements by 69.63 hours each, from 12,298.11 to 12,367.74 hours.

Although the final rule does not change procedures for vendor oversight, the rulemaking allows routine vendor monitoring and compliance investigations to be conducted virtually so that State agencies may use oversight methods appropriate for the vendors they authorize. As with initial

vendor preauthorization visits, the Department adjusted its estimate for round trip travel time to a brick-and-mortar or mobile vendor from 20 minutes to 30 minutes based on feedback on the proposed rule. The adjustment of the travel time, along with the increase in the number of WIC-authorized vendors since the previous ICR submission, increases the burden associated with on-site routine monitoring visits by 634.52 hours. The additional virtual routine monitoring visits of internet vendors authorized under the final rule adds 6.44 more hours to State agencies' reporting burden. The State agency recordkeeping burden for routine vendor monitoring would also increase by 5.27 hours, from 931.68 to 936.95 hours. Of this increase, 2.75 hours are due to the addition of internet vendors authorized under the final rule, and 2.52 hours are due to the increase in the number of WIC-authorized vendors since the previous ICR submission.

State agency staff conduct on-site compliance investigations of five percent of vendors each year. As with on-site vendor preauthorization visits and on-site routine monitoring visits, FNA adjusted its estimate for round trip travel time to a brick-and-mortar or mobile vendor from 20 minutes to 30 minutes based on feedback on the proposed rule. To reflect feedback that the compliance investigations take longer than the Department estimated, the Department adjusted the time to 4.5 hours, for a total of 5 hours including travel time. This adjustment, along with the increase in the number of WIC-authorized vendors since the previous ICR submission, increases the burden hours for on-site compliance investigations by 4,992.94 hours, from 4,349.06 hours to 9,342 hours.

The Department estimated that it would take State agencies 2 hours to conduct virtual compliance investigations of internet vendors each year. Public comments on the proposed rule provided feedback that virtual investigations will take more time. Therefore, the Department increased the burden associated with virtual compliance investigations to 4.5 hours, which adds a total of 24.75 hours to the State agency reporting burden. Additionally, the authorization of

internet vendors as a result of this rulemaking would increase the State agency recordkeeping burden for compliance investigations by 11 hours, and the increase in WIC-authorized vendors since the previous ICR submission would add another 10.10 hours to this recordkeeping burden.

The addition of 110 internet vendors under the final rule would increase State agencies' reporting burden for vendor training by 220 hours per year. The Department estimates that it takes two hours for vendors to attend annual training provided by State agencies. Authorizing 110 internet vendors results in an additional 220 hours of reporting burden for those new vendors to receive the training. The Department estimates that it takes one hour for each vendor to subsequently train their staff. Due to the additional internet vendors, this will increase the burden for vendor training of their staff by 110 hours. Each of these estimated burdens for State agencies and vendors associated with vendor training activities would also increase due to the increase in the number of WIC-authorized vendors since the previous ICR submission.

Further, FNA estimates that the addition of internet vendors will result in proportionate increases in both the number of vendors that State agencies must assess for “above-50-percent” status and the number of vendors that demonstrate a pattern of violations during investigations. These changes would result in associated increases in: the State agency reporting burden related to assessing a vendor's food sales data to determine if they are an “above-50-percent” vendor (8.80 additional hours); the vendor reporting burden required to provide such sales data (4.40 additional hours); the reporting burden for above-50-percent vendors who request approval from their State agency to provide incentive items to WIC shoppers (0.98 additional hours); and the State agency recordkeeping burden to collect information on above-50-percent vendors' incentive items (0.98 additional hours). Since the previous ICR submission, the number of vendors that State agencies assess for “above-50-percent” status has decreased from 840 to 795, the number of WIC State agencies has decreased from 89 to 88, and the number of WIC-authorized vendors

has increased from 37,267 to 37,368. These program adjustments have additional impacts on each of the State agency and vendor burdens listed above.

Per 246.12(l)(3), State agencies are required to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction before another violation is documented, unless the State agency determines notifying the vendor would compromise an investigation. Accounting for the addition of internet vendors due to this final rule, the associated reporting burden for this requirement would increase by 0.26 hours and the associated recordkeeping burden would increase by 3.09 hours. These burdens would also increase by 0.23 hours and 2.79 hours, respectively, due to the increase in the number of WIC-authorized vendors since the previous ICR submission.

Finally, vendors are required to maintain inventory records for federal tax reporting purposes, a recordkeeping burden that takes vendors approximately 10 minutes (0.167 hours) to complete. To account for the new internet vendors, the Department estimates an additional 18.37 hours associated with this requirement. The increase in the number of WIC-authorized vendors since the previous ICR submission also results in 16.87 additional hours for this requirement.

b. Burden Revisions Related to Program Modernization

In recognition of the efficiency of using electronic benefit redemption data to analyze the prices vendors charge for supplemental foods, the final rule removes the requirement that State agencies with access to EBT data collect shelf prices from vendors on a biannual basis or seek an exemption from FNA. As all State agencies are operating EBT at the time of this rule publication, removing the shelf price collection requirement for State agencies significantly decreases the reporting burden for WIC State agencies (-149,068 hours for collecting shelf prices

and -40 hours for preparing exemption requests) and WIC-authorized vendors (-132,318.79 hours).

To operationalize online shopping, State agencies will have to update their systems to support new technology in alignment with the Department's standards per § 246.12(bb)(1). The proposed rule did not account for this burden and therefore the Department is adding a burden associated with system updates to allow online shopping, including the return of benefits. The Department estimates that these updates will take 50 hours, and therefore would increase the reporting burden by 2,200 total hours for the 44 State agencies implementing online shopping. Additionally, to fully account for any State agency status updates, FNA-provided trainings, or review of FNA guidance materials that may be required to update food delivery systems to incorporate online shopping, the Department estimates a 5-hour implementation burden per State agency, for a total of 220 hours. Similarly, the development of online shopping will require 50 burden hours to update vendor systems to allow online shopping, including returns. Therefore, the vendor reporting burden associated with vendor system updates to allow online shopping will result in 5,500 additional burden hours for the 110 new internet vendors.

State agencies are required to submit requests for approval for costs of capital expenditures per § 246.14(d). The proposed rule estimated that the number of State agencies submitting such requests would increase as a result of the rule. However, based on project costs from State agencies currently implementing online shopping, the MIS and EBT changes necessary to implement online shopping projects are not meeting the cost threshold requiring that they submit approval. Therefore, the Department is no longer estimating that there will be an increase in the number of State agencies submitting requests for approval, and there is no estimated increase in the burden associated with this activity.

The final rule allows State agencies to adopt EBT transaction authentication technologies other than PIN authentication. Regardless of whether State agencies adopt new transaction authentication technologies or maintain use of the PIN, they must develop transaction authentication policies for the technology they use. Additionally, the Department has modified this provision from what was proposed to require that State agencies receive written approval from FNA if they adopt an authentication method other than the PIN. Based on public comment feedback, the Department increased the burden hours associated with this activity from 25 to 50 hours, and adjusted the number of estimated respondents in recognition that all State agencies will be creating policies and, in the future, may request FNA approval to adopt authentication methods other than the PIN. This increases the reporting burden for this activity to 4,400 hours.

The final rule encourages State agencies to issue electronic benefits remotely and mail EBT cards to participants to reduce the number of clinic visits households make to receive benefits. This decreases the burden associated with picking up food instruments and receiving benefits outside of a certification clinic visit by a total of 1,747,698.87 hours. These estimates assume that: on average, WIC households consist of two WIC participants, requiring only one trip to the clinic to pick up both participants' benefits; currently, households in State agencies without an online EBT system are required to travel to a clinic to reload offline EBT cards three times a year outside of another scheduled appointment; and currently, new participants in State agencies with online EBT systems are required to pick up their EBT card in person. With this final rulemaking, only participants who need to reload an offline EBT card would be required to travel to a clinic to receive benefits in person. These estimates also account for a decrease in the number of offline EBT State agencies (from 9 to 8) and an increase in the number of WIC participants (from 6,243,960 to 6,866,085) since the previous ICR submission.

c. Costs Associated with the Final Rule and OMB Control Number 0584-0043

In addition to the changes to the information collection burdens discussed in this section, implementing the final rule is expected to create additional costs for State agencies and WIC participants. FNA estimates that it will cost each State agency approximately $185,000 to update their EBT and MIS to implement online shopping in the year that they choose to do so. Across the estimated 44 State agencies implementing online shopping, these one-time implementation costs would total $8.14 million. After implementation, the Department anticipates that maintenance of such systems will cost approximately $4,500 per month. Therefore, in an average year following implementation of online shopping in 44 State agencies, these ongoing maintenance costs would total $2.38 million.

The final rule adds a provision at § 246.12(h)(3)(xxxiii) that allows WIC participants who choose to shop for supplemental foods online to pay for fees associated with such services using another tender type, as long as those fees are also assessed to non-WIC customers using the same services. Adjusting for annual inflation, the Department estimates that an average online grocery order in 2027 will be assessed $10.66 in delivery and service fees, increasing to $11.63, adjusting for inflation, in FY 2031 (see the Regulatory Impact Analysis that follows this rule as an Appendix for a full explanation of these estimates). Additionally, FNA estimates that once online shopping has been implemented across 44 State agencies, 28 percent of WIC participants in those State agencies, or about 961,252 participants, would make one online WIC order each month. Further, FNA estimates that 33 percent of those WIC online shopping orders (317,213 orders) would be placed for home delivery. On average, each WIC household consists of two WIC participants. Therefore, FNA estimates that approximately 158,607 households would place an online order for home delivery each month, costing WIC participants a total of about $1.84 million per month, or $22.14 million per year in delivery fees if 44 State agencies have implemented online shopping by 2031.

d. Summary of Revisions to OMB Control Number 0584-0043

The current approved burden for OMB Control Number 0584-0043 is 17,362,904 hours, 67,867,960 responses, and 6,283,126 respondents. Changes to the burden due to the rulemaking decrease the total burden by 1,589,524 hours and changes due to program adjustments decrease the burden by 403,908 hours. Together, these changes and adjustments decrease the burden by 1,993,432 hours, resulting in a total burden of 15,369,471 hours. The rule and program adjustments decrease the total number of responses by 3,634,621, resulting in a total of 64,233,339 responses. The addition of internet vendors due to the final rule is estimated to increase the total number of respondents for this information collection by 110, and the program adjustments (changes in the number of State agencies, vendors, and participants since the previous ICR submission) are estimated to increase the total number of respondents by 622,335. Taken together, these program changes and adjustments increase the number of respondents for this information collection from 6,283,126 to 6,905,461. One-time costs associated with the final rule are estimated to total $8.14 million and annual costs and fees following implementation of online shopping are estimated to total $24.52 million. The average burden per response, the annual burden hours, and the total fees and costs related to this final rule are explained below and summarized in the tables which follow.

The change in burden hours to OMB Control Number 0584-0043 and costs associated with the final rule are best estimates.

***Respondents*: State agencies, including Indian Tribal Organizations and U.S. Territories** (note that burden estimates for local agencies are not affected by this proposed rule).

Estimated Number of Respondents: 88

Reporting

Estimated Number of Reporting Responses per Respondent: 651.54

Estimated Number of Responses: 57,336

Estimated Hours per Reporting Response: 2.48

Estimated Total Annual Reporting Burden Hours for Respondents: 142,324

Recordkeeping

Estimated Number of Recordkeeping Responses per Respondent: 199.14

Estimated Number of Responses: 17,524

Estimated Hours per Recordkeeping Response: 1.05

Estimated Total Annual Recordkeeping Burden Hours for Respondents: 18,461

Respondents: **Individuals and households.**

Reporting

Estimated Number of Respondents: 3,433,043

Estimated Number of Responses per Respondent: 0.24

Estimated Number of Responses: 819,249

Estimated Hours per Response: 0.50

Estimated Total Annual Burden on Respondents: 409,624

Respondents**: WIC-authorized vendors.**

Reporting

Estimated Number of Respondents: 37,478 (37,367 brick-and-mortar vendors, 110 internet vendors, and 1 mobile vendor)

Estimated Number of Responses per Respondent: 2.41

Estimated Number of Responses: 90,193

Estimated Hours per Response: 1.48

Estimated Total Annual Burden on Respondents: 133,326

Recordkeeping

Estimated Number of Recordkeeping Responses per Respondent: 1.00

Estimated Number of Responses: 37,478

Estimated Hours per Recordkeeping Response: 0.17

Estimated Total Annual Recordkeeping Burden Hours for Respondents: 6,259

Estimated Capital, Start-up, Operation, Maintenance and Implementation Costs and Fees:

Summary of Costs Associated with the Final Rule				
Description of Cost	**Number of Respondents**	**One-Time Costs (millions)**	**Annual Costs (millions)**	**Total Costs (millions)**
State Agencies				
Systems development and maintenance for online shopping	44	$8.14	$2.38	$10.52
Individuals and Households				
Fees associated with online shopping	158,607	$0.00	$22.14	$22.14
Total Costs		**$8.14**	**$24.52**	**$32.66**

Regulatory Citation	Description of Activities	Estimated Number of Respondents	Frequency of Responses	Total Annual Responses	Average Burden Hours per Response	Estimated Total Burden Hours	*Current Burden Hours in OMB # 0584-0043*	Estimated Change due to Program Changes	Estimated Change due to Adjustments	Total Change due to Rulemaking and Adjustments
REPORTING BURDEN ESTIMATES										
Affected Public: State and Local Agencies (including Indian Tribal Organizations and U.S. Territories)										
246.4	State Plan	88.00	1.00	88.00	170.62	15,014.56	*15,185.18*	0.00	-170.62	-170.62
246.12	Implementation of food delivery system changes	44.00	1.00	44.00	5.00	220.00	*0.00*	220.00	0.00	220.00
246.12(g)(4)(i)	Vendor food sales data	88.00	9.07	798.28	4.00	3,193.13	*3,360.00*	8.80	-175.67	-166.87
246.12(g)(4)(ii)(B)	Vendor shelf prices	0.00	0.00	0.00	2.00	0.00	*149,068.00*	-149,068.00	0.00	-149,068.00
246.12(g)(4)(ii)(B)	Vendor shelf prices exemption	0.00	0.00	0.00	8.00	0.00	*40.00*	-40.00	0.00	-40.00
246.12(g)(5)	Vendor initial preauthorization visits (onsite)	88.00	17.00	1,496.00	1.17	1,750.32	*1,513.00*	0.00	237.32	237.32
246.12(g)(5)	Vendor initial preauthorization visits (virtual)	44.00	2.50	110.00	0.67	73.48	*0.00*	73.48	0.00	73.48
246.12(h)	Review vendor applications & agreements	88.00	140.54	12,367.74	2.00	24,735.48	*8,215.14*	72.60	16,447.74	16,520.34
246.12(i)(1)	Vendor training	88.00	425.89	37,478.00	2.00	74,956.00	*74,534.00*	220.00	202.00	422.00
246.12(j)(2)	Routine vendor monitoring (onsite)	88.00	21.23	1,868.40	1.67	3,120.23	*2,485.71*	0.00	634.52	634.52
246.12(j)(2)	Routine vendor	44.00	0.13	5.50	1.17	6.44	*0.00*	6.44	0.00	6.44

	monitoring (virtual)									
246.12(j)(4),(6)	Vendor compliance investigations (onsite)	88.00	21.23	1,868.40	5.00	9,342.00	*4,349.06*	0.00	4,992.94	4,992.94
246.12(j)(4),(6)	Vendor compliance investigations (virtual)	44.00	0.13	5.50	4.50	24.75	*0.00*	24.75	0.00	24.75
246.12(l)(3)	Notification of vendor violations	88.00	11.98	1,053.88	0.0835	88.00	*87.51*	0.26	0.23	0.49
246.12(bb)(1)	System updates to allow online shopping, including return of benefits	44.00	1.00	44.00	50.00	2,200.00	*0.00*	2,200.00	0.00	2,200.00
246.12(bb)(2)	Transaction authentication policy development	88.00	1.00	88.00	50.00	4,400.00	*0.00*	4,400.00	0.00	4,400.00
246.14(d)	ADP proposals	20.00	1.00	20.00	160.00	3,200.00	*3,200.00*	0.00	0.00	0.00
Subtotal Reporting: State and Local Agencies		**88**	**651.54**	**57,335.70**	**2.48**	**142,324.38**	***262,037.60***	**-141,881.68**	**22,168.46**	**-119,713.22**
Affected Public: Individuals and Households: Applicants for Program Benefits										
246.12(r)(4) & (r)(5)	Offline EBT State agencies: Food instrument and cash-value voucher pick up (non-certification clinic visits)	312,094.77	2.63	819,248.78	0.50	409,624.39	*894,499.89*	-58,517.77	-426,357.73	-484,875.50
246.12(r)(4) & (r)(5)	Online EBT State agencies: Food instrument and cash-value voucher pick up (non-	3,120,947.73	0.00	0.00	0.00	0.00	*1,262,823.37*	-1,262,823.37	0.00	-1,262,823.37

	certification clinic visits)									
Subtotal Reporting: Applicants		**3,433,043**	**0.24**	**819,248.78**	**0.50**	**409,624.39**	***2,157,323.26***	**-1,321,341.14**	**-426,357.73**	**-1,747,698.87**
Affected Public: Business: Retail Vendors (WIC-Authorized Food Stores) and Nonprofit Businesses										
246.12(g)(4)(i)	Vendor food sales data for A50s	798.28	1.00	798.28	2.00	1,596.56	*1,680.00*	4.40	-87.84	-83.44
246.12(g)(4)(ii)(B)	Vendor shelf prices	0.00	0.00	0.00	0.00	0.00	*132,318.79*	-132,318.79	0.00	-132,318.79
246.12(g)(5)	Vendor initial preauthorization visits	1,606.00	1.00	1,606.00	0.67	1,072.81	*1,010.68*	73.48	-11.36	62.12
246.12(h)	Vendor applications & agreements	12,367.74	1.00	12,367.74	1.00	12,367.74	*12,298.11*	36.30	33.33	69.63
246.12(h)(3)(xiii)	Vendor training of staff	37,478.00	1.00	37,478.00	1.00	37,478.00	*37,267.00*	110.00	101.00	211.00
246.12(h)(8)(i)	Vendor incentive items	354.79	1.00	354.79	1.00	354.79	340.00	0.98	13.81	14.79
246.12(i)	Vendor training	37,478.00	1.00	37,478.00	2.00	74,956.00	*74,534.00*	220.00	202.00	422.00
246.12(bb)(1)	System updates to allow online shopping, including return of benefits	110.00	1.00	110.00	50.00	5,500.00	*0.00*	5,500.00	0.00	5,500.00
Subtotal Reporting: Businesses		**37,478**	**2.41**	**90,192.81**	**1.48**	**133,325.90**	***259,448.58***	**-126,373.63**	**250.95**	**-126,122.68**
GRAND SUBTOTAL: REPORTING		**3,470,609**	**0.28**	**966,777.29**	**0.71**	**685,274.67**	***2,678,809.44***	**-1,589,596.45**	**-403,938.32**	**-1,993,534.77**
RECORDKEEPING BURDEN ESTIMATES										
Affected Public: State and Local Agencies (including Indian Tribal Organizations and U.S. Territories)										

246.12(h)(1)(i)	Vendor applications & Agreements	88.00	140.54	12,367.74	1.00	12,367.74	*12,298.11*	36.30	33.33	69.63
246.12(h)(8)(i)	Vendor incentive items	4.00	88.70	354.79	1.00	354.79	*389.20*	0.98	-35.39	-34.41
246.12(j)(6)	Routine vendor monitoring	88.00	21.29	1,873.90	0.50	936.95	*931.68*	2.75	2.52	5.27
246.12(j)(6)(ii)	Vendor compliance Investigations	88.00	21.29	1,873.90	2.00	3,747.80	*3,726.70*	11.00	10.10	21.10
246.12(l)(3)	Vendor notice of violations	88.00	11.98	1,053.88	1.00	1,053.88	*1,048.00*	3.09	2.79	5.88
Subtotal Recordkeeping: State and Local Agencies		88	199.14	17,524.21	1.05	18,461.16	*18,393.69*	54.12	13.35	67.47
Affected Public: Business: Retail Vendors (WIC-Authorized Food Stores) and Nonprofit Businesses										
246.12(h)(3)(xvi)	Vendor Inventory Records	37,478.00	1.00	37,478.00	0.17	6,258.83	*6,223.59*	18.37	16.87	35.24
Subtotal Recordkeeping: Businesses		**37,478**	**1.00**	**37,478**	**0.17**	**6,259**	***6,224***	**18.37**	**16.87**	**35.24**
GRAND SUBTOTAL: RECORDKEEPING		**37,566**	**1.46**	**55,002.21**	**0.45**	**24,719.99**	**24,617.28**	**72.49**	**30.22**	**102.71**
GRAND TOTAL: REPORTING, RECORDKEEPING, and PUBLIC DISCLOSURE		**3,470,609**	**0.29**	**1,021,779.51**	**0.69**	**709,994.66**	**2,703,426.72**	**-1,589,523.96**	**-403,908.10**	**-1,993,432.06**

2. Revisions to OMB Control Number 0584-0401

Title: Food Delivery Portal (FDP) Data Collection

OMB Number: 0584-0401

Expiration Date: 1/31/2028

Type of Request: N/A

Abstract: The Department proposed revising regulations around data submission timelines for information that State agencies must report to FNA using the Food Delivery Portal (FDP). All WIC State agencies are required to submit information on their vendor monitoring and investigation activities, in accordance with § 246.12(j)(5). The revisions in the proposed rule removed the annual submission deadline of February 1 of each fiscal year and proposed to replace it with submission timelines that "may be as frequent as quarterly but not less than annually, based on system capabilities and reporting needs" along with other proposed edits.

FNA received comments on the Department's proposed rule burden estimate incorporating the possibility of quarterly reporting. The comments largely expressed that the Department's estimate that this change would not increase the burden was inaccurate, and instead quarterly reporting would quadruple the workload and burden on WIC State agencies.

After further analysis of the FDP system and the current data upload process, as well as considering the public comment feedback received on the proposed rule and the FDP burden, the Department agrees that an increase in the frequency of reporting would put an unnecessary burden on State agencies.

The Department has removed the language allowing federal reporting requests to be as frequently as quarterly. Instead, the Department is finalizing this rule maintaining the current annual federal reporting requirement. Because of this, there will be no change to the existing information collection requirements in the information collection under OMB Control Number

0584-0401. The Department is confident that the data submitted on an annual basis provides the information necessary to ensure federal oversight and support the research work that uses this data.

a. Summary of Revisions to OMB Control Number 0584-0401

The current approved burden for OMB Control Number 0584-0401 is 3,576 hours and 541 total responses. As this final rulemaking does not implement the proposed changes, the burden due to the rulemaking will have no effect on the total number of burden hours, which would remain 3,576 hours.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Foods, Grants administration, Grant programs- health, Grant programs- social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Public health, Reporting and recordkeeping requirements, Women.

Accordingly, the FNA amends 7 CFR part 246 as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2:

a. Remove the definition of "Above-50-percent vendors";

b. Add the definitions of "Above-50-percent vendor", "Brick-and-mortar vendor, and "Cash-value benefit" in alphabetical order;

c. Revise the definitions of "Cash-value voucher" and "Compliance buy";

d. Add the definition of "Electronic benefits" in alphabetical order;

e. Remove the definition of "Electronic Benefit Transfer";

f. Add the definition of "Electronic benefit transfer";

g. Revise the definitions of "Food instrument" and "Home food delivery contractor";

h. Add the definitions of "Internet vendor" and "Mobile vendor" in alphabetical order; and

i. Revise the definitions of "Routine monitoring" and "Vendor".

The additions and revisions read as follows:

§ 246.2 Definitions.

* * * * *

Above-50-percent vendor means any type of vendor that derives more than 50 percent of its annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS.

* * * * *

Brick-and-mortar vendor means a type of vendor authorized to provide authorized supplemental foods to participants through transactions at a single, physical, fixed location. All transactions that take place at the brick-and-mortar vendor will be assigned to that vendor.

Cash-value benefit means a type of electronic benefit that is a fixed-dollar amount used to obtain authorized fruits and vegetables.

Cash-value voucher means a fixed-dollar amount check, voucher, or other document which is used to obtain authorized fruits and vegetables.

* * * * *

Compliance buy means a covert investigation in which a representative of the Program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts food instruments, cash-value vouchers, or electronic benefits, and does not reveal during the visit their identity as a program representative.

* * * * *

Electronic benefits mean the WIC benefits for supplemental foods prescribed to a participant and contained within the participant's benefit balance.

Electronic benefit transfer (EBT) means a benefit delivery method that permits electronic access to WIC food benefits using a card or other electronic benefit access device or technology approved by the Secretary.

* * * * *

Food instrument means a paper voucher, check, coupon, other document; or an EBT card or other electronic benefit access device or technology that is used to obtain supplemental foods.

* * * * *

Home food delivery contractor means a business entity that contracts directly with a State agency to deliver authorized supplemental foods to a location designated by the State agency or designated by the participant and approved by the State agency under a home food delivery system.

* * * * *

Internet vendor means a type of vendor authorized to provide authorized supplemental foods to participants through internet-based transactions. All transactions that take place via an online ordering system, platform, or site used by an internet vendor will be assigned to that vendor.

* * * * *

Mobile vendor means a type of vendor authorized to provide authorized supplemental foods to participants through transactions that take place at a truck, bus, pushcart, or other mobile vehicle. All transactions that take place at the mobile vendor will be assigned to that vendor.

* * * * *

Routine monitoring means overt monitoring during which program representatives identify themselves to vendor personnel.

* * * * *

Vendor means a business entity authorized by the State agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store, internet retailer, and mobile vehicle constitutes a unique vendor and must be authorized separately.

* * * * *

4. In § 246.4:

a. Remove and reserve paragraph (a)(14)(xv); and

b. Revise paragraph (a)(23).

The revision reads as follows:

§ 246.4 State Plan.

* * * * *

(a) * * * * *

(23) A plan to improve access to the Program for participants and prospective applicants, with additional focus on those who are employed and/or reside in rural areas. The plan must identify and address the needs of these individuals, and must include, at a minimum, policies and procedures to minimize the time they must spend away from work and the distances they must travel. This plan must include measures to improve access to the Program through the remote issuance of food instruments, cash-value vouchers, and/or electronic benefits, as applicable, to participants through means other than direct participant pick-up, pursuant to § 246.12(r)(4) and (5). The State agency must also describe the State agency's policy for approving transportation of participants to and from WIC clinics per § 246.14(c)(7). This plan must describe how the State agency will ensure the integrity of Program services and fiscal accountability.

* * * * *

5. In § 246.7, revise paragraph (f)(2)(iv) to read as follows:

§ 246.7 Certification of participants.

* * * * *

(f) * * *

(2) * * *

(iv) Each local agency using a retail food delivery system must issue food instruments, cash-value vouchers, or electronic benefits, as applicable, to the participant at the same time as notification of certification. Such food instruments, cash-value vouchers, and electronic benefits must be provided for the current month or the remaining portion thereof and must be transactable immediately upon receipt by the participant. Local agencies may issue electronic benefits remotely or mail the food instruments and cash-value vouchers with the notification of certification, as provided in § 246.12(r)(4) and (5).

* * * * *

6. In § 246.12:

a. Revise paragraph (b);

b. In paragraph (g)(4) introductory text, revise the third sentence and add a sentence after the third sentence.

c. Revise paragraphs (g)(4)(ii)(B) and (g)(5);

d. In paragraph (g)(9), revise the last sentence;

e. Revise paragraphs (h)(3)(ii), (v), and (vi);

f. Add paragraphs (h)(3)(xxxii) and (xxxiii);

g. Revise paragraphs (j)(5) and (j)(6)(ii)(B);

h. In paragraph (m) introductory text, revise the first sentence;

i. Revise paragraphs (r)(2) and (4);

h. Redesignate paragraphs (r)(5) and (6) as paragraphs (r)(6) and (7), respectively, and add a new paragraph (r)(5);

i. Remove the period at the end of newly redesignated paragraph (r)(6) and add "; and" in its place;

j. Revise paragraphs (v)(1)(iv) and (ix);

k. Revise paragraph (x)(2)(iii);

l. Add paragraph (x)(4);

m. Redesignate paragraphs (bb)(2) and (3) as paragraphs (bb)(3) and (4), respectively, and add a new paragraph (bb)(2).

The revisions and additions read as follows:

§ 246.12 Food delivery methods.

* * * * *

(b) *Uniform food delivery systems.* The State agency may operate a combination of up to three types of food delivery systems under its jurisdiction—retail, home food delivery, and direct distribution. These three food delivery systems must be procedurally uniform throughout the jurisdiction of the State agency and the combination of systems used must ensure adequate participant access to supplemental foods. When used, each food instrument type must be uniform and described and approved in the State agency's State Plan per § 246.4(a)(14)(i).

* * * * *

(g) * * *

(4) * * * The State agency must consider a vendor applicant's prices for non-WIC customers or the prices it bids for supplemental foods, which must not exceed the price charged to non-WIC customers. The State agency may consider the vendor applicant’s EBT data when available. * * *

* * * * *

(ii) * * *

(B) The analysis of vendor prices to monitor vendor compliance with paragraphs (g)(4)(i)(C), (g)(4)(ii)(C), and (g)(4)(iii) of this section and to ensure State agency policies and procedures dependent on price data are efficient and effective. State agencies without access to electronic benefit redemption data must collect vendor shelf prices at least every six months to ensure compliance with this paragraph (g)(4)(ii)(B). FNS may grant an exemption from the requirement to collect shelf prices if the State agency demonstrates to FNS’ satisfaction that an alternative methodology for monitoring vendor compliance with paragraphs (g)(4)(i)(C), (g)(4)(ii)(C), and (g)(4)(iii) of this section is efficient and effective and other State agency policies and procedures are not dependent on frequent collection of shelf price data. Such exemption would remain in effect until the State agency no longer meets the conditions on which the exemption was based, until FNS revokes the exemption, or for three years, whichever occurs first; and

* * * * *

(5) *Preauthorization visit.* The State agency must conduct an on-site or virtual visit prior to or at the time of a vendor’s initial authorization.

* * * * *

(9) * * * In addition, if the State agency does not have access to electronic benefit redemption data, the State agency must collect the vendor applicant's current prices for supplemental foods.

* * * * *

(h) * * *

(3) * * *

(ii) *No substitutions, cash, credit, cash refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the paper food instrument and cash-value voucher or available in the participant's benefit balance.

(A) Except as specified in paragraph (h)(3)(ii)(C) of this section, the vendor must not provide unauthorized food items, non-food items, cash, or credit (including rain checks) in exchange for benefits. The vendor must not provide cash refunds (including but not limited to gift cards or store credit) or permit exchanges for authorized supplemental foods obtained with benefits, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its “sell by,” “best if used by,” or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand, type, physical form, and size as the original authorized supplemental food item obtained and returned by the participant.

(B) The vendor may provide only the authorized infant formula which the vendor has obtained from sources included on the list described in paragraph (g)(10) of this section to participants in exchange for food instruments specifying infant formula.

(C) During a supplemental food recall, as defined in § 246.2, the vendor must treat all customers, including WIC participants, parents or caretakers of infant or child participants, and

proxies the same. This should be reflected in store recall exchange policies, including policies related to replacements (which may include, but are not limited to, the same product, a substitute product, store credit, or a cash refund).

* * * * *

(v) *Purchase price.* The vendor must ensure that the purchase price is calculated in accordance with the procedures described in the vendor agreement. The purchase price must include only the amount(s) for the authorized supplemental food items actually provided, and the WIC participant, parent or caretaker of an infant or child participant, or proxy must be made aware of the total purchase price of the transaction before the transaction is completed.

(vi) *Signature on paper food instruments and cash-value vouchers.* For paper food instruments and cash-value vouchers, the vendor must ensure the participant, parent or caretaker of an infant or child participant, or proxy signs the paper food instrument or cash-value voucher after the purchase price is entered.

* * * * *

(xxxii) *Transaction authentication.* The vendor must authenticate transactions in accordance with the policies established by the State agency.

(xxxiii) *Fees associated with WIC purchases.* A vendor must not charge the State agency for fees associated with WIC purchases (e.g., delivery, service, convenience, bag fees). If such fees are assessed to non-WIC customers using the same services, WIC participants must be allowed to pay them using another tender type.

* * * * *

(j) * * *

(5) *Reporting.* The State agency must send FNS certain vendor, direct distribution contractor, home food delivery contractor, farmer, and farmers' market data containing information stipulated by FNS via reporting requirements that will be provided to WIC State agencies with advance notification. Reporting requirements will include required data fields and annual data submission timelines. Plans for improvement in the coming year must be included in the State Plan in accordance with § 246.4(a)(14)(iv).

(6) * * *

(ii) * * *

(B) A description of the cashier involved in each transaction, if applicable;

* * * * *

(m) * * * Home food delivery systems are systems in which authorized supplemental foods are delivered to a location designated by the State agency or designated by the participant and approved by the State agency. * * *

* * * * *

(r) * * *

(2) *Signature requirement.* Ensure that the participant, parent or caretaker of an infant or child participant, or proxy signs for receipt of food instruments, cash-value vouchers, or authorized supplemental foods, when receiving them in person;

* * * * *

(4) *Paper food instrument and cash-value voucher pick up.* Require participants, parents and caretakers of infant and child participants, and proxies to pick up paper food instruments and cash-value vouchers in person when scheduled for in-person nutrition education

or for an in-person appointment to determine whether participants are eligible for a second or subsequent certification period. In all other circumstances the State agency may opt to mail paper food instruments or cash-value vouchers unless FNS determines that it would jeopardize the integrity of program services or program accountability;

(5) *EBT card and electronic benefit issuance.* Ensure participants receive their EBT cards and electronic benefits in accordance with §§ 246.7(f)(2)(iv) and 246.11(a)(2), without jeopardizing the integrity of program services or program accountability. The State agency is encouraged to remotely issue electronic benefits and mail EBT cards, when possible, unless FNS determines that it would jeopardize the integrity of program services or program accountability. When EBT cards are issued remotely, the State agency must have procedures in place to ensure receipt by the intended recipient;

* * * * *

(v) * * *

(1) * * *

(iv) Transact and redeem cash-value vouchers or cash-value benefits in accordance with procedures established by the State agency. Such procedures must include:

(A) A requirement for the farmer or farmers' market to allow the participant, parent or caretaker of an infant or child participant, or proxy to pay the difference when the purchase price of fruits and vegetables exceeds the value of the cash-value vouchers or cash-value benefits. This is known as a split tender transaction; and

(B) Procedures to ensure that the WIC participant, parent or caretaker of an infant or child participant, or proxy is made aware of the total purchase price of the transaction before the transaction is completed;

* * * * *

(ix) Offer WIC participants, parents or caretakers of infant or child participants, or proxies the same courtesies as other customers. The farmer or farmers' market must not charge the State agency for fees associated with WIC purchases (e.g., delivery, service, convenience, bag fees). If such fees are assessed to non-WIC customers using the same services, WIC participants must be allowed to pay them using another tender type;

* * * * *

(x) * * *

(2) * * *

(iii) *Last date of use.* The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days, or in the month of February 28 or 29 days, from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance when it may be the end of the month or cycle for which the electronic benefit is valid. This may be extended, as applicable, per paragraph (x)(4)(iii) of this section; and

* * * * *

(4) *Return of benefits.* If a State agency authorizes internet vendors, the State agency must allow for the return of electronic benefits to a participant's balance and the return of electronic benefits for all vendor types. The return of electronic benefits must comply with the following requirements:

(i) *In-person returns*. If the participant returns an item in person, the return of electronic benefits must be processed immediately;

(ii) *Post-delivery returns*. Post-delivery return of benefits, such as those for items returned via mail or unfulfilled items from an internet-based transaction, must be processed within two (2) business days after receipt of the returned item or indication of an unfulfilled item;

(iii) *Use of returned electronic benefits.* When electronic benefits are returned to a participant's benefit balance, the State agency must provide the participant the remainder of the benefit issuance month to transact the returned benefits. The State agency may allow the participant a maximum of seven (7) calendar days beyond the last date of use to transact returned benefits.

* * * * *

(bb) * * *

(2) The State agency must develop policies to ensure that each transaction is authenticated (e.g., using a Personal Identification Number (PIN)). The State agency must receive written approval from FNS to adopt an authentication method other than the PIN.

* * * * *

7. In § 246.14, revise paragraphs (b)(1)(i) and (c)(4) to read as follows:

§ 246.14 Program costs.

* * * * *

(b) * * *

(1) * * *

(i) Supplemental foods purchased by participants using WIC benefits in a retail food delivery system and/or acquiring supplemental foods provided to State or local agencies or

participants, whichever receives the supplemental foods first in a home food delivery system or a direct distribution food delivery system;

* * * * *

(c) * * *

(4) The cost of administering the food delivery system, including the cost of transporting supplemental foods, except as prohibited at § 246.12(h)(3)(xxxiii) and (v)(1)(ix).

* * * * *

Shiela Corley,

Acting Administrator.

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