

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

WIC VENDOR SANCTION POLICY

PURPOSE

USDA Federal Regulations and Michigan Department of Health and Human Services (referred to as the Department) WIC vendor policy require the sanctioning of contracted WIC retail vendors determined to be violating program rules and procedures, engaging in abusive WIC food benefit redemption practices, and/or fraudulently obtaining program funds.

It is the responsibility of the WIC Division, Vendor Management and Operations Section, to determine the need for and application of appropriate WIC vendor sanctions. Vendor sanctions assigned in the preceding contract period may impact vendor qualification for subsequent authorization. Also, the violations of the WIC Program which occurred during the previous contract period, if any, may be carried over and used as a basis for termination and/or disqualification or other sanctions under any subsequent contracts in accordance with the Sanction Policy.

The Department may apply a variety of sanctions to vendors found to be violating program requirements. Sanctions may include monetary claims, civil money penalties, fines, termination of a WIC Vendor Contract or termination and disqualification of a vendor from the program, and denial of an application for a WIC contract. The Department may refer food vendors who commit fraud or abuse of the Program to Federal, State or Local authorities for prosecution under applicable statutes. These sanctions may be applied singly or in combination of two (2) or more sanctions.

The Department has identified two levels of violations: those violations which result in Department sanctions and violations which require Federally mandated sanctions. However, these two levels of violations are not all inclusive. In addition, the Department may sanction a vendor for a combination of violations or any other violations of the terms of the contract, State/Federal Regulations, State Plan of Program Operations and Administration and/or other applicable rules and regulations.

As referenced in this document, food instruments are defined as WIC EBT transactions that are processed through the use of the Michigan WIC EBT Bridge Card, which includes the WIC shopping list produced by any WIC EBT point of sale device. This also includes Cash Value Benefits (CVB's), which are specific dollar amounts provided to the WIC client's account intended only for the purchase of WIC approved fresh fruits and vegetables.

A. ADMINISTRATIVE AND PROCEDURAL VIOLATIONS - DEPARTMENT SANCTIONS

Under this section, vendors who accumulate 35 or more violation points during a contract period may be subject to termination of their Vendor Contract and a one year period of disqualification. Sanction points assigned during a contract period may be carried over to the next contract period (see page 12, Section XX of the WIC Vendor Contract).

A vendor will be sent a warning letter prior to being assigned any violation points. However, vendors who fail to submit the vendor survey (see violation #16) as required will not receive a warning letter but will be issued violation points. Violation points accumulated under this section may also be used in determining a vendor's qualification for reauthorization as a WIC vendor.

<u>VIOLATION</u>	<u>POINTS</u>
1. Inadequate stock:	
a. Insufficient quantities to meet minimum stock.	5 points/food group up to maximum of 15 points per visit.
b. No stock.	10 points/food group up to maximum of 30 points per visit.
c. Expired, stale, spoiled, or moldy WIC foods as part of minimum stock requirements.	10
2. Failure to show the price of an authorized WIC food on the package, container, shelf or sign.	3 points/food group up to maximum of 15 points per visit.
3. Advertising a non-WIC food item as a WIC authorized food item or other improper use of the WIC logo or acronym.	5 points/visit
4. Requiring WIC clients to show identification other than their Michigan's WIC EBT Bridge Card.	10
5. Requiring other cash purchases or a minimum purchase as a condition to use food instruments.	10
6. Requiring WIC clients to use WIC only checkout lanes.	5
7. Requiring WIC clients to purchase a single brand when other WIC approved brands are available.	3
8. Failure to allow the purchase of up to the full amount of WIC foods authorized on the food instrument, if such foods are available and requested by the WIC client.	15
9. Failure to properly process WIC EBT transactions in accordance with the procedures set forth in the most recent publication of the Michigan WIC Program Vendor Guidebook and the Michigan WIC EBT Manual, including any revisions or supplements issued by the Department.	5

<u>VIOLATION</u>	<u>POINTS</u>
10. Not allowing sales promotions such as cents off coupons, and/or not honoring any and all manufacturer's promotional specials to WIC clients but offered to other customers and not reducing the corresponding amount from the food benefit price. This does not include sale prices as vendors are required to charge WIC clients the sale price or be considered to be overcharging.	5
11. Providing incentive items or other free merchandise to only WIC clients and not offered to any other customers.	10
12. Providing alcohol, tobacco, or lottery to WIC clients as an incentive to redeem WIC benefits in your store.	20
14. Issuing "Rain Checks" in exchange for food benefits	10
15. Contacting WIC clients in an attempt to recoup funds for food benefits not paid by WIC.	5
16. Failure to submit or providing false information on the WIC Vendor Survey.	5
17. Providing false information to Department representative during an on-site visit.	20

NOTICE OF VIOLATION

The Department will send the vendor notification of any violation points assigned to the vendor by certified mail or by first class mail to the last known address.

B. CHRONIC VIOLATIONS AND/OR ABUSE - DEPARTMENT SANCTIONS

The Department has determined that one incidence of the violations outlined in this section will result in the immediate imposition of the sanctions indicated. The Department will not provide the vendor with prior warning that violations were occurring before imposing these sanctions.

The Department shall also terminate the vendor's WIC contract in addition to imposing the disqualification in this section. The Department may also deny a WIC vendor application in addition to termination and disqualification for any of the violations listed below.

VIOLATION

POINTS

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| 1. Failure to attend the required training | Termination of contract and one year disqualification |
| 2. Accumulation of 35 or more administrative and procedural violation points within a single contract period. Sanction points assigned during a contract period may be carried over to the next contract period. | Termination of contract and one year disqualification |
| 3. Failure to provide access to store premises and/or in any manner to hinder or impede authorized WIC Program staff in the act of conducting an on-site education, monitoring, inventory audit or investigation visit. | Termination of contract and one year disqualification |
| 4. Threatening and/or verbally abusing WIC clients and/or authorized WIC Program personnel in the conduct of legitimate WIC Program business. | Termination of contract and one year disqualification |
| 5. Making false statements on a WIC Vendor Application or Contract | Termination of contract and one year disqualification |
| 6. The existence of a conflict of interest between the vendor and the Department or Local Agency as defined by State law, regulations and/or policies. | Termination of contract and disqualification from the WIC Program until the conflict of interest no longer exists. |
| 7. Suspension or loss of a license or permit to operate a food establishment issued by the Michigan Department of Agriculture and Rural Development. | Termination of contract and disqualification from the WIC Program until the vendor is properly licensed by the Michigan Department of Agriculture and Rural Development. |
| 8. Vendor ceasing operation for any reason except due to temporary closure from casualty losses, natural disaster, or renovations for improvements, as set out in the State Plan of Program Operation and Administration and any subsequent revisions. | Termination of Contract (no period of disqualification) |

<u>VIOLATION</u>	<u>POINTS</u>
9. Change of ownership or change of location.	Termination of Contract (no period of disqualification)
10. Assessment of a civil money penalty for hardship in SNAP (Food Stamp Program).	Termination of contract and disqualification from the WIC Program for the period for which the vendor would otherwise have been disqualified by SNAP.
11. Failure to maintain inventory records or other records the Department requires in the vendor contract for a period of three years after final payment has been received by the vendor for redeemed food benefits or after all pending matters have been resolved.	Termination of contract and one year disqualification.
12. Failure to make available to the Department, the United States Department of Agriculture, or the comptroller General of the United States, upon request, at a reasonable time and place for inspection and audit or to provide legible copies to the Department within 21 calendar days of the date of the request, all WIC transaction information in the vendor's possession and all program related records, including purchase and inventory records for authorized WIC food items for which the vendor has claimed reimbursement from the Department.	Termination of contract and one year disqualification.
13. Failure to purchase infant formula from licensed wholesalers, distributors and retailers listed with the Michigan Department of Agriculture and Rural Development or from infant formula manufacturers registered with the Food and Drug Administration.	Termination of contract and one year disqualification.
14. Failure at any time during the contract period to meet all of the most current WIC program vendor selection criteria.	Termination of contract and one year disqualification
15. Failure to immediately notify the Department when total WIC sales exceed more than 50% of total store food sales.	Termination of contract and one year disqualification

VIOLATIONS REQUIRING A MANDATORY SANCTION UNDER FEDERAL REGULATIONS AT 7 CFR 246.12

Federal Regulations at 7 CFR 246.12 require mandatory sanctions be imposed for the violations listed in this section and also require that a pattern of incidences of a violation be established before imposing a mandatory sanction for violations numbered 1, 2, 3, 4, 5 listed in this section. For violations of numbers 3, 4 or 5 listed in this section, the Department may send a warning letter after the first incident.

The Department shall terminate the vendor's WIC Contract in addition to imposing the mandatory disqualification sanctions listed in this Section. The Department may also deny a WIC Vendor Application for any of the violations listed in this section.

The WIC Program continues to work with the vendor community to eliminate fraud and abuse. We believe violations relating to overcharging WIC are very serious and jeopardize the integrity of the WIC Program. USDA provides the State Agency discretion to decide which factors to consider in determining if a notice of a violation would compromise an investigation.

On a case by case basis, when investigations are covert in nature, and on vendors that have a high risk indicator, the State Agency will review the initial violation relating to overcharging to determine if a warning letter should be sent. If the notice of an overcharging violation would compromise the investigation, this will be documented in the file and no warning letter will be sent to the vendor. However, failure to issue a warning letter shall not be a basis to contest a documented violation.

Also, covert investigations of vendors being conducted by SNAP (Food Stamp Program), the USDA Office of Inspector General, the State Police or other authorities do not provide any notice of such investigations. It is our common goal to strengthen the integrity of the WIC Program, contain costs, and serve clients. When overcharging (charging WIC more than the shelf price) happens, this serious violation will not be tolerated.

<u>Violation</u>	<u>Number of Incidences of the Violation Which Will Result in the Indicated Sanction</u>	<u>Sanction and Length of Disqualification</u>
1. Overcharging, which is defined as charging the WIC Program more for supplemental food than non-WIC customers or charging the WIC Program more than the current shelf price.	3	Termination of contract and three year disqualification
2. Charging the WIC Program for food (by UPC code) not received by the client.	3	Termination of contract and three year disqualification

<u>Violation</u>	<u>Number of Incidences of the Violation Which Will Result in the Indicated Sanction</u>	<u>Sanction and Length of Disqualification</u>
3. Receiving, transacting and/or redeeming WIC EBT benefits outside of authorized channels, including the use of unauthorized vendors and/or unauthorized persons. This also includes an unauthorized vendor passing food instruments to an authorized vendor for redemption.	2	Termination of contract and three year disqualification
4. Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products cash, firearms, ammunition, explosives or controlled substances as defined in 21USC 802, in exchange for food instruments.	2	Termination of contract and three year disqualification.
5. Providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.	3	Termination of contract and one year disqualification.
6. Vendors convicted of trafficking in WIC EBT Food instruments or selling firearms, ammunition, explosives or controlled substances as defined in Section 102 of the Controlled Substance Act (21 USC 802), in exchange for WIC EBT food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such a violation.	1	Termination of contract and permanent disqualification
7. Vendors buying or selling WIC EBT food instruments for cash (trafficking), or selling firearms, ammunition, explosives, or controlled substances as defined in Section 102 of the Controlled Substance Act (21 USC 802), in exchange for WIC EBT food instruments.	1	Termination of contract and six year disqualification
8. The sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC EBT food instruments.	1	Termination of contract and three year disqualification

<u>Violation</u>	<u>Number of Incidences of the Violation Which Will Result in the Indicated Sanction</u>	<u>Sanction and Length of Disqualification</u>
9. Claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time.	2 or more months	Termination of contract and three year disqualification
10. Vendors who have been disqualified from SNAP (Food Stamps) shall be disqualified, and/or terminated from the WIC Program. The disqualification shall be for the same length of time as the SNAP disqualification and may begin at a later date than the SNAP disqualification. The disqualification is not subject to Administrative or Judicial Review under the WIC Program.		

D. MULTIPLE VIOLATIONS DURING SINGLE INVESTIGATION

When during the course of a single investigation the Department determines a vendor has committed multiple violations (which may include violations subject to Department sanctions) the Department shall disqualify the vendor for the period corresponding to the most serious mandatory sanction.

E. CIVIL MONEY PENALTY

The Department will not impose a civil money penalty in lieu of permanent disqualification for vendors convicted of trafficking or illegal sales as Stated in Section C, item 6, of this Sanction Policy. If the Department determines that disqualification of a vendor would result in inadequate client access, the Department shall impose a civil money penalty in lieu of disqualification for those violations listed in Section C of this Sanction Policy, items 1, 2, 3, 4, 5, 7, 8 and 9 and for violations as listed in Sections A and B of this Sanction Policy which would result in disqualification. The civil money penalty amount shall be determined using the formula in USDA Federal Regulations at 7 CFR 246, RA of 2004, PL 108-265, Final Rule. The total amount of civil money penalties for violations investigated as part of a single investigation shall not exceed \$44,000.

A civil money penalty shall not be imposed in lieu of disqualification for third or subsequent sanctions for violations listed in Section C, items 1, 2, 3, 4, 5, 7, 8 and 9 of this Sanction Policy.

Vendors that have been convicted of trafficking (Section C-6) in food instruments or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments will be permanently disqualified from the WIC Program. A civil money penalty in lieu of disqualification will not be considered if disqualification of the vendor would result in inadequate client access or if the vendor had at the time of the violation an effective policy and program in affect to prevent trafficking and the ownership of the vendor was not aware of it.

A vendor who does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification will be disqualified from the WIC Program for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

F. SECOND MANDATORY SANCTION

A vendor who previously has been assessed a sanction for any of the violations listed in Section C, items 1, 2, 3, 4, 5, 7, 8 and 9, and receives another sanction for any of these violations, the second sanction will be doubled.

G. THIRD OR SUBSEQUENT MANDATORY SANCTION

A vendor who previously has been assessed two or more sanctions for any of the violations listed in Section C, items 1, 2, 3, 4, 5, 7, 8 and 9, and receives another sanction for any of these violations, the third sanction and all subsequent sanctions will be doubled.

H. NO VOLUNTARY WITHDRAWAL OR NONRENEWAL OF CONTRACT

The Department shall not accept voluntary withdrawal of the vendor from the WIC Program as an alternative to disqualification for the violations requiring a mandatory sanction under Federal regulations listed in Section C of this Sanction Policy. In addition, the Department shall not use nonrenewal of the Vendor Contract as an alternative to disqualification for the mandatory sanctions in Section C.

I. CRIMINAL OR CIVIL PROSECUTION

A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or Local laws. In accordance with Federal Regulations, those who have willfully misapplied, stolen, or fraudulently obtained program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

J. CHANGE OF LOCATION

If a vendor changes his business location and is authorized at the new location under the change of location policy, any violations which occurred under the previous contract will carry over to the contract at the new location and may be used as a basis for termination and/or disqualification action or other sanctions.

K. CHANGE OF BUSINESS ENTITY THAT IS THE OWNER

If a vendor changes ownership at the same location by reason of a change in business entity or the addition or deletion of partners, associates or principals, then any violations which occurred under the previous contract will carry over to the new contract and may be used as a basis for termination and/or disqualification action or other sanctions. By way of example, such changes in ownership may include, but are not limited to, a change from a sole proprietorship or partnership to a corporation where the previous individual owner(s) or one or more partner(s) remain as an officer or shareholder of the new corporation.

L. TERMINATION/DENIAL/DISQUALIFICATION

Vendors may appeal denial, termination, termination and disqualification, or a civil money penalty according to the most recent Administrative Hearing Procedures issued by the Department. However, a termination and disqualification which is based on a SNAP disqualification **is not subject to Administrative or Judicial Review**.

For those cases where a vendor has timely appealed a termination or termination and disqualification action, and the vendor was allowed to continue on the program, all provisions of the WIC Vendor Contract will continue to apply, including sanctions for noncompliance, during the time period the contract is in effect.

Vendors whose contracts are terminated, denied and/or disqualified and wish to become authorized again must reapply (if disqualified, after the disqualification period) for a WIC Vendor Contract. The vendor must meet all requirements in force at that time for a WIC Vendor Contract including the selection plan and limitation policy requirements. The Department will not consider contracting with a vendor during any disqualification period from the WIC Program.

M. SNAP (FOOD STAMP) DISQUALIFICATION

Disqualification from the WIC Program for any of the mandatory sanctions listed in Section C of this Sanction Policy may result in disqualification as a retailer in SNAP. Such disqualification is not subject to Administrative or Judicial Review under SNAP.