

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

WIC VENDOR SANCTION POLICY

OVERVIEW

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 Relations and Program Integrity Section, to determine the need for and application of appropriate WIC Vendor Sanctions. For documented violations under Section A or B, in the Department's sole and exclusive discretion, a Vendor may be given one opportunity during a contract period to pay a Monetary Claim and/or a Civil Money Penalty and enter into a Corrective Action Plan (CAP) in lieu of termination of contract or termination and disqualification as applicable, subject to conditions established by the Department.

Vendor sanctions assigned in the preceding contract period may impact Vendor qualification for subsequent authorization. Violations of the WIC Program which occurred during the previous contract period, if any, may also be carried over and used as a basis for termination and/or disqualification or other sanctions under any subsequent WIC Vendor 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 Vendor Contract. The Department may refer authorized WIC 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-authorized fresh fruits and vegetables.

A. ADMINISTRATIVE AND PROCEDURAL VIOLATIONS

NOTICE OF VIOLATION

Violation points are assigned based on the violation(s) identified on the WIC Vendor Monitoring Visit Report, which is reviewed with the Vendor and a copy is left at the store at the time of the Monitoring Visit. **The Department will issue the Vendor a written warning after the first documented incident of a specific violation.** After a Vendor receives a warning for that violation, the Vendor

may be assigned the corresponding number of violation points for subsequent documented incidents of the same violation. Food quality issues with food items intended for infants will be referred to the Michigan Department of Agriculture & Rural Development (MDARD). Failure or delay in providing written notification of violation points assigned shall not be a basis to contest the validity of a documented violation.

Under this section, Vendors who accumulate 35 or more violation points during a contract period may be subject to termination of their WIC 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). Violation points accumulated under this section may also be used in determining a Vendor's qualification for reauthorization as a WIC Vendor.

Under this section, Vendors may be assigned violation points as specified below for the following violations:

<u>VIOLATION</u>	<u>POINTS ASSESSED (For 2nd and subsequent violations)</u>
1. Inadequate stock:	
a. Insufficient quantities to meet minimum stock.	3 points/food group up to maximum of 15 points per visit
b. No stock.	5 points/food group up to maximum of 30 points per visit
2. Failure to show the price of an WIC authorized food on the item, container, shelf or sign.	3 points/food group up to maximum of 15 points per visit
3. Price loaded for a WIC-authorized food in the Point-of-Sale device is greater than the price marked on the item, container, shelf or sign; or, prices not loaded in Point-of-Sale device.	3 points/food group up to maximum of 15 points per visit
4. Offering for sale WIC-authorized foods that are spoiled, damaged, or past the dates marked on item (i.e. "best by," "expired," or 'best before' date). All WIC-authorized food that is on a shelf and/or accessible to a customer will be considered a WIC authorized food offered for sale.	3 points/visit (violations are referred to MDARD)
5. Advertising a non-WIC food item as a WIC-authorized food item or other improper use of the WIC logo or acronym.	3 points/visit

<u>VIOLATION</u>	<u>POINTS ASSESSED (For 2nd and subsequent violations)</u>
6. Requiring WIC clients to show identification other than their Michigan WIC EBT Bridge Card.	10
7. Requiring other cash purchases or a minimum purchase as a condition to use food instruments.	10
8. Designating 'WIC EBT only' checkout lanes where no other forms of tender are accepted.	5
9. Requiring WIC clients to purchase a single brand when other WIC-authorized brands are available.	10
10. Failure to allow, or requiring, 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.	10
11. 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
12. 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.	5
13. Providing incentive items or other free merchandise to only WIC clients and not offered to any other customers.	10
14. Failure to extend to WIC clients the same courtesy offered to other customers.	5
15. Issuing "Rain Checks" in exchange for food benefits.	10
16. Contacting WIC clients in an attempt to recoup funds for food benefits not paid by WIC.	5
17. Failure to submit or providing false information during an onsite visit; or as requested by the WIC Program.	5

VIOLATION

POINTS ASSESSED (For 2nd and subsequent violations)

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| 18. Conducting WIC business in a way that is contrary to the health, welfare, and safety of WIC clients. | 10 |
| 19. Not allowing a split tender transaction whereby a WIC client is allowed to pay a remaining balance on a fresh fruit/vegetable transaction (CVB) with another form of tender. Fresh fruits and vegetables are the only WIC-authorized items a Vendor may ask a client to pay the difference for with another form of tender. | 5 |

B. STATE AGENCY SANCTIONS

For violations of numbers 1 through 16 listed in this section, the Department may issue a **written warning** after the first incident.

VIOLATION

SANCTION

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| 1. Failure to attend the required training. | Termination of Contract and/or ineligibility for reauthorization |
| 2. Accumulating 35 or more Administrative and Procedural Violation points. | 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 immediate disablement of POS Device |
| 4. Threatening and/or verbally abusing WIC clients and/or authorized WIC Program staff in the conduct of legitimate WIC Program business. | Termination of Contract and immediate disablement of POS Device |
| 5. Making false statements on a WIC Vendor Application, Contract, request for information, audit, etc. | Termination of Contract and immediate disablement of POS Device |

<u>VIOLATION</u>	<u>SANCTION</u>
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 immediate disablement of POS Device
7. Suspension or loss of a license or permit to operate a food establishment issued by the Michigan Department of Agriculture & Rural Development (MDARD).	Termination of Contract and/or immediate disablement of POS Device
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 and immediate disablement of POS Device
9. Change of ownership as outlined in Section K; or, change of location.	Termination of Contract and immediate disablement of POS Device
10. Assessment of a Civil Money Penalty (CMP) 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. A pattern of failing to maintain inventory records or other records the Department requires in the WIC 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. A pattern will be established when a Vendor fails to produce inventory records for specified WIC-authorized foods as requested by the Department corresponding to a 3-month to 36-month audit period as applicable.	Termination of Contract and one-year disqualification

<u>VIOLATION</u>	<u>SANCTION</u>
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 WIC-authorized food items for which the Vendor has claimed reimbursement from the Department.	Termination of Contract and immediate disablement of POS Device
13. Failure to purchase infant formula from licensed wholesalers, distributors and retailers listed with the Michigan Department of Agriculture & Rural Development or from infant formula manufacturers registered with the Food and Drug Administration.	Termination of Contract
14. Failure at any time during the Contract period to meet all of the most current WIC Vendor Selection Criteria. (See Appendix A, Section B for more information about current Selection Criteria requirements and action schedules.)	Termination of Contract
15. Failure to immediately notify the Department when total WIC sales exceed more than 50% of total store food sales.	Termination of Contract
16. Providing alcohol, tobacco, or lottery to WIC clients as an incentive to redeem WIC benefits.	Termination of Contract

CORRECTIVE ACTION PLAN AND PAYMENT OF CIVIL MONEY PENALTY IN LIEU OF TERMINATION AND DISQUALIFICATION FOR ACCUMULATION OF ADMINISTRATIVE VIOLATION POINTS

Vendors that have accumulated 35 or more violation points, but less than 70, at the Department's sole and exclusive discretion, may be given one opportunity during a contract period to pay a Civil Money Penalty (CMP) and enter into a Corrective Action Plan (CAP) in lieu of termination and disqualification, subject to the following conditions:

- A Vendor that accumulates 70 or more violation points will not be considered under this section; and
- Vendor must meet all WIC Vendor Selection Criteria and not currently be in violation of any of the violations listed in Section C, Mandatory Sanctions of the WIC Vendor Sanction Policy; and
- Vendor must submit a written CAP addressing the violations in a form acceptable to the WIC Program; and
- Vendor must promptly pay a CMP that will be computed using the formula in USDA Federal Regulations at 7 CFR 246.12(l)(1)(x); and
- Vendor will be given 90 days (the Assessment Period) to demonstrate that it can consistently meet Program requirements. Vendor agrees that, during the Assessment Period, the Department will conduct a minimum of three (3) to five (5) unannounced monitoring visits at Vendor's expense. Vendor agrees to reimburse the Department one hundred dollars (\$100.00)

per monitoring visit completed during the Assessment Period for up to a maximum of five (5) monitoring visits. The Department will submit an invoice to Vendor within 5 days of each monitoring visit, and Vendor agrees to submit payment immediately upon receipt of the invoice; and

- During the Assessment Period, Vendor will be subject to all terms and conditions of the WIC Vendor Contract and to sanctions for any violations that occur in accordance with the WIC Vendor Sanction Policy. Granting this CAP will not limit or affect the Department's right to issue additional sanctions or other actions permitted under the WIC Vendor Contract, the WIC State Plan, and federal regulations; and
- If Vendor successfully completes the Assessment Period with no violations, and fully reimburses the Department for the monitoring visits conducted during the Assessment Period, the Department will reduce Vendor's violation points to 10 as of that date going forward; and
- If Vendor accumulates violation points during the Assessment Period, Vendor may be subject to termination and disqualification in accordance with the Sanction Policy. Any violations assessed during the Assessment Period may be included as evidence to support this action.

C. 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, or 5 listed in this section. For violations of numbers 3, 4 or 5 listed in this section, the Department may issue a warning after the first incident.

The Department shall terminate the Vendor's WIC Vendor 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. The Program believes 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.

When investigations are covert in nature and conducted on Vendors that have a high-risk indicator, the State Agency will review the initial violation relating to overcharging to determine if a written warning should be issued. However, if, on a case-by-case basis, it is determined that the notice of a violation requiring a pattern of violations would compromise the investigation, this will be documented, and no warning letter will be sent to the Vendor. No written warning will be issued as a result of a sanctionable violation identified during an inventory audit. However, failure to issue a warning letter shall not be a basis to contest the validity of a documented violation.

Also, Vendors are not provided notice of covert investigations being conducted by SNAP (Food Stamp Program), the USDA Office of Inspector General, the State Police or other authorities. 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 to Establish a Pattern of the Violation to Result in the Indicated Sanction</u>	<u>Sanction and Length of Disqualification</u>
1. A pattern of 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. A pattern of charging the WIC Program for food (by UPC code) not received by the client.	3	Termination of Contract and three-year disqualification
3. A pattern of 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. A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances as defined in 21 USC 802, in exchange for food instruments.	2	Termination of Contract and three-year disqualification
5. A pattern of 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

<u>VIOLATION</u>	<u>Number of Incidences to Establish a Pattern of the Violation to Result in the Indicated Sanction</u>	<u>Sanction and Length of Disqualification</u>
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
9. A pattern of 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. A monetary claim may be issued in the amount of the discrepancy between the reimbursement and inventory records.	3 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 (CMP) 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 CMP in lieu of disqualification for those violations listed in Section B, item 11, and Section C, items 1, 2, 3, 4, 5, 7, 8 and 9 of this Sanction Policy and for violations as listed in Sections A and B of this Sanction Policy which would result in disqualification. The CMP amount shall be determined using the formula in USDA Federal Regulations at 7 CFR 246.12(l)((1)(x). The total amount of CMPs for violations investigated as part of a single investigation

has a maximum of \$15,041 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$60,161 pursuant to 7 CFR 3.91(b)(3)(v).

A CMP shall not be imposed in lieu of disqualification for third or subsequent sanctions for violations listed in Section B, item 11, and Section C, items 1, 2, 3, 4, 5, 7, 8 and 9 of this Sanction Policy or if the Vendor has been assessed a CMP in lieu of disqualification by another WIC State Agency. In addition, a CMP shall not be imposed if the Department determines that disqualification of the Vendor would result in inadequate client access and the Vendor has been assessed a CMP for hardship by SNAP. In this instance, the Vendor would not be disqualified.

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 CMP 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 effect 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 CMP 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 CMP was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple CMPs as a result of a single investigation).

SECOND SANCTION

For a Vendor who has previously been assessed a sanction for any of the violations listed in Section B, item 11, and 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.

THIRD SANCTION

A Civil Money Penalty shall not be imposed in lieu of disqualification for third or subsequent sanctions for violations listed in Section B, item 11, and Section C, items 1, 2, 3, 4, 5, 7, 8 and 9 of this Sanction Policy.

F. 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 WIC Vendor Contract as an alternative to disqualification for the mandatory sanctions in Section C.

G. 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 (5) 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 (1) year or both.

H. CHANGE OF LOCATION

If a Vendor changes its business location and is authorized at the new location under the change of location policy, any violations which occurred under the previous WIC Vendor 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.

I. 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 WIC Vendor 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.

J. TERMINATION/DENIAL/DISQUALIFICATION

Vendors may appeal denial, termination, termination and disqualification, or a Civil Money Penalty according to the most recent Administrative Hearing Procedures and/or Administrative Review Procedures for Vendors 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 WIC Vendor Selection Criteria and Limitation Policy requirements. The Department will not consider contracting with a Vendor during any disqualification period from the WIC Program.

K. 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.