



## WIC VENDOR SANCTION SCHEDULE

USDA Federal Regulations and Michigan Department of Health and Human Services (the Department) WIC Vendor policy require the sanctioning of authorized WIC Vendors determined to have violated Program rules and procedures, engaged in abusive WIC food benefit redemption practices, and/or fraudulently obtained 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.

Vendor sanctions assigned in the preceding contract period may impact Vendor qualification for subsequent authorization. Violations which occurred during the previous contract period 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 this policy.

The Department may apply a variety of sanctions to Vendors found to be violating Program requirements. Sanctions may include monetary claims, 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. In the Department's sole and exclusive discretion, a Vendor may be given an opportunity to pay a Monetary Claim, pay a Civil Money Penalty and/or enter into a Corrective Action Plan (CAP) in lieu of termination of contract or termination and disqualification. The Department may refer authorized WIC Vendors who commit fraud or abuse to Federal, State or Local authorities for prosecution under applicable statutes. These sanctions may be applied singly or in combination of two or more sanctions.

The Department may sanction a Vendor for a combination of violations or any other violations of the terms of the WIC Vendor Contract, WIC Pharmacy Contract, State/Federal Regulations, State Plan of Program Operations and Administration and/or other applicable rules and regulations.

As referenced in this document, *WIC benefits* are defined as electronic benefits that can be used to purchase WIC-approved food items from authorized WIC Vendors using a WIC electronic benefit transfer (EBT) card.

### I. ADMINISTRATIVE AND PROCEDURAL VIOLATIONS

#### NOTICE OF VIOLATION

Violation points are assigned based on the violation(s) identified during compliance investigations and/or monitoring visits. 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. Food quality issues may 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 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 Section XXII 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:

<b><u>VIOLATION</u></b>	<b><u>POINTS ASSESSED</u> <u>(For 2<sup>nd</sup> and subsequent violations)</u></b>
1. Inadequate stock:	
a. Insufficient quantities to meet minimum stock.	3 points/food group up to a maximum of 15 points per visit
b. No stock.	5 points/food group up to a maximum of 30 points per visit
2. Failure to show the price of on the item, container, shelf or sign for a WIC-approved item available for sale.	3 points/food group up to a maximum of 15 points per visit
3. Price loaded in the Point-of-Sale (POS) device is greater than the price marked on the item, container, shelf or sign; or prices not loaded in the POS device for a WIC-approved food available for sale.	3 points/food group up to a maximum of 15 points per visit
4. Offering for sale WIC-approved foods that are spoiled, damaged, or past the dates marked on the item (i.e., “best by,” “expiration,” or “best before” date). All WIC-approved food that is on a shelf and/or accessible to a customer will be considered a WIC-approved food available for sale.	3 points/visit (violations are referred to MDARD)
5. Advertising a non-WIC food item as a WIC-approved food item or other improper use of the WIC logo or acronym.	3 points/visit
6. Requiring WIC participants to show identification other than their Michigan WIC EBT Bridge Card.	10 points
7. Requiring other cash purchases or a minimum purchase as a condition to use WIC benefits.	10 points
8. Designating ‘WIC EBT only’ checkout lanes where no other forms of tender are accepted; or, failure to have at least one WIC EBT equipped lane functional and accessible at all times; or, failing to comply with WIC EBT minimum lane coverage provisions.	5 points
9. Limiting WIC participants in their choices of WIC-approved foods (e.g., requiring WIC participants to purchase a single brand when other WIC-approved brands are available).	10 points

<b><u>VIOLATION</u></b>	<b><u>POINTS ASSESSED</u></b> <b><u>(For 2<sup>nd</sup> and</u></b> <b><u>subsequent violations)</u></b>
10. Failure to allow, or requiring, the purchase of up to the full quantity of WIC-approved foods on the participant's shopping list, if such foods are available and requested by the WIC participant. This includes refusal to split cases.	10 points
11. Failure to comply with WIC-approved formula ordering requirements for Pharmacy Vendors (Grocery with Pharmacy; Stand-alone Pharmacy).	
a. Failure or refusal to order WIC-approved formula within 24 hours of a request by a WIC client or WIC staff member.	5 points
b. Failure to make formula available for pick-up by a WIC participant within 2 business days of placing the order.	5 points
12. Failure to properly process WIC EBT transactions in accordance with WIC Program requirements and EBT operating rules, standards and technical requirements.	5 points
13. Not allowing sales promotions, such as cents off coupons, and/or not honoring any and all manufacturer's promotional specials to WIC participants, but offered to other customers.	5 points
14. Providing incentive items or other free merchandise to only WIC participants and not offered to any other customers.	10 points
15. Failure to extend to WIC participants the same courtesy offered to other customers.	5 points
16. Issuing credit, 'rain checks,' due bills or other similar receipts for WIC-approved foods not obtained at the time of the transaction.	10 points
17. Contacting WIC participants in an attempt to recoup funds for food benefits not paid by WIC.	5 points
18. Failure to provide access to WIC records or providing false information during an on-site visit; or as requested by the WIC Program.	5 points
19. Conducting WIC business in a way that is contrary to the health, welfare, and safety of WIC participants; or, discriminating against WIC participants on the basis of race, color, national origin, sex, age, or disability.	10 points

<b><u>VIOLATION</u></b>	<b><u>POINTS ASSESSED</u></b> <b><u>(For 2<sup>nd</sup> and</u></b> <b><u>subsequent violations)</u></b>
20. Improper use of cash-value benefits (CVBs):	
a. Not allowing a split-tender transaction whereby a WIC participant is allowed to pay a remaining balance on a fruit and vegetable (CVB) transaction with another form of tender. Fruits and vegetables are the <u>only</u> WIC-approved items that a Vendor may ask a participant to pay the difference for with another form of tender.	5 points
b. Exchanging CVBs for items other than WIC-approved fruits and vegetables; or, using the incorrect PLU to transact CVBs.	5 points
21. Failure to inform, train and update cashiers and other staff on WIC Program requirements and procedures; or failure to maintain records of such internal trainings.	10 points
22. Failure to keep a valid email address, phone number and mailing address on file with the Department.	5 points
23. Allowing unauthorized return or exchange of WIC-approved foods; or failure to allow the exchange of defective, spoiled or expired food items purchased with WIC benefits.	5 points
24. Entering a cardholder's PIN and/or not allowing the cardholder to enter his/her own PIN.	10 points
25. Failure to scan or manually enter the actual UPC code affixed to the item being purchased with WIC benefits; or, scanning or entering a UPC code that is not affixed to the actual item being purchased, or is a replacement for the item being purchased with WIC benefits.	10 points

## II. STATE AGENCY SANCTIONS

For violations of numbers 1 through 17 listed in this section, the Department may issue a written warning after the first incident.

<b><u>VIOLATION</u></b>	<b><u>SANCTION</u></b>
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

<b><u>VIOLATION</u></b>	<b><u>SANCTION</u></b>
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 participants 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
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 by the Michigan Department of Agriculture & Rural Development (MDARD).	Termination of Contract and/or immediate disablement of POS device
8. Vendor ceasing operation or unable to transact WIC 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 Operations and Administration and any subsequent revisions.	Termination of Contract and immediate disablement of POS device
9. Failure to notify the Department of a change of ownership; or, change of location, as defined in Section III, Item 15 and Section XII of the WIC Vendor Contract.	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

<b><u>VIOLATION</u></b>	<b><u>SANCTION</u></b>
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-approved foods as requested by the Department corresponding to a 3-months to 36-month audit period, as applicable.	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 State, 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-approved 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 (MDARD) 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 MI-WIC Vendor Policy Section 2.02.)	Termination of Contract
15. Failure to immediately notify the Department if and/or when total WIC sales exceed more than 50% of total store food sales.	Termination of Contract
16. Providing cash, alcohol, tobacco, or lottery to WIC participants as an incentive to redeem WIC benefits.	Termination of Contract
17. Allowing the return of food purchased with WIC benefits in exchange for cash.	Termination of Contract and one-year disqualification
18. Failure to comply with all Federal Regulations and state laws, rules and regulations as they relate to WIC Vendors.	Termination at the discretion of the Department

III. 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 considers violations relating to overcharging WIC to be very serious and to 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 participants. When overcharging (charging WIC more than the shelf price) happens, this serious violation will not be tolerated.

<b><u>VIOLATION</u></b>	<b><u>Number of Incidences to Establish a Pattern of the Violation to Result in the Indicated Sanction</u></b>	<b><u>Sanction and Length of Disqualification</u></b>
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 participant.	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 WIC benefits to an authorized Vendor for redemption.	2	Termination of Contract and three-year disqualification

<b><u>VIOLATION</u></b>	<b><u>Number of Incidences to Establish a Pattern of the Violation to Result in the Indicated Sanction</u></b>	<b><u>Sanction and Length of Disqualification</u></b>
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 WIC benefits.	2	Termination of Contract and three-year disqualification
5. A pattern of providing unauthorized food items in exchange for WIC benefits, including charging for supplemental food provided in excess of those listed on the WIC benefit.	3	Termination of Contract and one-year disqualification
6. Vendors convicted of trafficking in WIC EBT WIC benefits 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 WIC benefits. 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 WIC benefits 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 WIC benefits.	1	Termination of Contract and six-year disqualification
8. The sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC EBT WIC benefits.	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



## VIOLATION

10. Vendors who have been disqualified from SNAP (Food Stamp Program) 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 Review or Administrative Hearing under the WIC Program.

#### IV. CORRECTIVE ACTION PLAN IN LIEU OF TERMINATION AND DISQUALIFICATION FOR ACCUMULATION OF ADMINISTRATIVE VIOLATION POINTS

Vendors that have accumulated 35 or more violation points under Section I, at the Department's sole and exclusive discretion, may be given an opportunity to enter into a Corrective Action Plan (CAP) in lieu of termination and disqualification. As deemed necessary by the Department, a Civil Money Penalty, as described in Section V below, may also be issued as part of a CAP. The CAP is subject to the following conditions:

- Unless determined necessary for ensuring participant access, 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 III, Mandatory Sanctions of the WIC Vendor Sanction Schedule; and
- Vendor must submit a written CAP addressing the violations in a form acceptable to the WIC Program; 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; 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 Schedule. Granting a 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, the Department will reduce Vendor's violation points to 0 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 WIC Vendor Sanction Schedule. Any violations assessed during the Assessment Period may be included as evidence to support this action.

#### V. CIVIL MONEY PENALTY

If the Department determines that disqualification of a Vendor would result in inadequate participant access, the Department shall impose a Civil Money Penalty (CMP) in lieu of disqualification. Vendors who pay the CMP imposed by the Department in lieu of disqualification for the violation listed in Section II, Item 2 will have their Administrative and Procedural Violation Points reduced to

0 after payment is made.

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 \$15,692 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$62,767 pursuant to 7 CFR 3.91(b)(3)(v).

A CMP will not be issued in lieu of disqualification under the following circumstances:

- If the Vendor has been assessed a CMP for hardship by SNAP.
- If the Vendor has been assessed a CMP in lieu of disqualification by another WIC State Agency.

However, if the Department determines a participant access need, the Vendor will not be disqualified.

Disqualification of Vendors for violations listed in Section III, Items 6 and 10, however, are not subject to the possibility of receiving Civil Money Penalties in lieu of disqualification, regardless of participant access or other circumstance.

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 II, item 11, and Section III, 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 II, item 11, and Section III, items 1, 2, 3, 4, 5, 7, 8 and 9 of this Sanction Schedule.

## VI. MULTIPLE VIOLATIONS DURING A 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.

## VII. 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 issuing a sanction for the violations in this Sanction Schedule.

If a Vendor voluntarily withdraws from the WIC Program and is issued a sanction including a

disqualification period, the Vendor's voluntary withdrawal shall be accepted as grounds for immediate termination of the WIC Vendor Contract. The Vendor shall still be subject to disqualification from participation in the WIC Program, including re-application for a WIC Vendor Contract, for the duration of the disqualification period. A Vendor who has voluntarily withdrawn from the WIC Program retains the right to appeal sanctions according to standard appeal procedures.

In addition, the Department shall not use nonrenewal of the WIC Vendor Contract as an alternative to disqualification.

#### VIII. 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.

#### IX. 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.

#### X. 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. Because the WIC Vendor Contract is specific to the owner, the WIC Program must approve any changes in ownership before they occur.

#### XI. TERMINATION/DENIAL/DISQUALIFICATION

Vendors may appeal denial, termination, termination and disqualification, or a Civil Money Penalty according to the MI-WIC Vendor Policy 7.0 (Appeals Policy). However, a termination and disqualification which is based on a SNAP disqualification is not subject to Administrative Review, Administrative Hearing, or other 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.

XII. SNAP (FOOD STAMP) DISQUALIFICATION

Disqualification from the WIC Program for any of the mandatory sanctions listed in Section III of this Sanction Schedule may result in disqualification as a retailer in SNAP. Such disqualification is not subject to Administrative Review, Administrative Hearing, or other judicial review.