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Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Vendor Management & Food Delivery Handbook

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Developed by USDA's Food and Nutrition Service, Supplemental Food Programs Division

The *WIC Vendor Management and Food Delivery Handbook* was developed by USDA's Food and Nutrition Service (FNS) to serve as a resource manual for State and federal staff who operate and oversee the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

The handbook is a comprehensive summary of regulations, policy, and guidance related to WIC Vendor Management and Food Delivery. It does not replace or supersede federal regulations or policies that govern the WIC Program.

In accordance with 5 U.S.C. § 552(b)(7)(E), select chapters are not available for public sharing.

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1 Introduction

The *WIC Vendor Management and Food Delivery Handbook* is intended to serve as a resource manual for State and federal WIC staff, but does not replace or supersede federal regulations or policies that govern the WIC Program. To identify the regulations and policies that support any section of this handbook, please see Appendix C - Selected Regulatory Citations.

For additional requirements related to WIC electronic benefit transfer (EBT), see WIC EBT regulations and guidance, which are located on FNS' public website.

This handbook will be updated periodically; the issuance date is included on the cover and in the footer.

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2 Food Delivery Methods

A WIC food delivery method is a system used by State and local agencies to provide supplemental foods to participants. The State agency may operate up to four types of food delivery systems/methods: home delivery, direct distribution, retail, or electronic benefit transfer (EBT).

Requirements for all four types of food delivery systems/methods are included in sections 2.1 and 2.2, below. See Handbook sections 2.3 (Home Delivery), 2.4 (Direct Distribution), and 2.5 (Retail) for information specific to each method.

2.1 Management

The State agency is responsible for managing and operating its food delivery systems/methods. This includes providing guidance to local agencies on how to operationalize its methods at the local level.

The State agency must:

- Design all food delivery systems/methods to be used within its jurisdiction. Each food delivery system/method must be uniform and:
    - Use consistent procedures in all areas where the system/method is used within the State agency's jurisdiction.
    - Ensure adequate participant access to foods.
    - If food instruments (FIs) are used, they must be uniform. FIs are vouchers, checks, electronic benefit transfer (EBT) cards, coupons or other documents that are used by a participant to obtain supplemental foods.
- Ensure all contracts/agreements entered into by the State or local agency for the management and operation of food delivery systems/methods conform to federal contracting requirements located at 2 CFR part 200, Appendix II.
- Ensure that food delivery systems/methods are compatible with the delivery of services to participants, including health and nutrition education and breastfeeding counseling.
- Ensure there is no conflict of interest (as defined by applicable State laws, regulations, and policies) between the State agency and any vendor, farmer, farmers' market, or direct distribution or home delivery contractor. This also applies to any local agency and any vendor, farmer, farmers' market, or direct distribution or home delivery contractor under the local agency's jurisdiction.
- Have procedures to document the handling of complaints by participants, parents/caretakers of infant or child participants, proxies, vendors, farmers, farmers' markets, and direct distribution or home delivery contractors. Complaints of civil rights discrimination must be handled in accordance with WIC regulations at 7 CFR 246.8(b), FNS Instruction 113-1, and applicable FNS policy memoranda.
- Employ at least one staff member designated for food delivery system management. This staff may perform additional duties. FNS recommends that the staff member:
    - Be knowledgeable about the State agency's entire food delivery system/method.
    - Have a thorough understanding of regulations and policies related to vendor management and food delivery.
    - Be accountable for resolving issues and problems involving food delivery.

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The State agency is prohibited from charging vendors for any vendor management cost for which it receives federal funding. This includes, but is not limited to: processing applications for authorization, contracting activities, processing FIs, providing training, conducting reviews, and conducting administrative appeals.

FNS oversight: FNS may require revisions to a State agency's proposed or current food delivery system(s)/method(s). If revisions are required, FNS will give written notice of the cause and will allow reasonable time for changes to be made.

2.1.1 Delegation of Vendor Management Related Activities

The State agency may delegate certain vendor management activities to its local agencies, but must provide supervision and instruction to ensure the uniformity and quality of local agency activities.

The State agency may delegate the following responsibilities to local agencies if the State agency indicates its intention to do so in its State Plan (see Handbook Chapter 15 for more information):

- Authority to sign vendor agreements.
- Vendor training.
    - This may also be delegated to contractors and vendor representatives.
- Vendor monitoring and compliance.
    - This may also be delegated to another entity, including another WIC State agency.
    - The entity conducting monitoring or investigations acts as a contractor and must:
        - Follow the rules and procedures of the contracting State agency.
        - Use the contracting State agency's food instruments for any buys that are conducted during monitoring or investigations.

Although it may be delegated to other entities, FNS recommends that the State or its local agencies conduct routine monitoring.

If the State agency delegates any vendor management activities, including the signing of vendor agreements, vendor training, or vendor monitoring to a local agency, it must evaluate the local agency's effectiveness in carrying out these responsibilities.

Additionally, State agencies may want to solicit feedback from local agencies to inform their vendor management decisions. Local agencies may provide valuable input about:

- Areas of participant concentration.
- Participant access issues.
- Reputations of local vendors.
- Service quality provided to WIC participants at local vendors.

2.2 Issuance of Supplemental Foods, Food Instruments and Cash Value Vouchers

Participants must receive authorized supplemental foods free of charge through the State agency's food delivery system(s)/method(s). Most State agencies use a food delivery system/method by which participants transact food instruments (FIs) or cash value vouchers (CVVs) for authorized supplemental

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foods. FIs are vouchers, checks, EBT cards, coupons, or other documents used to obtain supplemental foods. CVVs are fixed-dollar amount checks, vouchers, or other documents used to obtain authorized fruits and vegetables. Cash Value Benefits (CVBs) is the term used to describe fruit and vegetable benefits that are included on an EBT card.

The State agency must:

- Ensure that participants, parents/caretakers of infant and child participants, and proxies receive instructions on the proper use of FIs and CVVs, or on the procedures for obtaining authorized supplemental foods when FIs or CVVs are not used.
- Establish uniform procedures that allow parents/caretakers of infant or child participants and proxies to obtain and transact FIs and CVVs or to obtain authorized supplemental foods on behalf of a participant.
    - In determining whether a particular participant or parent/caretaker should be allowed to designate a proxy or proxies, the State agency must require the local agency or clinic to consider whether adequate measures can be implemented to provide nutrition education and health care referrals to that participant or, in the case of an infant or child participant, to the participant's parent/caretaker.
- Ensure that the participants, parents/caretakers of infant or child participants, and proxies sign for receipt of FIs, CVVs, or authorized supplemental foods.
- Ensure that participants, parents/caretakers of infant and child participants, and proxies are informed that they have the right to complain about improper vendor, farmer, farmers' market, and home delivery contractor practices.
- Ensure that no more than a 3 month supply of FIs and CVVs or a 1 month supply of authorized supplemental foods is issued at any one time to any participant, parent/caretaker of an infant or child participant, or proxy.
- Require participants, parents/caretakers of infant or child participants, and proxies to pick up benefits in person when scheduled for a certification or nutrition education appointment.

The State agency may:

- Provide for issuance through an alternative means such as mailing paper FIs and CVVs unless FNS determines that such actions would jeopardize the integrity of Program services or accountability.
    - If the State agency opts to mail FIs and CVVs it must:
        - Provide justification in its State Plan for mailing FIs and CVVs to areas where Supplemental Nutrition Assistance Program (SNAP) benefits are not mailed.
        - Establish and implement a system that ensures that FIs and CVVs are returned to the State or local agency if a participant no longer resides or receives mail at the address where the FIs and CVVs were sent.

2.2.1 Additional Requirements for FIs and CVVs

In addition to following the issuance procedures listed in Handbook section 2.2, all State agencies that issue FIs or CVVs must meet the following requirements.

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2.2.1.1 FI and CVV Security

The State agency must develop standards to ensure the security of FIs and CVVs from the time the FIs or CVVs are created to the time they are issued.

For pre-printed FIs and CVVs, the standards must include:

- Maintenance of perpetual inventory records of FIs and CVVs.
- Monthly physical inventory of FIs and CVVs on hand.
- Reconciliation of perpetual and physical inventories of FIs and CVVs.
- Locking up all FIs and CVVs, except for supplies needed for immediate use.

For EBT and print-on-demand FIs and CVVs, the standards must provide for accountability and security in the manufacturing and issuance of FIs and CVVs/CVBs.

2.2.1.2 FI and CVV Disposition

The State agency must account for the disposition of all FIs and CVVs through a one-to-one reconciliation process.

FIs and CVVs must be classified as:

- Issued or voided.
- Redeemed or unredeemed.

Additionally, redeemed FIs and CVVs must be identified as:

- Validly issued.
- Lost.
- Stolen.
- Expired.
- Duplicate.
- Not matching valid enrollment or issuance records.

In an EBT system, the above requirement is met through the linking of the Primary Account Number (PAN) associated with the electronic transaction to valid issuance records, and can be conducted by matching the electronic benefit record for the household to redemptions by EBT card number (PAN) at the aggregate household benefit level.

In both paper and EBT, this process must be:

- Performed within 120 days of the first valid date for participant use of the FI or EBT benefits.
- Conducted in accordance with the financial management requirements of WIC regulations at 7 CFR 246.13.

The State agency may be subject to claims for redeemed FIs or CVVs that do not meet these conditions (see Handbook section 15.3 for more information).

2.3 Home Delivery

Home delivery is the WIC food delivery system in which supplemental foods are delivered directly to the participant's home.

A State agency that operates a home delivery system must:

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- Procure supplemental foods in accordance with WIC regulations (see Handbook section 2.2 for more information), which relate to actions such as the purchase of food in bulk lots and the use of available discounts.
- Issue supplemental foods to participants within 10 days of notifying them of their certification.
- Ensure that foods are delivered by:
    - Paying home delivery contractors only after the delivery of supplemental foods to participants.
    - Routinely (at least once per month) verifying the correct delivery of supplemental foods to participants.
- Keep records of the delivery of supplemental foods, bills sent, and payments received for at least 3 years. These records must be made available to federal, State, and local authorities, on request.

2.4 Direct Distribution

Direct distribution is the WIC food delivery system in which participants, parents/caretakers, or proxies pick up authorized supplemental foods from storage facilities operated by the State agency or its local agencies.

A State agency that operates a direct distribution system must:

- Have adequate storage and insurance coverage against theft, spoilage, infestation, fire, and other causes to minimize loss.
- Have adequate control of inventory (i.e., manage when food is stocked and issued).
- Procure supplemental foods in accordance with WIC regulations at (see Handbook section 2.2 for more information), which relate to actions such as the purchase of food in bulk lots and the use of available discounts.
- Ensure that supplemental foods are accessible to participants and potential participants who live far from storage facilities or distribution centers.
- Ensure that supplemental foods are issued to participants within 10 days of notifying them of their certification.
- Ensure that any contractor operating any part of the direct distribution system meets applicable requirements listed above.

2.5 Retail

A retail food delivery system is one in which participants, parents/caretakers of infant and child participants, and proxies receive supplemental foods from authorized retail vendors using FIs and CVVs.

A State agency that operates a retail food delivery system must authorize, train, manage, oversee, and monitor its authorized vendors. Participants must be allowed to obtain supplemental foods from any vendor authorized by the State agency.

2.5.1 Issuance of FIs and CVVs in Retail

In addition to the FI and CVV requirements listed in Handbook section 2.2, the State agency must ensure that all local agencies that issue retail benefits meet the following requirements.

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Local agencies:

- Must issue FIs and CVVs to the participant at the same time the participant is notified of certification. These FIs and CVVs must:
    - Provide benefits for the current month or the remaining portion of the month.
    - Be redeemable immediately upon receipt by the participant.
- May mail initial FIs and CVVs with notification of certification to participants that meet the criteria for the receipt of FIs and CVVs through the mail (see Handbook section 2.2 for more information).

2.5.1.1 Additional Requirements for FIs and CVVs in Retail

Printed paper FIs and CVVs must plainly show:

- List of supplemental foods the participant may obtain.
- First date of use.
- Last date of use (or number of days FI or CVV is valid).
    - The last date of use must be at least 30 days from the first date, or in the month of February, 28 or 29 days.
    - Exception: On the participant's first month of issuance, the last date of use may be extended to the end of the month or valid cycle.
- Redemption period (dates during which the vendor must submit FIs or CVVs for redemption).
    - The last date of the redemption period must be no more than 60 days from the first date of use.
    - The last date of the redemption period may be fewer than 60 days from the first date of use if the State agency ensures there is sufficient time for vendors to submit the FI or CVV without undue burden.
- Serial number (a unique, sequential number).
- A space for the purchase price to be entered by the vendor (or by the participant, at State agency option).
- FNS does not recommend either printing a maximum price on an FI, or publicly posting the maximum price.
    - If a maximum price is printed on the FI, the space for the purchase price must be clearly distinguishable from the maximum price.
- A space for participants, parents/caretakers of infant or child participants, or proxies to sign.

See Handbook section 2.6 for information on EBT requirements.

2.5.2 Redemption Procedures in Retail Food Delivery Systems

The State agency must clearly document and train vendors on its redemption procedures. The vendor must submit FIs and CVVs for redemption in accordance with the State agency's redemption procedures.

The State agency must ensure that vendors meet the following requirements:

- Accept FIs and CVVs only from participants, parents/caretakers of infant and child participants, or proxies.
- Accept an FI or CVV only within the specified time period.

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- Provide only the authorized supplemental foods listed on the FI or CVV.
    - The vendor may not provide unauthorized food items, non-food items, cash, or credit (including rain checks) in exchange for FIs or CVVs.
    - The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with FI or cash value vouchers.
      Exception: The vendor may exchange an identical (exact size and brand) authorized supplemental food item if the original food item was defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item.
    - The vendor may only provide the authorized infant formula listed on the FI, obtained from sources included on the State agency's list of infant formula providers (see Handbook section 14.5 for more information).
- Enter the purchase price for FIs and CVVs in accordance with the State agency's redemption procedures.
    - The purchase price must include only the authorized supplemental food items actually provided and must be entered on the FI or CVV before it is signed.
    - The State agency must determine whether the vendor or the participant enters the purchase price.
- Require that the participant, parent/caretaker of an infant or child participant, or proxy signs the FI or CVV in front of the cashier after the purchase price has been entered.
    - In EBT, a Personal Identification Number (PIN) is used instead of a signature.
- Do not collect sales tax on supplemental foods obtained with FIs or CVVs.
- Allow the participant, parent/caretaker of an infant or child participant, or proxy to pay the difference when a CVV fruit and vegetable purchase exceeds the value on the CVV.
    - The difference/overages are considered non-WIC items and should be taxed consistent with the form of payment used to pay for them (e.g., if SNAP, do not apply tax; if cash, apply tax).

Additionally, the State agency must:

- Not pay a vendor more than the maximum allowable reimbursement levels (MARLs) applicable to the vendor and FI or food item (in EBT).
- Implement procedures to ensure that the vendor that submitted each FI and CVV can be identified.
    - Each store location operated by a single business entity must be separately identifiable.
    - The State agency may require all authorized vendors to stamp or enter their names or a vendor identification number on all FIs and CVVs prior to submitting them for redemption.

The State agency may:

- Pay vendors for FIs and CVVs submitted after the valid redemption period if the vendor provides justification and documentation.
    - If the total value of FIs and CVVs submitted at one time exceeds $500.00, the State agency must obtain FNS approval before payment.

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2.5.3 Vendor Discounts and Incentives

See WIC Policy Memorandum 2014-3: *Vendor Management: Incentive Items, Vendor Discounts and Coupons*.

2.6 Electronic Benefit Transfer

Each State agency must implement Electronic Benefit Transfer (EBT) statewide by October 1, 2020, unless granted an exemption by FNS (see Handbook section 2.6.5 for more information). The State agency is responsible for EBT coordination and management.

Note: FNS has the authority to modify regulatory provisions if, after an assessment of a specific situation, it determines that an EBT system provides adequate safeguards that serve the purpose of the regulatory provisions being modified.

2.6.1 EBT Minimum Lane Coverage

WIC vendors are required to have point of sale (POS) terminals that support WIC EBT. This section outlines the requirements for minimum lane coverage (i.e., the minimum number of POS terminals that a vendor must have, based on size and type). Statewide EBT States must have implemented minimum lane coverage requirements by March 1, 2017. State agencies transitioning to EBT after that date must meet all requirements at the time of statewide implementation.

All vendors must have at least one POS terminal, and may be required to have up to four, depending on the store type and volume of monthly WIC redemptions (considered over the prior 12 months). POS terminals may be single-function (WIC-only) or multi-function (WIC and any other tender types). Vendors must meet the minimum lane coverage requirements, which are as follows:

- Superstores and supermarkets (which are defined as having at least $2 million annually in food sales), based on monthly WIC business:
    - $0 to $11,000: 1 terminal
    - $11,001 to $22,000: 2 terminals
    - $22,001 to $33,000: 3 terminals
    - $33,001 and more: 4 terminals
- All other vendors, based on monthly WIC business:
    - $0 to $8,000: 1 terminal
    - $8,001 to $16,000: 2 terminals
    - $16,001 to $24,000: 3 terminals
    - $24,001 and above: 4 terminals
- Farmers and farmers' markets:
    - The State agency must determine the number of appropriate POS terminals.
- Newly authorized WIC vendors the State agency considers necessary for participant access:
    - One POS terminal, unless the State agency determines other factors in this location warrant additional terminals.

Any authorized vendor that has been equipped with a POS terminal by the State agency may submit evidence that additional terminals are necessary after the initial POS terminals are installed. The State

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agency may provide authorized vendors with additional (up to four) POS terminals above the minimum number required:

- To permit WIC participants to obtain a shopping list or benefit balance.
- As long as the number of terminals provided does not exceed the number of lanes in the vendor location.

Notes:

1. The State agency may use an alternative minimum lane coverage formula with FNS approval.
2. Excess terminals may be removed, but reductions must be consistent with the minimum requirements.

2.6.2 EBT Costs and Fees

A State agency must not impose the costs of single-function equipment required for WIC EBT transactions on any authorized vendor, farmer, or farmers' market, except as otherwise provided in this section.

The State agency may develop cost-sharing criteria for multifunction equipment, in accordance with federal cost-sharing principles:

- Cost-sharing agreements must be developed between a State agency and its vendors, farmers, or farmer's markets. Agreements depend on the type, scope, and capabilities of shared equipment.
- Costs shared by a WIC State agency must be proportional to the usage for the WIC Program.
- The State agency must provide its allocation and cost-sharing methodology to FNS as part of the Advance Planning Document (APD) for review and approval before incurring costs.

2.6.2.1 Third-Party Processing Costs and Fees

Vendors must not charge the State agency for any third-party commercial processing or transaction costs or fees incurred by the vendor from EBT multi-function equipment.

The State agency must:

- Not pay or reimburse vendors, farmers, or farmers' markets for third-party processing costs or fees for vendors, farmers, or farmers' markets that elect to accept EBT using multi-function equipment.
- Not charge any fees to authorized vendors for use of single-function equipment.

2.6.2.2 Interchange Fees

The State agency must not pay or reimburse the vendor for interchange fees related to WIC EBT transactions.

2.6.2.3 Ongoing Maintenance and Operational Costs

The State agency will not pay for ongoing maintenance, processing fees or operational costs for multi-function vendor systems and equipment used to support WIC EBT after the State agency has

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implemented WIC EBT statewide. This requirement must be implemented in statewide EBT States by March 1, 2018. State agencies transitioning to EBT after that date must comply with this requirement at the time of statewide implementation.

Exceptions:
The State agency must pay ongoing maintenance and operational costs:

- If the vendor is needed for participant access.
- If the vendor was provided with single-function equipment by the State agency prior to statewide rollout.

2.6.3 Electronic Benefit Requirements

Each electronic benefit must contain the following information:

- Authorized supplemental foods: The supplemental foods authorized by food category, subcategory and benefit quantity, to include the CVB.
- First date of use: The first date of use on which the electronic benefit may be used to obtain authorized supplemental foods.
- 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.
    - Exception: 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.
- Benefit issuance identifier: A unique and sequential number. This number enables the identification of each benefit change (addition, subtraction or update) made to the participant record.

The State agency must ensure each EBT purchase submitted for electronic payment is matched to an authorized vendor, farmer, or farmers' market prior to authorizing payment. Each vendor operated by a single business entity must be identified separately by matching the authorized vendor ID number with each purchase record during EBT processing.

2.6.4 EBT Management and Reporting

The State agency must follow Advance Planning Document (APD) requirements and submit Planning and Implementation APDs and appropriate updates for FNS approval.

If a State agency plans to incorporate additional programs in its EBT system, the State agency must consult with State officials responsible for administering the programs prior to submitting the Planning APD (PAPD) and must include the outcome of those discussions in the PAPD submission to FNS for approval.

Each State agency must have implemented an active EBT project by August 1, 2016. An active EBT project is one that is in a formal process of planning, implementation, or has completed statewide implementation of WIC EBT.

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Annually, as part of the State plan, the State agency must submit an EBT project status report. At a minimum, the annual status report must contain:

- Until statewide EBT implementation: an outline of the EBT implementation goals and objectives that demonstrate the State agency's progress toward statewide EBT implementation.
- After statewide EBT implementation: any information on future EBT changes and procurement updates affecting present operations.

2.6.5 Other EBT Requirements

2.6.5.1 EBT Technical Standards and Requirements

By March 1, 2018, each statewide EBT State agency, contractor, and authorized vendor must follow, and demonstrate compliance with:

- WIC EBT Operating Rules, standards, and technical requirements issued by FNS.
- Other industry standards, as required by FNS.

State agencies transitioning to EBT after that date must comply with this requirement at the time of statewide implementation.

2.6.5.2 EBT Customer Service Standards

EBT Customer Service Standards outline how customer service will be provided to participants and proxies.

The State agency must:

- Respond to any report of a lost, stolen, or damaged card within one business day of the date of report.
- Replace EBT cards and transfer benefit balances within 7 business days of the date of report.

The State agency must establish procedures to:

- Provide customer service during non-business hours that enable participants or proxies to:
    - Report a lost, stolen, or damaged card.
    - Report other card or benefit issues.
    - Receive information on the EBT balance.
    - Receive the current benefit end date.

The State agency may implement alternatives to the minimum service standards with FNS approval.

2.6.5.3 National Universal Product Code Database

The National Universal Product Code (NUPC) database is to be used by all State agencies using EBT to deliver WIC food benefits.

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2.6.5.4 Exemptions from the EBT Mandate

FNS may grant an exemption to the October 1, 2020 statewide implementation requirement. To be eligible for an exemption, a State agency must demonstrate that one or more of the following applies:

- Unusual technological barriers to implementation exist.
- Operational costs are not affordable within the nutrition services and administration (NSA) grant.
- The exemption is in the best interest of the Program.

Exemptions will remain in effect until:

- The State agency no longer meets the conditions on which the exemption was based.
- FNS revokes the exemption.
- The exemption expires, or 3 years has lapsed since the date the exemption was granted, whichever occurs first.

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3 Vendor Authorization

Vendor authorization is the process the State agency uses to assess, select, and enter into agreements with applicant vendors. Vendors must apply and be selected for authorization before they can transact WIC food instruments (FIs) or cash value vouchers (CVVs). Only authorized vendors, farmers and farmers' markets, home food delivery contractors, and direct distribution sites are permitted to accept FIs and CVVs.

The State agency must choose vendors based on its current selection criteria for both initial authorizations and reauthorizations. All contracts or agreements the State or local agency enters into for the management or operation of food delivery systems must conform to the requirements of 2 CFR part 200, Appendix II.

The State agency must authorize the number and distribution of vendors that ensures:

- The lowest practical food prices.
- Adequate participant access to supplemental foods.
- The most effective State agency management, oversight, and review of its authorized vendors.

Vendors must follow State agency policies and procedures to apply and become WIC authorized vendors.

3.1 General Vendor Application/Authorization Requirements

State agencies must accept and process vendor applications at least once every 3 years. They may limit vendor application periods, but they must have procedures for processing applications when a vendor is needed to ensure adequate participant access to supplemental foods.

The State agency must collect all information needed to assess the vendor against the federal and State selection criteria at application.

The State agency:

- Must review application materials to determine whether the vendor meets all selection criteria.
    - The State agency may streamline the application process for obtaining and assessing shelf prices of chain stores. However, the process must apply the competitive price selection criterion (CPSC) in a fair, consistent manner.
- Must conduct an onsite, preauthorization visit prior to or at the time a new vendor is authorized.
    - Must review either the inventory invoices for food items, or the actual food items present at the preauthorization visit to ensure the vendor meets minimum stocking requirements (MSR) (see Handbook section 3.3.1.1 for more information).
- Must collect the vendor applicant's Supplemental Nutrition Assistance Program (SNAP) authorization number if the vendor applicant is SNAP authorized.
- Must ask and determine whether vendor applicants are expected to be above-50-percent (A50) vendors, even if the State agency does not authorize A50 vendors.

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    - Must calculate or request from the vendor applicant the percentage of anticipated food sales by type of payment (i.e., cash, SNAP, WIC, and credit/debit card) in order to determine A50 status).
    - Must determine whether WIC authorization is required for the store to open for business (and must classify such vendors as A50).
- May authorize vendors for a maximum of 3 years.
- May not authorize a vendor applicant if it determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. To make this determination, the State agency may consider whether the store has been sold at below fair market value or to relatives of the previous owner.
- Is encouraged to consider the impact of authorization decisions on small businesses.

When the State agency provides written notice of the expiration of the vendor agreement, it may, if appropriate, notify the vendor that it does not meet the State agency's current selection criteria, based on recent redemption history or other factors. The State agency must not prohibit the vendor from reapplying for vendor authorization. It must assess the vendor's subsequent application along with other vendor applicants and authorized vendors.

When a State agency terminates a vendor for cause, there is no minimum period a vendor must wait before reapplying. The State agency may impose a minimum waiting period if this is established through vendor sanctions or vendor selection criteria (recommended). The timeframes must be reasonable, as stated in Handbook section 11.5.2. Some State agencies have found restrictions on application periods useful in establishing annual work plans for their limited staffs.

3.2 Limiting Criteria

The State agency may establish limiting criteria to limit the number of stores it authorizes. When limiting criteria is established, the State agency must apply the criteria consistently. If used, limiting criteria must be included in the State Plan, as outlined in Handbook Chapter 15.

State agencies have the authority to limit the number of vendors and determine the geographical distribution of authorized vendors. Vendor authorization should be governed by the access needs of participants and qualifications of the vendor.

As not every vendor meeting the basic qualifications is needed to ensure participant access to supplemental foods, limiting criteria can be used to ensure that the State agency authorizes a manageable number of vendors. This practice may save resources related to, among other things: vendor authorization, training, monitoring, and investigating.

To implement limiting criteria, State agencies must decide how many vendors should be authorized and where they will be located.

State agencies must:

- Apply limiting criteria consistently across the State agency, and with clear rationale.
- Establish a system to revise and reapply limiting criteria, depending on demographic shifts or significant changes in local caseload allocation, growth, or decline.

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While there are no specific criteria for limiting vendor numbers, State agencies may consider participant-to-vendor ratios for sub-areas based on:

- Population density.
- Distribution of participants, local agencies, and clinics.
- Availability of public transportation and road systems to the WIC population.
- Supply of WIC vendors.

3.3 Vendor Selection Criteria

Vendor selection criteria are the minimum requirements that a vendor applicant must meet in order to become WIC authorized. Implementing sound vendor selection criteria will ensure that the State agency authorizes only vendors that provide supplemental foods and quality customer service to WIC participants and that offer competitive prices to the Program.

The State agency must:

- Develop and implement vendor selection criteria to select stores for authorization.
- Include all federally mandated selection criteria (see Handbook section 3.3.1 for more information) in its selection criteria.
- Apply its selection criteria consistently throughout its jurisdiction.

The State agency should have procedures in place to periodically assess that vendors continue to meet the current selection criteria. The State agency may reassess any authorized vendor at any time using the current vendor selection criteria, and any vendor found out of compliance must have their vendor agreement terminated.

3.3.1 Federally Mandated Selection Criteria

The State agency's vendor selection criteria must include the six criteria described in federal regulations:

- Minimum variety and quantity of supplemental foods
- Business integrity
- Current SNAP disqualification or civil money penalty for hardship
- Competitive price
- Incentive items management
- Electronic Benefit Transfer (EBT) capability

In certain cases, vendor selection criteria must be waived to ensure participant access (see Handbook section 3.3.3 for more information).

3.3.1.1 Minimum Variety and Quantity of Supplemental Foods

The State agency must establish minimum stocking requirements (MSRs) for the variety and quantity of supplemental foods that a vendor applicant must stock at all times. The State agency may not authorize any vendor applicant that fails to meet the MSR.

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State agencies are required to ensure that all WIC food categories are made available to participants (see 7 CFR 246.10(b)(2)(ii)(B) for more information). State agencies typically meet this requirement, in part, through the development of a comprehensive MSR.

All MSRs must include at a minimum, the following federally required supplemental foods:

- Two different fruits.
- Two different vegetables.
- One authorized whole grain cereal authorized by the State agency.

Additionally, MSRs must require that infant formula is obtained only from sources on the State agency's list of infant formula retailers, wholesalers, and distributors (see Handbook section 14.5 for more information).

Different minimums may be established for different vendor peer groups. When establishing the minimum variety and quantity requirements, State agencies should consider:

- Participants' ability to purchase the full range of prescribed foods in order to fully meet their supplemental nutrition needs.
- Availability of various package sizes, brands, and types of supplemental foods.
- Shelf space at different types of vendors.
- If any exceptions to MSRs will be offered.

If exceptions to MSRs will be offered, the State agency must:

- Ensure that exceptions are outlined in MSRs.
    - The MSRs must also outline the process the State agency will use to review and grant exceptions in a consistent manner.
- Ensure that exceptions do not include the federally required supplemental foods or overrule the requirement to purchase infant formula from the State agency's list of suppliers.
- Determine whether the exception criteria apply:
    - Universally to all vendors, or
    - Specifically to peer groups, or
    - Specifically to ethnic, religious, or other specialty stores.
- Ensure that MSRs are applied consistently so that all vendors are held to the same standard, at least within peer groups.

Examples of exceptions to MSRs:

- Ethnic or religious stores may request an exception from stocking items that are not purchased by their patrons. For example, a store patronized by participants that strongly prefer beans may be granted an exception from stocking peanut butter; Kosher and Halal stores may be granted an exception from stocking non-Kosher or non-Halal foods.

- Stores located in areas without a particular category of participant may request an exception from stocking items that are only prescribed to those categories (e.g., infant formula, infant foods). A State agency exercising this type of exception should include in its State Plan any

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conditions of the exception, such as making the excepted foods available within 72 hours for any participant new to the area.

3.3.1.2 Business Integrity

The State agency must consider the business integrity of vendor applicants. To determine business integrity, the State agency may rely solely on known facts and on vendor application information. State agencies are not required to establish a formal system of background checks, but are encouraged to check with appropriate State and federal authorities to verify business integrity.

The State agency may not authorize a vendor if, during the past 6 years, the vendor applicant or any of its owners, officers or managers were convicted of crimes that show a lack of business integrity or had a civil judgment entered against them. Crimes that show a lack of business integrity include:

- Fraud.
- Antitrust violations.
- Embezzlement.
- Theft.
- Forgery.
- Bribery.
- Falsification or destruction of records.
- Making false statements.
- Receiving stolen property.
- Making false claims.
- Obstruction of justice.

FNS has not distinguished between felonies and misdemeanors because of the wide variation between States in designating these criminal offenses.

The State agency may add other types of convictions, civil judgments, serious WIC and SNAP violations, or other business integrity related criteria, including any of the following:

- WIC sanctions imposed by another State agency.
- Serious non-Program violations, even without a conviction.
- Violations determined administratively.
    - Examples: A finding from the Equal Employment Opportunity Commission that the vendor has discriminated against minority staff. A finding from the National Labor Relations Board that the vendor had committed unfair labor practices.
- Debarment from federal contracts.
- Administrative citations for unsafe working conditions or environmental hazards.
- Committing vendor violations in another store location (e.g., overcharging while acting as cashier).
- Committing vendor violations while unauthorized, such as transacting WIC benefits and submitting them for redemption through authorized vendors.
    - The prohibition on authorizing these vendors may begin on the date when the pattern requirement for the violation type was met, or the date of the first violation detected by the State agency.

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- The prohibition must not last longer than the length of the related sanction.

FNS recommends adding the following question to the vendor application: "During the past 6 years, has any current owner, officer, or manager at your store been convicted of, or had a civil judgment, for any of the following activities (listed above, plus any additional State agency criteria)? If so, please specify the name of the owner, officer, or manager and the activities involved." If the answer is "no," and the State agency is unaware of any contrary information, the State agency may assume the information provided is correct and authorize the vendor. If the answer is "yes," the State agency must determine whether authorization of the vendor applicant is necessary to ensure adequate participant access. If a State agency has any reason to doubt the truthfulness of these responses, the State agency is expected to follow up.

Each store is a separate vendor and is authorized separately from other stores with the same owner. For this reason, one store may not be disqualified because of the disqualification of another store. However, if the circumstances of a disqualification result in the owner's other stores' failure to meet the selection criteria for business integrity, the State agency may terminate the authorizations of all other stores belonging to the owner.

3.3.1.3 Current SNAP Disqualification or Civil Money Penalty for Hardship

The State agency may not authorize a vendor applicant that is currently disqualified from SNAP or that has been assessed a SNAP civil money penalty for hardship (and the disqualification period that would otherwise have been imposed has not expired), unless denying authorization of such vendor applicant would result in inadequate participant access.

3.3.1.4 Competitive Price

The State agency must establish competitive price selection criteria (CPSC) in order to assess the prices of vendor applicants and authorize the vendors that provide the best prices to the Program while ensuring participant access. The prices a vendor applicant charges for supplemental foods, compared to the prices charged by other applicants and authorized vendors, are used to determine CPSC. FNS recommends that the State agency use a vendor's actual price history to verify the shelf prices submitted with its current application.

The State agency must:

- Develop and implement CPSC to evaluate the prices a vendor applicant charges compared to other vendor applicants and authorized vendors.
- Consider vendor applicants' shelf or bid prices (bid prices may not exceed shelf prices).
- Authorize vendors that offer the most competitive prices for supplemental foods.
- Consider participant access by geographic area.
- Establish CPSC levels for each peer group.
- Establish procedures to ensure that authorized vendors do not increase prices to a level that would make the vendor ineligible for authorization.

The State agency may include:

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- A factor (such as inflation) in its price limitations to account for fluctuations in wholesale prices.
- An opportunity to lower prices after a store has been assessed as non-competitive in either authorization or price monitoring processes.

FNS recommends setting CPSC by using a market basket of individual items. A State can construct a market basket by considering a representative sample of the typical monthly quantities of food prescribed for an individual food package or a combination of packages. The State agency may use:

- Redemption request prices (EBT).
- Shelf prices.
- Bid prices.
- Other FNS approved methodology.

A State agency may establish different CPSC levels for vendors in areas where the only stores have higher prices than the rest of the peer group or in order to ensure adequate participant access.

3.3.1.5 Incentive Items

The State agency may not authorize, continue to authorize, or make payments to A50 vendors that provide prohibited incentive items to participants. State agencies must approve of any incentive items that are provided by an A50, based on federal guidelines.

For more information, see WIC Policy Memorandum 2014-3: *Vendor Management: Incentive Items, Vendor Discounts and Coupons*.

3.3.1.6 EBT Capability

Once EBT has been implemented statewide, the State agency may not authorize a vendor applicant that cannot successfully demonstrate EBT capability in accordance with State agency requirements. The only exception is when the State agency determines the vendor is necessary for participant access and chooses to provide equipment before authorization.

3.3.2 State Agency Imposed Selection Criteria

The State agency may develop selection criteria in addition to the federally mandated selection criteria. Any additional criteria must be applied consistently and must not conflict with regulatory requirements, such as the limitations on the lengths of disqualification periods for various kinds of Program violations.

3.3.3 Participant Access Considerations

The State agency must authorize an appropriate number and distribution of vendors to ensure adequate participant access to supplemental foods. Two of the six mandatory vendor selection criteria, as well as all State agency imposed criteria, must be waived to authorize vendor applicants needed for participant access. For more information, see the chart below.

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Chart: Must selection criteria be waived to ensure participant access?

Selection Criteria	Must Be Waived
Minimum variety and quantity of supplemental foods (MSR)	No
Competitive price (CPSC)	No*
Current SNAP disqualification/CMP for hardship	Yes
Business integrity	Yes
Incentive items	No
EBT Capability	No**
All State agency criteria	Yes
* State agencies should work with vendors that do not meet CPSC to negotiate the best possible prices for supplemental foods.	
** This selection criteria applies only after EBT implementation. State agencies must follow WIC EBT regulations and guidance related to equipping vendors that are needed for participant access.	

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4 Vendor Agreements

All State agencies that operate a retail food delivery system must enter into written agreements with all authorized retail food vendors. The State agency must use a standard vendor agreement throughout its jurisdiction, but it may make exceptions to meet unique circumstances, as long as it documents the reasons for such exceptions.

To become a vendor, a retail store must:

- Apply for Program authorization.
- Meet or exceed the State agency's selection criteria.
- Be selected by the State agency for authorization.
- Enter into an agreement with the State agency.
    - Agreement must be signed by a representative that has legal authority to bind the vendor and State agency representative.
    - Vendors must accept the terms and are legally responsible for Program requirements.
    - Vendors should thoroughly read and understand their vendor agreements before signing them.

Vendor agreements must:

- Be in effect for no more than 3 years.
- Be a standard document that is used throughout the State agency's jurisdiction.
- Be signed by representatives with the authority to legally bind the vendor and the State agency.
- Specify all vendors covered by the agreement.
    - This enables the State agency to add or delete individual vendors without affecting the other vendors.
- Include all federally mandated vendor agreement provisions (see Handbook section 4.1 for more information).

The State agency must:

- Ensure that agreements are in place for all WIC authorized vendors.
- Notify vendors of changes to federal or State statutes, regulations, policies, or procedures governing the Program before the changes are implemented.
    - The State agency should give as much advance notice as possible. If necessary, the vendor agreement must be amended.
- Require vendors that wish to remain WIC authorized to reapply at the expiration of their agreements.

Provide vendors with no fewer than 15 days written notice of the expiration of their agreements. The State agency may delegate the authority to sign vendor agreements to its local agencies. If the signing of vendor agreements is delegated, the State agency must provide supervision and instruction to local agencies to ensure the uniformity and quality of local agency activities.

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4.1 Vendor Agreement Provisions

The vendor agreement must contain the following provisions. The State agency may determine the exact wording as long as all content is included.

1. Acceptance of food instruments and cash value vouchers. The vendor may accept food instruments (FIs) and cash value vouchers (CVVs) only from participants, parents/caretakers of infant and child participants, or proxies.

2. No substitutions, cash, credit, refunds, or exchanges. The vendor may provide only the authorized supplemental foods listed on the FIs and CVVs.

- The vendor may not provide unauthorized food items, non-food items, cash, or credit (including rain checks) in exchange for FIs or CVVs.
- The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with FIs or CVVs, except for exchanges of an identical authorized supplemental food item. This applies only 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 is the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.
- The vendor may provide only the authorized infant formula which the vendor has obtained from approved sources to participants in exchange for FIs specifying infant formula.

3. Treatment of participants, parents/caretakers, and proxies. The vendor must offer participants, parents/caretakers of infant and child participants, and proxies the same courtesies offered to other customers.

4. Time periods for transacting food instruments and cash value vouchers. The vendor may accept FIs or CVVs only within their specified time periods.

5. Purchase price on food instruments and cash value vouchers. The vendor must ensure the purchase price is entered on FIs and CVVs in accordance with the procedures described in the vendor agreement. The State agency may determine whether the vendor or the participant enters the purchase price. The purchase price must include only the authorized supplemental food items actually provided and must be entered on the FIs and CVVs before they are signed.

6. Signature on food instruments and cash value vouchers. For printed FIs and CVVs, the vendor must ensure the participants, parents/caretakers of an infant or child participant, or proxies sign the FIs and CVVs in the presence of the cashier. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

7. Sales tax prohibition. The vendor may not collect sales tax on authorized supplemental foods obtained with FIs or CVVs.

8. Food instrument and cash value voucher redemption. The vendor must submit FIs and CVVs for redemption in accordance with the redemption procedures described in the Vendor Agreement. The vendor may redeem FIs and CVVs only within the specified time period. As part of the redemption procedures, the State agency:

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- May make price adjustments to the purchase price on FIs submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor.
- Must establish and apply limits on the amount of reimbursement allowed for FIs based on a vendor's peer group and competitive price criteria.
    - In setting allowable reimbursement levels, the State agency must consider participant access in a geographic area and may include a factor to reflect fluctuations in wholesale prices.

In establishing allowable reimbursement levels for A50 vendors, the State agency must ensure:

- Reimbursements do not result in higher food costs than if the participants transacted their FIs at vendors that are not A50 vendors.
- Reimbursements do not result in higher average payments per FI to A50 vendors than average payments to comparable vendors.

The State agency may make price adjustments to the purchase price on FIs submitted by the vendor for redemption to ensure compliance with the allowable reimbursement level for the vendor.

A vendor's failure to remain price competitive is cause for termination of the vendor agreement.

- This applies even if actual payments to the vendor are within the maximum reimbursement amount.
- The State agency may exempt vendors that supply only exempt infant formula and/or WIC-eligible nutritionals and nonprofit A50 vendors from the allowable reimbursement limits.

9. Vendor claims. When the State agency determines the vendor has committed a vendor violation that affects the payment to the vendor, the State agency will delay payment or establish a claim.

- The State agency must delay payment or establish a claim in the amount of the full purchase price of each FI or CVV that contained the vendor overcharge or other error.
- The State agency will provide the vendor with an opportunity to justify or correct a vendor overcharge or other error.
- The vendor must pay any claim assessed by the State agency.
- In collecting a claim, the State agency may offset the claim against current and subsequent amounts to be paid to the vendor.
- In addition to denying payment or assessing a claim, the State agency may sanction the vendor for vendor overcharges or other errors in accordance with the State agency's sanction schedule.

10. No charge for authorized supplemental foods or restitution from participants. The vendor may not charge participants, parents/caretakers of infant and child participants, or proxies, for authorized supplemental foods obtained with FIs or CVVs. In addition, the vendor may not seek restitution from these individuals for FIs or CVVs not paid or partially paid by the State agency.

11. Split tender for cash value vouchers. The vendor must allow the participant, authorized representative, or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of the CVV. This is called a split tender transaction.

12. Training. At least one representative of the vendor must participate in training annually.

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- Vendor training may be provided by the State agency in a variety of formats, including newsletters, videos, and interactive training.
- The State agency will designate the date, time, and location of all interactive training. The State agency will provide the vendor with at least one alternative date to attend the training.

13. Vendor training of staff. The vendor must inform and train cashiers and other staff members on Program requirements.

14. Accountability for owners, officers, managers, and employees. The vendor is accountable for its owners, officers, managers, agents, and employees who commit vendor violations.

15. Monitoring. The vendor may be monitored for compliance with program requirements.

16. Recordkeeping. The vendor must maintain inventory records used for federal tax reporting purposes and other records the State agency may require for the period of time specified by the State agency in the vendor agreement. On request, the vendor must make available to representatives of the State agency, the Department, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all FIs and CVVs in the vendor's possession and all program-related records.

17. Termination. The State agency will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization. Either the State agency or the vendor may terminate the agreement for cause after providing advance written notice of a period of not less than 15 days to be specified by the State agency.

18. Change in ownership or location or cessation of operations. The vendor must provide the State agency advance written notification of any change in vendor ownership, store location, or cessation of operations. In such instances, the State agency will terminate the vendor agreement.

Exception: The State agency may permit vendors to move short distances without terminating the agreement. The State agency has the discretion to determine the length of advance notice required for vendors reporting changes under this provision, whether a change in location qualifies as a short distance, and whether a change in business structure constitutes a change in ownership.

19. Sanctions. In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule.

- Sanctions may include administrative fines, disqualification, and civil money penalties instead of disqualification.
- The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

20. Conflict of interest. The State agency will terminate the agreement if the State agency identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the vendor and the State agency or its local agencies.

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21. Criminal penalties. A vendor who commits fraud or abuse in the Program may be prosecuted under applicable federal, State, or local laws. Those who willfully misapply, steal, or fraudulently obtain program funds will be subject to a fine of not more than $25,000 or imprisonment for not more than 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 1 year or both.

22. Not a license/property interest. The vendor agreement does not constitute a license or a property interest.

- If the vendor wants to stay authorized beyond the period of its current agreement, the vendor must reapply for authorization.
- If a vendor is disqualified, the State agency will terminate the vendor's agreement, and the vendor will have to reapply in order to be authorized after the disqualification period is over.
    - In all cases, the vendor's new application will be subject to the State agency's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.

23. Compliance with vendor agreement, statutes, regulations, policies, and procedures. The vendor must comply with the vendor agreement and federal and State statutes, regulations, policies, and procedures governing the Program, including any changes made during the agreement period.

24. Nondiscrimination regulations. The vendor must comply with the nondiscrimination provisions of Departmental regulations (7 CFR parts 15, 15a and 15b).

25. Compliance with vendor selection criteria. The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. Using the current vendor selection criteria, the State agency may reassess the vendor at any time during the agreement period. The State agency will terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria.

26. Reciprocal SNAP disqualification for WIC Program disqualifications. Disqualification from the WIC Program may result in disqualification as a retailer in SNAP. Such disqualification may not be subject to administrative or judicial review under SNAP.

27. [Effective March 1, 2017] **EBT minimum lane coverage.** Point of Sale (POS) terminals used to support the WIC Program shall be deployed in accordance with the minimum lane coverage provisions of 7 CFR 246.12(z)(2). The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in 7 CFR 246.12(z)(2)(i) and (z)(2)(ii).

28. EBT third-party processing costs and fees. The vendor shall not charge to the State agency any third-party commercial processing costs and fees incurred by the vendor from EBT multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

29. EBT interchange fees. The State agency shall not pay or reimburse the vendor for interchange fees related to WIC EBT transactions.

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30. [Effective March 1, 2018] **EBT ongoing maintenance and operational costs.** The State agency shall not pay for ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support WIC EBT after the State agency has implemented WIC EBT statewide, unless the equipment is used solely for the WIC Program or the State agency determines the vendor using multi-function equipment is necessary for participant access. This provision also applies to authorized farmers and farmers' markets. Costs shared by a WIC State agency will be proportional to the usage for the WIC Program.

31. [Effective March 1, 2018] **Compliance with EBT operating rules, standards and technical documents.** The vendor must comply with the Operating rules, standards and technical requirements established by the State agency.

4.2 Additional Agreement Requirements

The vendor agreement must also include all of the following (in the agreement, or as attachments/web links):

- **Notification of program changes.** The State agency must notify vendors of changes to federal or State statutes, regulations, policies, or procedures governing the Program before the changes are implemented. The State agency should give as much advance notice as possible.
- **Purchase price and redemption procedures.** The redemption procedures must ensure that the State agency does not pay a vendor more than the price limitations applicable to the vendor.
- **Sanction schedule**. The State agency must include its sanction schedule in the vendor agreement.
- **Actions subject to administrative review and review procedures.** The State agency must include the adverse actions a vendor may appeal and those adverse actions that are not subject to administrative review and the State agency's administrative review procedures in the vendor agreement.
- **Allowable and prohibited incentive items for above-50-percent (A50) vendors**. The vendor agreement for an A50 vendor must include the State agency's policies and procedures related to the provision of incentive items, including the State agency's policies for approving incentive items.
- **Compliance with EBT operating rules, standards and technical requirements.** The vendor must comply with the Operating rules, standards and technical requirements established by the State agency.

4.3 Terminating Vendor Agreements

When the State agency disqualifies a vendor, it must terminate the vendor agreement. The State agency may not accept voluntary withdrawal of the vendor as an alternative to disqualification for mandatory federal sanctions (see Handbook section 9.1.4 for more information). The State agency must enter the disqualification on the vendor's record. Additionally, the State agency may not use nonrenewal of the vendor agreement as an alternative to disqualification.

The State agency must terminate the vendor agreement if the State agency determines that the vendor has provided false information on its application, as outlined in the vendor agreement (see Handbook section 4.1 for more information).

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If a vendor grants power of attorney to another person to operate the business, this does not mean that ownership has been transferred to the other party. It means the other party has been legally granted the power to make business decisions on the owner's behalf. Thus, granting power of attorney should not be cause for termination of the vendor agreement.

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5 Vendor Training

The State agency must train all vendors annually. Each year, the State agency must provide training to one or more representatives of each vendor; this is referred to as annual training. Annual training may be presented in a variety of formats, including webinars, newsletters, videos, etc. At least every 3 years, annual training must be presented in an interactive format (see Handbook section 5.1 for more information).

The purpose of vendor training is to improve vendors' understanding of Program rules and requirements to enhance compliance and prevent errors. Training for vendors must be designed to prevent errors and noncompliance, and to improve service. At a minimum, annual training must include:

- The purpose of the WIC Program.
- Approved supplemental foods.
- Minimum stocking requirements.
- The requirement to obtain infant formula only from sources included on the State agency's list of infant formula providers.
- Procedures for transacting and redeeming WIC FIs and CVVs.
- The vendor sanction system.
- The vendor complaint process.
- Claims procedures.
- Incentive item policies.
- Changes to Program requirements since the last training. This includes changes to federal and State statutes, regulations, policies, or procedures affecting the Program.

The State agency must document the content covered and vendor participation in all trainings. The State agency may delegate vendor training to a local agency, contractor, or a vendor representative. If training is delegated, the State agency must also provide instruction and supervision to ensure the uniformity and quality of delegated vendor training.

If the State agency provides training to a chain store's trainer, the State agency must document that it provided enough training materials for each vendor (i.e., each chain store location).

The vendor is accountable for its owners, officers, managers, agents, and employees who commit vendor violations.

5.1 Interactive Training

The State agency must provide training in an interactive format before or at the time of a vendor's initial authorization, and at least every 3 years thereafter.

Interactive training must cover all topics required in annual training and must provide vendors the opportunity to ask questions and receive immediate answers. The vendor must inform and train cashiers and other staff on Program requirements.

Examples of interactive training include:

- On-site cashier training.

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- Off-site classroom training.
- Train-the-trainer sessions.

The State agency must:

- Set the date, time, and location of the interactive training.
- Specify the audience (e.g., managers, cashiers) for the training.
- Provide vendors with at least one alternative date to attend training.
- Document the training's content and vendor participation.

When scheduling training, the State agency:

- Should take into account the scheduling limitations of vendors with small staffs.
- May delegate interactive vendor training to local agencies or a contractor.

If delegated, the State agency must provide supervision and instruction to ensure the uniformity and quality of the vendor training.

- An interactive, onsite preauthorization visit that takes place before the effective date of the vendor agreement may count toward the interactive training requirement.

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6 Vendor Cost Containment {Redacted}

! In accordance with 5 U.S.C. § 552(b)(7)(E), this information is not available for public sharing.

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7 High Risk Vendor Identification System {Redacted}

! In accordance with 5 U.S.C. § 552(b)(7)(E), this information is not available for public sharing.

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8 Monitoring & Investigations {Redacted}

! In accordance with 5 U.S.C. § 552(b)(7)(E), this information is not available for public sharing.

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9 Sanctions

Sanctions are adverse actions taken by State agencies in response to violations of Program rules, policies or procedures by vendors or participants. Participant and vendor sanctions must be based on evidence.

9.1 Vendor Sanctions

State agencies that operate a retail food delivery system must develop and implement a system for sanctioning vendors that violate Program rules. This system must include a sanction schedule, which must include all mandatory federal and State agency vendor sanctions (see Handbook sections 8.1.4 and 8.1.7 for more information). Sanctions may include administrative fines, disqualification, and civil money penalties (CMPs) in lieu of disqualification. Vendors must be sanctioned for vendor violations in accordance with the State agency's sanction schedule.

The State agency may not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification; the disqualification must be recorded in the vendor's file and notification must be sent to SNAP, as appropriate. In addition, the State agency may not use nonrenewal of the vendor agreement as an alternative to disqualification.

9.1.1 Participant Access Determination

The State agency must develop participant access criteria, which allows it to determine if participants in a certain area have adequate access to supplemental foods. Checking a vendor location against the established participant access criteria is called a participant access determination. When the State agency develops participant access criteria, it must consider the availability of other authorized vendors in the same areas and any geographic barriers to these vendors.

Before disqualifying a vendor (for non-permanent disqualifications), the State agency must determine if it would result in inadequate participant access. The State agency may also make a participant access determination before imposing permanent disqualification if it includes this provision in its State Plan.

If a participant access determination finds that the disqualification of a vendor would result in inadequate participant access, the State agency must impose a civil money penalty (CMP) instead of disqualification (see Handbook section 9.2 for more information). However, the State agency may not impose a CMP for third or subsequent sanctions for violations with mandatory disqualification periods (see Handbook sections 9.1.4.2, 9.1.4.3, and 9.1.4.4 for more information). Participant access determinations for all vendors that receive a disqualification or CMP instead of a disqualification must be documented in the vendor file.

9.1.2 Pattern of Violations

Some mandatory federal sanctions (see Handbook section 9.1.4 for more information) and all State agency vendor sanctions must be based on a pattern of violations. For the purpose of establishing a pattern of violations, all incidences of a violation that occur during the first compliance buy of a compliance investigation must be considered one incidence.

The State agency must develop a definition of pattern of violations.

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- Patterns should be defined such that a sufficient number of buys are conducted to indicate noncompliance with WIC vendor requirements.
- The definition of a pattern of violations may be different for different types of violations (e.g., to account for severity).
- State agencies may use "two or more buys," as their definition of pattern of violations in order to allow for flexibility in its investigative and sanctioning activities.
- FNS recommends that the State agency seek advice from its Attorney General or General Counsel's Office to determine the definition of pattern that is sufficient for a sanction to be issued.
- Patterns used for sanctioning must be for the same type of violation.

When, during the course of a single investigation, the State agency determines a vendor has committed multiple violations (which may include violations subject to State agency sanctions), the State agency must disqualify the vendor for the period corresponding to the most serious (i.e., longest) mandatory federal violation. The State agency must include all violations in the notice of adverse action. If the most serious mandatory federal sanction is not upheld on appeal, the State agency may impose a State agency sanction.

9.1.3 Notification of Violations

For violations that require a pattern of incidences (except for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds documented inventory), the State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation. Notification must be provided before another incidence of a violation is documented. The State agency may continue its investigation after the notice of violation is received, or presumed to be received, by the vendor. The State agency may use the same notification method it uses to notify a vendor of the time and place of an administrative review (see Handbook Chapter 11 for more information).

Exception: If the State agency determines that notifying a vendor would compromise an investigation, it is not required to notify the vendor. It must, however, document in the vendor file the reason(s) for determining that notification would compromise the investigation. Such determination must be made on a case-by-case basis, and documentation must be filed before a sanction is imposed.

9.1.4 Mandatory Federal Vendor Sanctions

The State agency must include in its sanction schedule all mandatory federal vendor sanctions (see below).

9.1.4.1 Permanent disqualification

The State agency must permanently disqualify a vendor for:

- One conviction for buying or selling food instruments (FIs) or cash value vouchers (CVVs) for cash (trafficking).
- One conviction for selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for FIs or CVVs.

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A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

If reflected in its State Plan, the State agency may impose a CMP instead of a disqualification for this violation when it determines, in its sole discretion, and documents that either:

- Disqualification of the vendor would result in inadequate participant access.
- The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership was not aware of, did not approve of, and was not involved in the conduct of the violation.

9.1.4.2 Six year disqualification

The State agency must disqualify a vendor for 6 years for:

- One incidence of buying or selling FIs or CVVs for cash (trafficking).
- One incidence of selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for FIs or CVVs.

9.1.4.3 Three year disqualification

The State agency must disqualify a vendor for 3 years for:

- One incidence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for FIs or CVVs.
- A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that food for a specified time.
- A pattern of vendor overcharges.
- A pattern of receiving, transacting, and/or redeeming FIs or CVVs outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person.
    - See Handbook section 3.3.1 (Business Integrity) for information on unauthorized vendors involved in this violation.
- A pattern of charging for supplemental foods not received by the participant.
- A pattern of providing credit or non-food items (other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances) in exchange for FIs or CVVs.

9.1.4.4 One year disqualification

The State agency must disqualify a vendor for 1 year for:

- A pattern of providing unauthorized food items in exchange for FIs or CVVs, including charging for supplemental foods provided in excess of those on the food instrument.
- A pattern of an A50 vendor providing prohibited incentive items to customers.

9.1.4.5 Second mandatory sanction

When a vendor receives a mandatory sanction for the second time (regardless of whether it is for the same violation), the State agency must double the second sanction. CMPs may only be doubled up to the maximum allowable CMP amount.

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9.1.4.6 Third or subsequent mandatory sanction

When a vendor receives a mandatory sanction after its second mandatory sanction (regardless of whether it is for the same violation(s)), the State agency must double the sanction. The State agency may not impose CMPs instead of disqualification for third or subsequent sanctions.

9.1.4.7 Disqualification based on a SNAP disqualification or CMP for hardship

The State agency must disqualify a vendor that has been disqualified from SNAP. Such disqualification:

- Must be for the same length of time as SNAP disqualification.
- May begin at a later date than the SNAP disqualification.
- Is not subject to administrative or judicial review under the WIC Program.

The State agency may disqualify a vendor that has been assessed a CMP for hardship in SNAP (see Handbook section 3.3.1.3 for more information). If a State agency exercises this option, it must:

- Include this in its sanction schedule.
- Disqualify the vendor for the same length of time that the vendor would have been disqualified by SNAP.
- Determine if disqualification of the vendor would result in inadequate participant access. If it would, the State agency must impose a CMP instead of disqualification.
- Include documentation of its participant access determination and any supporting documentation in the vendor's file.

9.1.5 State Agency Vendor Sanctions

The State agency may include additional violations and sanctions to its sanction schedule. All State agency sanctions must be based on a pattern of violations.

State agency sanctions may include, but are not limited to:

- Vendor violations that are not already addressed by the mandatory federal sanctions (see Handbook 9.1.4 for more information).
- Disqualifications (or CMPs in lieu of disqualification) not to exceed 1 year for violations uncovered in a single investigation.
- Administrative fines.
- Reciprocal sanctions with other State agencies.
    - The length of the disqualification must be for the same length of time as the disqualification by the other WIC State agency, or in the case of a CMP instead of disqualification assessed by the other WIC State agency, for the same length of time for which the vendor would otherwise have been disqualified.

9.1.6 Civil Money Penalties

For vendor sanctions that require a participant access determination, the State agency must assess a CMP instead of a disqualification if a vendor is needed to ensure adequate participant access. CMPs must be calculated in accordance with federal regulations (see below).

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If a CMP is assessed instead of a disqualification, the State agency must include documentation of the participant access determination, including supporting documentation, in the vendor file. The State agency may use installment plans for the collection of civil money penalties and administrative fines.

If a vendor does not pay a CMP in full, the State agency must disqualify the vendor for the length of the disqualification for which the CMP was assessed.

9.1.6.1 Calculating a CMP

For each violation subject to a mandatory sanction, the State agency must use the following formula to calculate a CMP imposed instead of disqualification (up to the maximum allowable CMP amount, see below):

- Determine the vendor's average monthly redemptions for at least the 6 month period ending with the month immediately preceding the month during which the notice of adverse action is dated.
- Multiply the average monthly redemptions figure by 10 percent (.10).
- Multiply the product by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that it does not exceed the maximum allowable CMP amount.
- For a violation that warrants permanent disqualification, the amount of the CMP shall be the maximum amount specified for each violation. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency must impose a CMP for each violation.
- The total amount of CMPs imposed for violations investigated as part of a single investigation may not exceed the amount specified as the maximum penalty for violations occurring during a single investigation.

The maximum CMP amounts are periodically updated. See 7 CFR 3.91(b)(3)(v-vi) for the most current information. To date the maximum CMP amounts are as follows:

- Vendor convicted of trafficking in food instruments: maximum of $11,000 for each violation (maximum penalty for violations occurring during a single investigation: $49,000).
- Vendor convicted of selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments: maximum of $11,000 for each violation (maximum penalty for violations occurring during a single investigation: $49,000).

9.1.7 Violation Location

Most vendor violations occur on store premises or in administrative offices. Violations such as overcharging or charging for supplemental foods not received, for example, cannot occur outside of a WIC transaction. Other vendor violations, such as trafficking, can occur anywhere.

If a vendor's owners, officers, or managers commit vendor violations that warrant a mandatory federal sanction, the State agency must sanction the vendor no matter where the violations occurred.

If a vendor's employee commits a violation outside of a WIC transaction on the vendor's premises (e.g., in the store or parking lot), the State agency must consider sanctioning the vendor. FNS recommends sending the vendor a warning letter indicating that one of its employees has committed a vendor

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violation that may affect the vendor's continued authorization in the Program. When appropriate, the State agency should refer the employee to federal, State, or local authorities for prosecution under applicable laws.

9.2 Participant Sanctions

The State agency must establish procedures designed to control participant violations, including violations that participants commit in collusion with vendors. The State agency must also establish sanctions for participant violations, including the required 1 year disqualifications listed below. Additional participant sanctions may include disqualification from the Program for up to 1 year. The State agency may provide warnings before imposing participant sanctions.

The State agency must disqualify the participant for 1 year:

- Any time it assesses a claim of $100 or more.
- Any time it assesses a claim for dual participation.
- Any time it assesses a second or subsequent claim of any amount.

Exception*:* The State agency may terminate a disqualification and allow a participant to reapply for certification, or may decide not to impose a disqualification if, within 30 days of receipt of the letter demanding repayment, one of the following occurs:

- Full restitution is made.
- A repayment schedule is agreed upon.
- In the case of a participant under age 18, the State or local agency approves the designation of a proxy.

When the State agency notifies a participant of a disqualification, it must:

- Tell the participant how to obtain a fair hearing (see 7 CFR 246.9 for more information).
- Make a referral, if appropriate, to federal, State, or local authorities for prosecution under applicable statutes.

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10 Vendor Claims

The State agency must design and implement a system to review food instruments (FIs) and cash value vouchers (CVVs) submitted by vendors for redemption to ensure compliance with the applicable price limitations and to detect questionable FIs or CVVs, suspected vendor overcharges, and other errors. This review may be completed before or after the State agency makes payments on FIs or CVVs (pre- or post-edit – see below).

This review must:

- Examine all or a representative sample of the FIs and CVVs.
- Include a price comparison or other edit designed to:
    - Ensure compliance with applicable price limitations.
    - Assist in detecting vendor overcharges.

In addition, for printed FIs and CVVs, the system must detect the following errors:

- Purchase price missing.
- Participant, parent, caretaker, or proxy signature missing.
- Vendor identification missing.
- FIs or CVVs transacted or redeemed after the specified time periods.
- Altered purchase price.

The State agency must take follow-up action within 120 days of detecting any questionable FIs or CVVs, suspected vendor overcharges, or other errors. It must implement procedures to reduce the number of errors when possible.

The State agency may detect vendor violations through compliance investigations, FI or CVV reviews, or other reviews or investigations of a vendor's operations.

When the State agency determines a vendor has committed a vendor violation that affects the payment to the vendor, the State agency must delay payment or establish a claim.

The State agency may use the full purchase price of each FI or CVV that contained the overcharge or error when delaying payment or establishing the claim.

For FI or CVV delayed payments and claims, the State agency must provide a vendor with an opportunity to justify or correct the vendor overcharge or other error. If satisfied with the justification or correction, the State agency must provide payment or adjust the proposed claim accordingly.

The State agency must deny payment or initiate claims collection action within 90 days or whichever is later:

- Detecting the vendor violation; or
- Completing the review or investigation giving rise to the claim.

The State agency may collect claims through offsets against current and subsequent amounts owed to the vendor.

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11 Administrative Review

The State agency must impose sanctions on vendors for non-compliance with the WIC Program's regulations, policies, and procedures (see Handbook Chapter 9 for more information). Vendors may request an administrative review of certain sanctions and other adverse actions, in accordance with Program rules.

The State agency must include a copy of the State's administrative review procedures in the vendor agreement (or as an attachment or a cross reference to the procedures' location in State law or regulations), or must include a statement that administrative review procedures are available on request. The applicable administrative review procedures must also be provided with notification of an adverse action subject to review.

11.1 Adverse Actions Subject to Full Administrative Review

The State agency must provide full administrative reviews (see Handbook section 11.5 for more information) to vendors when they appeal any of the following:

- Denial of authorization based on:
  - Application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods (see Handbook section 3.3.1 for more information).
  - A determination that the vendor is attempting to circumvent a sanction (see Handbook section 3.1 for more information).
- Termination of an agreement for cause (see Handbook section 4.3 for more information).
- Disqualification, except those disqualifications subject to abbreviated administrative review or not subject to review (see Handbook sections 9.1, 11.2, and 11.3 for more information).
- Imposition of a fine or a civil money penalty (CMP) instead of disqualification (see Handbook section 9.1 for more information).

11.2 Adverse Actions Subject to Abbreviated Administrative Review

The State agency must provide abbreviated administrative reviews (see Handbook section 11.5 for more information) for vendors that appeal any of the following adverse actions:

- Denial of authorization based on:
  - Vendor selection criterion for business integrity (see Handbook section 3.3.1 for more information).
  - Vendor selection criterion for current SNAP disqualification or CMP for hardship (see Handbook section 3.3.1 for more information).
  - State agency-established vendor selection criteria related to WIC vendor sanctions or SNAP authorization (see Handbook section 3.3.2 for more information).
  - State agency's vendor limiting criteria (see Handbook section 3.2 for more information).
  - Vendor submission of application outside of State agency timeframes.
  - Determination of current SNAP authorization.
- Disqualification based on any of the following (see Handbook section 9.1 for more information):
  - Trafficking conviction.
  - Imposition of a SNAP CMP for hardship.

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- Disqualification or CMP instead of a disqualification based on a mandatory federal sanction imposed by another WIC State agency.
- Application of vendor peer group criteria.
- Application of criteria used to identify vendors that are A50 vendors or comparable to A50 vendors.
- Termination of an agreement because of a change in ownership, location, or cessation of operations (see Handbook section 4.1 for more information).
- A WIC CMP imposed instead of disqualification based on a SNAP disqualification (see Handbook section 9.1 for more information).

Note: The State agency may decide to provide full abbreviated reviews for any or all of the above listed adverse actions.

11.3 Actions Not Subject to Review

The State agency may not provide administrative reviews to vendors that appeal the following actions:

- The validity or appropriateness of any of the following:
  - Vendor limiting criteria (see Handbook section 3.2 for more information).
  - Vendor selection criteria (see Handbook section 3.3 for more information) for:
    - Minimum variety and quantity of supplemental foods.
    - Business integrity.
    - Current SNAP disqualification or CMP for hardship.
    - Competitive price.
  - Peer group criteria.
  - A50 vendor identification methods.
  - Participant access criteria or determinations (see Handbook section 9.1.1 for more information).
  - Prohibition of incentive items.
  - Denial of an A50 vendor's request to provide incentive items.
- The State agency's determination of any of the following:
  - Include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from its list of suppliers (see Handbook section 13.5 for more information).
  - Whether or not to notify a vendor in writing when an investigation reveals an initial violation when a pattern is needed in order to impose a sanction.
  - Whether a vendor had an effective policy and program in place to prevent trafficking, and whether the owner was involved in any way (see Handbook section 7.1 for more information).
- Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency.
- Expiration of a vendor's agreement (see Handbook Chapter 4 for more information).
- Disputes regarding food instrument or cash value voucher payments and vendor claims (other than to justify or correct a vendor overcharge or other error) (see Handbook section 4.1 for more information).
- Disqualification of a vendor as a result of disqualification from SNAP (see Handbook section 9.1.4 for more information).

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11.4 Farmers and Farmers' Markets

The State agency will provide a hearing procedure for farmers or farmers' markets to appeal adverse actions that affect them. A farmer or farmers' market may appeal the following:

- Denial of application.
- Sanction.
- Disqualification.

Expiration of an agreement is not subject to appeal.

11.5 Administrative Review Procedures

State agency procedures must specify that both full and abbreviated review decisions are final. The State agency must make adverse actions to vendors/farmers/farmers' market effective on the following dates:

- On the same day the vendor/farmer/farmers' market receives notice for denials of authorization and disqualifications.
- For all other adverse actions, no earlier than 15 days and no later than 90 days after the date of the notice.
- If the adverse action is subject to administrative review, no later than the date the vendor/farmer/farmers' market receives the review decision.

A local agency, farmer or farmers' market or vendor appealing a decision is not relieved of the responsibility of continued compliance with the terms of any written agreement with the State agency.

The State agency must inform a vendor, farmer or farmers' market or local agency that it may be able to pursue judicial review of the decision if the administrative review decision upholds the adverse action against them.

11.5.1 Notification of Adverse Action

11.5.1.1 Notification to Vendors

The State agency must notify vendors in writing at the close of an investigation that reveals violations.

At a minimum, the notification must include:

- The adverse action.
- Cause(s) for the adverse action.
    - All violations uncovered during an investigation should be included in the notice of adverse action.
- The effective date of the adverse action.
- Procedures to follow to obtain a full administrative review, including relevant time periods and deadlines.
- When a vendor is disqualified due in whole or in part to mandatory federal violations, such notification must include the following statement: "This disqualification from WIC may result in

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disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP."

11.5.1.2 Notification to FNS

The State agency must provide a copy of the notice of adverse action to the appropriate FNS office for all vendors it has either disqualified or imposed a CMP instead of disqualification for all mandatory federal violations. This notice must be provided within 15 days of the expiration of the vendor's opportunity to file for a WIC administrative review or after all of the vendor's WIC administrative reviews have been completed.

This notification must include:

- Vendor name.
- Vendor address.
- Vendor identification number.
- Type(s) of violation(s).
- Length of disqualification (or length of the disqualification corresponding to the violation for which the civil money penalty was assessed).

11.5.2 Full Administrative Review Procedures

The State agency must develop procedures for a full administrative review of the adverse actions. The State agency must provide vendors, farmers, and farmers' markets with all of the following:

- Adequate advance notice of the time and place of the administrative review so all parties can prepare for the review.
    - The opportunity to present its case and at least one opportunity to reschedule the review date upon request. The State agency may set standards on how many review dates can be scheduled, as long as at least two review dates are allowed.
- The opportunity to cross-examine adverse witnesses. A protective screen or other device may be used to protect the identity of WIC Program investigators when necessary.
- The opportunity to be represented by counsel.
- The opportunity to examine the evidence the State agency used for the action prior to the review.
- An impartial decision-maker to review whether the State agency has correctly applied federal and State statutes, regulations, policies, and procedures governing the Program, according to evidence presented at the review. The State agency may appoint a reviewing official to review appeal decisions to make sure they follow approved policies and procedures.
- Written notification of the review decision, including the basis for the decision:
    - Within 90 days from the date of receipt of the request for an administrative review from a vendor, farmer, or farmer's market.
    - Within 60 days from the date of receipt of a local agency's request for an administrative review.

Note: The above timeframes are administrative requirements and are not a basis for overturning an adverse action if the decision is not made within the timeframe.

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11.5.3 Abbreviated Administrative Review Procedures

Unless a State agency decides to provide full administrative reviews for adverse actions, the State agency must develop procedures for an abbreviated administrative review. At a minimum, these procedures must provide the vendor, farmer, or farmers' market with the following:

- Written notification of the adverse action, the procedures to obtain an abbreviated administrative review, the cause(s) for and the effective date of the action, and an opportunity to provide a written response.
- A decision-maker to use the available information to determine whether the State agency has correctly applied federal and State statutes, regulations, policies, and procedures governing the Program. The decision-maker will be someone other than the person who made the initial decision on the action.
- Written notification of the review decision, including the basis for the decision, within 90 days of the date of receipt of the request for an administrative review. This timeframe is an administrative requirement and is not a basis for overturning an adverse action if the decision is not made within 90 days.

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12 Farmers and Farmers' Markets

This chapter describes provisions specific to farmers and farmers' markets that accept CVVs for the WIC Program. This chapter does not address the Farmers Market Nutrition Program (FMNP).

Farmers are individuals authorized by the State agency to sell eligible fruits and vegetables to participants at farmers' markets or roadside stands. A farmers' market is an association of local farmers who sell produce together at a specific location directly to consumers.

12.1 Authorization of Farmers and Farmers' Markets

The State agency may authorize farmers, farmers' markets, and/or roadside stands to accept CVVs for eligible fruits and vegetables. Only farmers or farmers' markets authorized by the State agency may redeem CVVs. After statewide EBT implementation, the State agency may not authorize a farmer or farmers' market that cannot successfully demonstrate EBT capability in accordance with State agency requirements, unless the State agency determines the farmer or farmers' market is necessary for participant access.

The State agency must enter into written agreements with all authorized farmers and/or farmers' markets (see Handbook section 12.2 for more information). The State agency must require farmers or farmers' markets to reapply at the expiration of their agreements and must provide farmers or farmers markets with not less than 15 days advance written notice of the expiration of the agreement.

The farmer or farmers' market must not:

- Collect sales tax on CVV purchases.
- Seek restitution from WIC participants, parents or caretakers of child participants or proxies for CVV not paid or partially paid by the State agency.
- Issue cash change for purchases that are in an amount less than the value of the CVV.

The State agency may deny payment to the farmer or farmers' market for improperly redeemed CVV and may issue claims for payments already made on improperly redeemed vouchers.

12.2 Farmer and Farmers' Market Agreements

The agreement must be signed by a representative who has legal authority to obligate the farmer or farmers' market and a representative of the State agency. The agreement period is not to exceed 3 years. Neither the State agency nor the farmer or farmers' market is obligated to renew the agreement. The State agency, the farmer, or farmers' market may terminate the agreement for cause after providing advance written notification.

Those State agencies that authorize farmers' markets, but not individual farmers, must require authorized farmers' markets to enter into a written agreement with each farmer within the market that is authorized to accept CVVs. The State agency will set forth the required terms for the written agreement, and provide a sample agreement for use by the farmers' market.

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12.2.1 Farmer and Farmers' Market Agreement Provisions

The agreement must include all of the following provisions, although the State agency may determine the exact wording. The farmer or farmers' market must:

1. Assure that the CVV is redeemed only for eligible fruits and vegetables as defined by the State agency.
2. Provide eligible fruits and vegetables at or below the current price charged to other customers.
3. Accept the CVV within the dates of their validity and submit the vouchers for payment within the allowable time period established by the State agency.
4. Redeem the CVV in accordance with a procedure established by the State agency. The procedure must include a requirement for the farmer or farmers' market to allow the participant, authorized representative or proxy to pay the difference when the purchase of fruits and vegetables exceeds the value of the CVV (also known as a split tender transaction).
5. Accept training on CVV procedures and provide training to any employees with CVV responsibilities on such procedures.
6. Agree to be monitored for compliance with program requirements, including both overt and covert monitoring.
7. Be accountable for actions of employees in the provision of authorized foods and related activities.
8. Pay the State agency for any CVVs transacted in violation of this agreement.
9. Offer WIC participants, parent or caretakers of child participants or proxies the same courtesies as other customers.
10. Comply with the nondiscrimination provisions of USDA regulations as provided in 7 CFR 248.7.
11. Notify the State agency if any farmers' market ceases operation prior to the end of the authorization period.

12.3 Monitoring Farmers and Farmers' Markets

A farmer or farmers' market that commits fraud or engages in other illegal activity is liable to prosecution under applicable federal, State or local laws.

The State agency must:

- Design and implement a system for monitoring its authorized farmers and farmers' market for compliance with program requirements.
    - Note: Including authorized Farmers and Farmers' Markets in the sample to be monitored through the Farmers' Market Nutrition Program (FMNP) is an acceptable plan.
- Document, at a minimum, the following information for all monitoring visits:
    - Name(s) of the farmer, farmers market, or roadside stand.
    - Name(s) and signature(s) of the reviewer(s); date of review.
    - Nature of problem(s) detected.

The State agency may disqualify a farmer or farmers' market for Program abuse. The farmer or farmers' market has the right to appeal a denial of an application to participate, a disqualification, or a Program sanction by the State agency. However, the following may not be appealed:

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- Expiration of an agreement with a farmer or farmers' market.
- Claims.

For compliance buys, the State agency must document all of the following:

- The date of the buy.
- A description of the farmer (and farmers' market, if appropriate) involved in each transaction.
- The types and quantities of items purchased.
- Current retail prices or prices charged other customers.
- Price charged for each item purchased, if available.
    - Price information may be obtained prior to, during, or subsequent to the compliance buy.
- The final disposition of all items as destroyed, donated, provided to other authorities, or kept as evidence.

See Handbook section 11.4 for information about Administrative Review for Farmers and Farmers' Markets.

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13 Miscellaneous

13.1 Confidentiality of Vendor Information

Confidential vendor information is any information that individually identifies a vendor, except for the types of information listed below. Information that meets this definition is confidential whether it is obtained directly from the vendor or from another source. Confidentiality protection extends to all vendors, whether they are currently authorized or not.

Vendor information that is not confidential:

- Vendor's name.
- Vendor's address.
- Vendor's phone number.
- Vendor's website.
- Vendor's email address.
- Vendor's store type.
- Vendor's authorization status.
- Aggregate data that does not individually identify vendors.
- Use of case studies by the State agency for participant or vendor training, as long as any identifying information on individual vendors is altered or removed.
- Vendor-specific data requested by the vendor about the vendor's own operations.
- Definitions used by the State agency for its peer groupings.
- Aggregate data about the number of vendors in each peer group.
- Aggregate or anonymous price information to demonstrate that the State agency correctly applied its competitive price vendor selection criterion when it denied authorization to the vendor applicant.
    - If vendor-specific price information is requested by the hearing officer, the State agency may provide such information to the hearing officer, who is permitted to view confidential vendor information. FNS recommends that the State agency first seek legal counsel from its General Counsel to determine what type of price information is appropriate for presentation during administrative reviews.

Information that is confidential includes, but is not limited to:

- Bank account information.
- Medical history.
- Personal correspondence.
- Religious beliefs.
- Peer group assignments (a vendor may only be given information on its own assignment).
- Pricing information.
- WIC redemption information.

The State agency must restrict the use or disclosure of confidential vendor information to:

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- People directly connected with the administration or enforcement of the WIC Program or SNAP that the State agency determines have a need to know the information for purposes of these programs. This may include:
    - Personnel from its local agencies.
    - Personnel from other WIC State and local agencies.
    - People who are investigating or prosecuting WIC or SNAP violations under federal, State, or local law.
    - Those directly connected with the administration or enforcement of any federal or State law or local law or ordinance.
        - Prior to releasing the information to one of these parties (other than a federal agency), the State agency must enter into a written agreement with the requesting party specifying that such information may not be used or re-disclosed, except for purposes directly connected to the administration or enforcement of a federal, or State law.
- A vendor that is subject to an adverse action, including a claim, to the extent that the confidential information is about the vendor subject to the adverse action and is related to the adverse action.
- The State agency must restrict the use or disclosure of information about SNAP retailers obtained from SNAP, including information provided pursuant to Section 9(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2018(c)) and 7 CFR 278.1(q), to persons directly connected with the administration or enforcement of the WIC Program.
    - Exceptions: Information that is not confidential may be shared. Information that is confidential may be shared for administration or enforcement purposes, as described above.
- The State agency must provide the USDA and the Comptroller General of the United States access to all WIC Program records, including confidential vendor information (see 7 CFR 246.25(a)(4) for more information).
- At the discretion of the State agency, all authorized vendors and vendor applicants may be given information regarding vendor sanctions that have been imposed.
    - The State agency may disclose only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for the sanction that are listed on the notice of adverse action.
    - This information may be disclosed only when all administrative and judicial reviews have been exhausted, and the sanction has been upheld.

The reason for limiting the use and disclosure of vendor information is to encourage vendors to provide the information necessary to authorize and monitor vendors, to avoid sharing private vendor records with their competitors, and to avoid compromising State agency investigative techniques.

13.1.1 Agreements

Written agreements between State or local agencies disclosing confidential information, and the public organization that will receive the information, are required when confidential information is shared.

Exceptions: A written agreement is not required to share information with personnel of the State agency's local agencies or with other WIC State and local agencies. Agreements are also not required

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when information is disclosed to federal agencies responsible for administrative or enforcement activities related to WIC or SNAP.

If the State agency plans to disclose confidential vendor information on a regular basis, the State agency may enter into a single written agreement that generically covers the disclosure and use of confidential vendor information for such activities. Individual agreements for each disclosure of information are not necessary.

13.1.2 Conflicts with State Law

The State agency must adhere to all federal regulations and policy governing the Program, including confidentiality requirements. Confidential vendor information may not be shared as a part of any freedom of information, open records request, or similar.

If a State's information/records laws conflict with WIC confidentiality requirements, the State agency must take whatever steps are necessary to modify or obtain an exception from the law. In some cases, there may not be a conflict because the State law already provides WIC an exception from the disclosure requirement.

13.1.3 Subpoenas and Search Warrants

The State agency may disclose confidential vendor information pursuant to a valid subpoena or search warrant in accordance with the following procedures:

Subpoena procedures:

In determining how to respond to a subpoena *duces tecum* (i.e., a subpoena for documents) or other subpoena for confidential information, the State or local agency must use the following procedures:

1. Upon receiving the subpoena, the local agency must immediately notify the State agency.
2. Consult with legal counsel for the State or local agency and determine whether the information requested is confidential and, therefore, prohibited from being used or disclosed as stated in the subpoena.
3. If the State or local agency determines that the information is confidential and prohibited from being used or disclosed as stated in the subpoena, it must attempt to quash the subpoena.
    - Exception: Unless the State or local agency determines that disclosing the confidential information is in the best interest of the Program.
    - The determination to disclose confidential information without attempting to quash the subpoena should be made infrequently.
    - If the State or local agency seeks to quash the subpoena or decides that disclosing the confidential information is in the best interest of the Program, it must inform the court or the receiving party that this information is confidential and seek to limit the disclosure by:
        - Providing only the specific information requested in the subpoena, and no further information.
        - Limiting to the greatest extent possible the public access to the confidential information disclosed.

Search warrant procedures:

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In responding to a search warrant for confidential information, the State or local agency must use the following procedures:

1. Upon receiving the search warrant, the local agency must immediately notify the State agency.
2. Immediately notify legal counsel for the State or local agency.
3. Comply with the search warrant.
4. Inform the individual(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:
    - Providing only the specific information requested in the search warrant and no other information.
    - Limiting, to the greatest extent possible, public access to the confidential information disclosed.

13.2 Recordkeeping Requirements

13.2.1 State Agency Records

Each State and local agency must maintain full and complete records concerning Program operations. These records must comply with 2 CFR part 200 and the following requirements:

Records must include, but are not limited to, information related to:

- Financial operations.
- Food delivery methods.
- Food instrument issuance and redemption.
- Equipment purchases and inventory.
- Certification.
- Nutrition education, including breastfeeding promotion and support.
- Civil rights.
- Fair hearing procedures.

Retention schedules:

- All records must be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains.
- If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3 year period, the records must be kept until all issues are resolved, or until the end of the regular 3 year period, whichever is later.
- Records for nonexpendable property acquired in whole or in part with Program funds shall be retained for 3 years after its final disposition.

All records must be available during normal business hours for representatives of FNS and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

If FNS deems any Program records to be of historical interest, it may require the State or local agency to forward those records to FNS whenever either agency is disposing of them.

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13.2.2 Vendor Records

In its Vendor Agreement (see Handbook section 4.1 for more information), the State agency must require vendors to retain certain records and make them available to the WIC State agency, FNS, and the Comptroller General of the United States, upon request.

These records include:

- Inventory records used for federal tax reporting purposes.
- All Program related records.
- Any other records specified in the Vendor Agreement.

Food instruments and cash value vouchers in the vendor's possession must also be provided to the above listed parties, upon request.

13.3 The Integrity Profile (TIP)

The State agency must submit a summary of its vendor monitoring and investigations activities every federal fiscal year. This summary must be submitted through TIP, which is an online tool managed by FNS, by February 1 of the following fiscal year.

13.4 Conflict of Interest

The State agency must ensure that no conflict of interest exists—as defined by applicable State laws, regulations, and policies—between the State agency and any vendor, farmer, farmers' market, or home delivery contractor, or between any local agency and any vendor, farmer, farmers' market, or home delivery contractor under its jurisdiction.

13.5 List of Infant Formula Providers

The State agency must notify vendors (through the vendor agreement and vendor training, at a minimum) that they may only purchase infant formula from a source included on the State agency's list of infant formula providers (or from a source on another State agency's list, if the State agency permits this). This notification must also inform vendors that they may only provide infant formula to participants with food instruments (FIs) that include that specific infant formula.

The State agency must provide the list of infant formula providers in writing or by other effective means to all authorized retail vendors at least once per year. The list must include the names and addresses of infant formula wholesalers, distributors, and retailers licensed* in the State in accordance with State law, and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula.

The State agency may not exclude a State-licensed entity from the list except when:

- Specifically required or authorized by State law or regulations.
- The entity does not carry infant formula.

*If more than one type of license applies, the State agency may choose which one to use.

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13.6 Complaints

The State agency must have procedures to document the handling of complaints by participants, parents or caretakers of infant or child participants, proxies, vendors, farmers, farmers' market, home delivery contractors, and direct distribution contractors.

13.7 Reciprocal SNAP Disqualification for WIC Program Disqualifications

Disqualification from the WIC Program may result in disqualification as a retailer in SNAP. This disqualification is not subject to administrative or judicial review under SNAP. A statement must be included on all notifications for any violations subject to mandatory federal sanctions (see Handbook Chapter 9 for more information).

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13.8 Military Commissaries

FNS has a Memorandum of Understanding (MOU) with the Department of Defense regarding military commissaries that are WIC Program vendors. Under the MOU, the State agency:

- May not conduct on-site monitoring reviews, compliance investigations and routine monitoring of commissaries unless "upon invitation by the constituted military authority."
- Is permitted to review FIs and CVVs submitted for redemption by commissary vendors before payment.
    - If there are errors or omissions, payment may be denied until justification or correction is provided by the commissary.
    - If the State agency identifies a potential problem, it should write to the commanding officer of the installation and request: repayment, investigation, or other appropriate action.
    - The commanding officer or designee must take necessary action and promptly reply to the State agency, including making repayment, if appropriate.
    - If the State agency is not satisfied, it should refer the case to its FNS regional office.

The number of commissary vendors may be subtracted from the State agency's total number of vendors when calculating the 5 percent routine monitoring and compliance investigation requirements.

For more information and to view the MOU, see FNS Instruction 806-4R1: *Food Delivery System: Military Commissaries as WIC Program Vendors.*

13.9 Suspension and Debarment Procedures

See WIC Policy Memorandum 2014-5: *Reporting Permanently Disqualified WIC-Only/Authorized Store Owners to the System for Award Management (SAM)*.

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14 FNS Monitoring and Review

14.1 Management Evaluations

FNS will assess each State agency through management evaluations (MEs). MEs will assess State agencies' adherence to Program rules and accomplishment of Program objectives. FNS will establish standards and procedures to determine how well Program objectives are being accomplished by State agencies, and will implement sanction procedures as warranted by State agencies' performance.

14.2 Corrective Action Plans

The State agency must submit a corrective action plan, including implementation timeframes, within 60 days of receipt of an FNS management evaluation report containing a finding that the State agency did not comply with Program requirements.

If FNS determines that the State agency has failed to demonstrate an efficient and effective administration of its Program, or to comply with its corrective action plan, without good cause, FNS may withhold up to 100 percent of the State agency's nutrition services and administration funds for that year.

The State agency may appeal sanctions imposed by FNS, in accordance with 7 CFR 246.22. Before sanctions are carried out, these procedures must be followed:

- FNS will notify the Chief State Health Officer or equivalent in writing of the deficiencies found and of FNS's intention to withhold nutrition services and administration funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 60 days after mailing of notification.
- The State agency must develop a corrective action plan with a schedule that specifies various actions to correct the deficiencies and prevent future recurrence.
- If the corrective action plan is acceptable, FNS will notify the Chief State Health Officer, or equivalent, in writing within 30 days of receipt of the plan. The letter approving the corrective action plan will:
    - Describe the technical assistance that is available to the State agency to correct the deficiencies.
    - Advise the Chief State Health Officer or equivalent of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.
- After the State agency notifies FNS that corrective action has been taken, FNS will assess the action, and, if necessary, will perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency whether the actions taken were in compliance with the corrective action plan, and whether the deficiency is resolved or if further corrective action is needed.
- If an acceptable, corrective action plan is not submitted within 60 days, FNS may withhold nutrition services and administration funds through a reduction of the State agency's Letter of Credit or by assessing a claim against the State agency. FNS will notify the Chief State Health Officer or equivalent of this action.

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- If compliance with a corrective action is achieved before the end of the fiscal year in which the funds are withheld, the funds shall be restored to the State agency's Letter of Credit. FNS is not required to restore funds withheld if compliance is delayed until the subsequent fiscal year. If the 60 day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year.

14.3 Claims against State Agencies

FNS may issue claims against WIC State agencies in accordance with federal regulations. The State agency will have a full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made.

14.3.1 Fraud/Misuse

If FNS determines, through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for supplemental foods or nutrition services and administration (NSA) purposes were, through State or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a formal claim will be assessed by FNS against the State agency.

The State agency must pay to FNS:

- A sum equal to the amount of the NSA funds or the value of supplemental foods, food instruments, or cash value vouchers misused, diverted, or lost.

The State agency has 30 days to either:

- Pay the debt in full.
- Contact FNS to reach a mutually acceptable repayment plan for the billed amount.

14.3.2 Loss/Theft/Embezzlement

If FNS determines that any part of the Program funds received by a State agency; or supplemental foods, either purchased or donated commodities; or food instruments or cash value vouchers, were lost as a result of theft, embezzlement, or unexplained causes, the State agency will, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the supplemental foods, food instruments, or cash value vouchers lost.

14.3.3 Improper Disposition

FNS will establish a claim against any State agency that has not accounted for the disposition of all redeemed FI and CVVs that cannot be matched against valid enrollment and issuance records, including cases that may involve fraud, unless the State agency has demonstrated to the satisfaction of FNS that it has made:

- Every reasonable effort to comply with this requirement.
- Identified the reasons for its inability to account for the disposition of each redeemed FI or cash value voucher; and

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- Provided assurance that it will take appropriate actions to improve its procedures.

14.3.4 Failure to Achieve Above-50-Percent Vendor Cost Neutrality

If FNS determines that a State agency has failed to ensure above-50-percent (A50) vendor cost neutrality, it will establish a claim against the State agency to recover excess food funds expended and will require remedial action.

14.3.5 Interest

If an agreement cannot be reached with the State agency for payment of its debts or to offset debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency.

Interest will begin to accrue on the 31st day after the date of the first demand letter, bill or claim. Interest will be computed monthly on any unpaid balance as long as the debt exists. From non-federal sources, the State agency must provide the funds necessary to maintain Program operations at the grant level authorized by FNS.

14.3.6 Penalties

In accordance with the National School Lunch Act (42 U.S.C. 1786), anyone who embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been stolen, willfully misapplied or obtained by fraud will be fined up to $25,000 or imprisoned up to 5 years, or both. If such funds are valued as less than $100, the responsible party will be fined not more than $1,000 or imprisoned up to 1 year, or both.

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15 State Plan Requirements

The following State Plan requirements relate to Vendor Management, Food Delivery, and the State agency Staffing Plan.

The State agency must provide a description of the food delivery method it operates, including:

EBT implementation: An outline of the State agency's goals and objectives for improving Program operations, to include EBT and/or EBT implementation.

Type of system/method: All food delivery systems/methods in use within the State agency's jurisdiction.

Vendor limiting and selection criteria: If used by the State agency and the vendor selection criteria established by the State agency, consistent with 7 CFR 246.12(g)(3) and (g)(4).

A sample vendor, farmer and/or farmers' market, if applicable, agreement: The sample vendor agreement must include the sanction schedule, the process for notification of violations in accordance with 7 CFR 246.12(l)(3), and the State agency's policies and procedures on incentive items in accordance with 7 CFR 246.12(g)(3)(iv), which may be incorporated as attachments or through citations to the regulations if the sanction schedule, the process for notification of violations, or policies on incentive items are in the State agency's regulations. State agencies that intend to delegate signing of vendor, farmer and/or farmers' market agreements to local agencies must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of local agency activities.

Vendor monitoring: The system for monitoring vendors to ensure compliance and prevent fraud, waste, and program noncompliance, and the State agency's plans for improvement in the coming year in accordance with 7 CFR 246.12(j). The State agency must also include the criteria it will use to determine which vendors will receive routine monitoring visits. State agencies that intend to delegate any aspect of vendor monitoring responsibilities to a local agency or contractor must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of vendor monitoring.

Farmer monitoring: The system for monitoring farmers and farmer's markets within its jurisdiction, for compliance with Program requirements.

Options regarding trafficking convictions of vendors: The option exercised by the State to sanction vendors.

Food instruments and cash value vouchers: A facsimile of the FI and cash value voucher, if used, and a description of the system the State agency will use to account for the disposition of FI and cash value vouchers.

Names of contractors: The names of companies, excluding authorized vendors, with whom the State agency has contracted to participate in the operation of the food delivery method.

Food instrument and cash value voucher security*:* A description of the State agency's system for ensuring food instrument and cash value voucher security.

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Participant access determination criteria*:* A description of the State agency's participant access determination criteria consistent with 7 CFR 246.12(l)(8).

Mobile stores: The special needs necessitating the authorization of mobile stores, if the State agency chooses to authorize such stores.

Vendor cost containment*:* A description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrates that the State agency is in compliance with the cost containment provisions; information on non-profit A50 vendors that the State agency has exempted from competitive price criteria and allowable reimbursement levels; a justification and documentation supporting the State agency's request for an exemption from the vendor peer group requirement, if applicable; and, if the State agency authorizes A50 vendors, information required by FNS to determine whether the State agency's vendor cost containment system meets the stated requirements.

List of infant formula wholesalers, distributors, and retailers: The State agency must provide a list in writing or by other effective means to all authorized WIC retail vendors of the names and addresses of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law, and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula on at least an annual basis. The vendor may provide only the authorized infant formula, which the vendor has obtained from a source included on the list, to participants in exchange for food instruments specifying infant formula.

Replacement of EBT cards: A description of how the State agency will replace lost, stolen, or damaged EBT cards and transfer the associated benefits within 7 business days.

EBT customer service standards: A description of the procedures established by the State agency to provide customer service during nonbusiness hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on the EBT food balance and receive the current benefit end date. The procedures shall address how the State agency will respond to reports of a lost, stolen, or damaged card within one business day of the date of report.

Vendor authorization for participant access: The State agency's procedures for accepting and processing vendor applications outside of its established timeframes, if the State agency determines there otherwise will be inadequate participant access to the WIC Program.

Administrative appeal procedures: A copy of the State agency's administrative appeal procedures for local agencies, food vendors, farmers and farmers' markets.

Until operating EBT statewide: The State agency will provide an outline of the EBT implementation goals and objectives to demonstrate the State agency's progress toward statewide EBT implementation. If operating EBT statewide, the State agency will provide any information on future EBT changes and procurement updates affecting present operations and other information the Secretary may require. The State agency will be responsible for EBT coordination and management.

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Appendix A Glossary

Above-50-percent (A50) Vendors: Vendors that derive more than 50 percent of their annual food sales revenue from Women, Infants, and Children (WIC) food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by the Food and Nutrition Services (FNS).

Authorized supplemental foods: Foods authorized by a State or local agency for issuance to a particular participant. These foods are authorized to be obtained with a food instrument or cash value voucher.

Breastfeeding: Practice of feeding a mother's breast milk to her infant(s) on average of at least once a day.

Cash Value Voucher (CVV): Fixed dollar amount check, voucher, electronic benefit transfer (EBT) card or other document, which is used by a participant to obtain authorized fruits and vegetables. This is also known as cash value benefit (CVB) in an EBT environment.

Certification: Implementation of criteria and procedures to assess and document each applicant's eligibility for the Program.

Clinic: A facility where applicants are certified.

Compliance buy: Covert, onsite investigation in which a representative of the Program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts one or more food instruments or cash value vouchers, and does not reveal during the visit that he or she is a program representative.

Confidentiality of vendor information: Any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address, telephone number, website/email address, store type, and authorization status.

Contract brand infant formula: All of the milk-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all of the soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

Cost containment measure: Competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved State Plan of operation and administration.

Days: Calendar days.

Department: The U.S. Department of Agriculture.

Discount: A benefit that provides Program foods to participants the amount of the price reduction or other price concession provided by the manufacturer or supplier of the particular food product.

Disqualification: Disqualification refers to the act of ending the Program participation of a participant, authorized food vendor, or authorized State or local agency, whether as a punitive sanction or for administrative reasons.

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Documentation: Documentation refers to vendor documents, which provide official information or evidence or that serves as a record. Documentation helps to substantiate statements made by a vendor.

Educational Buy: An overt buy conducted for the educational benefit of the store and cashiers.

Electronic Benefit Transfer (EBT): Method that permits electronic access to WIC food benefits using a card or other access device approved by FNS.

Electronic Benefit Transfer (EBT) Capable: A WIC vendor that demonstrates that its cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file, and successfully complete WIC EBT purchases.

Electronic signature: An electronic sound, symbol, or process, attached to or associated with an application or other record and executed and or adopted by a person with the intent to sign the record.

Exempt infant formula: An infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR 106 and 107.

Farmer: An individual authorized by a State agency to sell eligible fruits and vegetables to participants at a farmers' market or roadside stand. Individuals, who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized.

Farmers' market: An association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

First date of use: The first date on which the food instrument or cash value voucher may be used to obtain supplemental foods.

Fiscal year: The period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

Food and Nutrition Service (FNS) of the U.S. Department of Agriculture: FNS works to reduce hunger and food insecurity through the administration of 15 federal nutrition assistance programs including WIC, Supplemental Nutrition Assistance Program (SNAP), and school meals.

Food costs: Costs associated with supplemental foods.

Food delivery system/method: The method used by State and local agencies to provide supplemental foods to participants. There are four types of food delivery systems/methods: Retail, Home Delivery, Direct Distribution, and EBT.

Food Instrument: A voucher, check, electronic benefit transfer card (EBT), coupon or other document, used by a participant to obtain supplemental foods.

Food sales: Sales of all Supplemental Nutrition Assistance Program (SNAP) eligible foods intended for home preparation and consumption, including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated drinks may be included in food sales when offered for sale along with

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foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with SNAP (also known as food stamps) benefits, such as hot foods or food that will be eaten in the store.

Full nutrition benefit: The minimum amount of reconstituted fluid ounces of liquid concentrate infant formula as specified in Table 1 of 7 CFR 246.10(e)(9) for each food package category and infant feeding variation (e.g., Food Package IA fully formula fed, IA-FF).

High-risk vendor: A vendor identified as having a high probability of committing a vendor violation through application of the criteria established in 7 CFR 246.12(j)(3) and any additional criteria established by the State agency.

Home food delivery contractor: A sole proprietorship, partnership, cooperative association, corporation, or other business entity that contracts with a State agency to deliver authorized supplemental foods to the residences of participants under a home delivery system.

Infant formula: Refers to a food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under Section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR 106 and 107. Other infant formula definitions include the following:

- Contract Brand Infant Formula: All infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract;
- Exempt Infant Formula: An infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107
- Non-contract Brand Infant Formula: All infant formula, including exempt infant formula that is not covered by an infant formula cost containment contract awarded by that State agency; and
- Primary Contract Infant Formula: The specific infant formula for which manufacturers submit a bid to a State.

Inventory audit: The examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental foods to provide participants with the quantities specified on food instruments redeemed by the vendor during a given period of time.

Last date of use: The date on which the food instrument (FI) or cash value voucher (CVV) may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used, except for the participant's first month of issuance, when it may be the end of the month or cycle for which the FI or CVV is valid. All FI or CVV may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the food instrument or cash value voucher may be used.

Local agency: (a) A public or private, nonprofit health or human service agency which provides health services, either directly or through contract; (b) an Indian Health Service (IHS) service unit; (c) an Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an IHS service unit; or (d) an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit.

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Nonprofit agency: A private agency that is exempt from income tax under the Internal Revenue Code of 1954, as amended.

Multi-function equipment: Point-of-sale equipment obtained by a WIC vendor through commercial suppliers and capable of supporting WIC EBT and other payment tender types.

Partially redeemed food instrument (FI): An FI that is redeemed for less than all of the supplemental foods authorized for that FI.

Participant access determination criteria: Criteria defined by the State agency used to assess whether WIC participants have adequate access to WIC authorized vendors. To make this determination, the State agency must consider the availability of other authorized vendors in the same area as a given vendor/vendor applicant and take into account any geographic barriers to using such vendors.

Participants: Pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments or cash value vouchers under the Program, and the breastfed infants of participant breastfeeding women.

Participant violation: Any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts, to obtain benefits; selling or offering to sell WIC benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

Price adjustment: An adjustment made by the State agency, in accordance with the vendor agreement, to the purchase price on a food instrument after it has been submitted by a vendor for redemption to ensure that the payment to the vendor for the food instrument complies with the State agency's price limitations.

Program: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by section 17 of the Child Nutrition Act of 1966, as amended.

Proxy: Any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact FI or CVV or to obtain supplemental foods on behalf of a participant. The proxy must be designated consistent with the State agency's procedures. Parents or caretakers applying on behalf of child and infant participants are not proxies.

Purchase price: The space used to enter the purchase price. With EBT, the purchase price is the sum of the item prices of each food item in a purchase.

Redemption period: The date by which the vendor must submit the FI or CVV for redemption. This date must be no more than 60 days from the first date on which the food instrument or cash value voucher may be used. If the date is fewer than 60 days, then the State agency must ensure that the allotted time

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provides the vendor sufficient time to submit the food instrument or cash value voucher for redemption without undue burden.

Routine monitoring: Overt, on-site monitoring during which program representatives identify themselves to vendor personnel.

Serial number: A unique and sequential serial number that appears on a food instrument.

Single-function equipment: Point-of-sale equipment, such as barcode scanners, card readers, PIN pads and printers provided to an authorized WIC vendor solely for use with the WIC Program.

Sign or signature: A handwritten signature on paper or an electronic signature. If the State agency chooses to use electronic signatures, the State agency must ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, and applicable federal law and policy, and the confidentiality requirements.

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, WIC provides federal grants to States. These grants are used for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age 5 who are found to be at nutritional risk.

Split tender transactions: Split tender transactions allow the participant, authorized representative or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of the cash value vouchers.

State: Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

State agency: The health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the IHS.

State Plan: A Program operation and administration that describes the strategy in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction.

Statewide EBT: The stage in the EBT implementation process when the State agency has converted all WIC clinics to an EBT delivery method and all authorized vendors are capable of transacting EBT purchases.

Supplemental foods: Supplemental foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants, and children, and foods that promote the health of the population served by the WIC Program as indicated by relevant nutrition science, public health concerns, and cultural eating patterns.

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Supplemental Nutrition Assistance Program (SNAP): The program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011, et. seq.), in which eligible households receive benefits that can be used to purchase food items from authorized retail stores and farmers' markets.

Vendor: A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the State agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity. Each store must have a single, fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the State agency's State Plan.

Other vendor definitions include the following:

- **Vendor authorization**: The process by which the State agency assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be authorized as vendors;
- **Vendor limiting criteria**: Vendor limiting criteria means criteria established by the State agency to determine the maximum number and distribution of vendors it authorizes.
- **Vendor overcharge**: Occurs when a vendor intentionally or unintentionally charges a State agency more for authorized supplemental foods than is permitted under the vendor agreement. It is not a vendor overcharge when a vendor submits a food instrument for redemption and the State agency makes a price adjustment to the food instrument.
- **Vendor peer group system:** A classification of authorized vendors into groups based on common characteristics or criteria that affect food prices, for the purpose of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels.
- **Vendor Selection Criteria:** Vendor selection criteria means the criteria established by the State agency to select individual vendors for authorization consistent with the requirements in 7 CFR 246.12(g)(3) and (g)(4).
- **Vendor Violation:** Vendor violation refers to any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement, or federal or State statutes, regulations, policies, or procedures governing the Program.

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Appendix B WIC Acronyms

A50	Above-50-Percent Vendor
APD	Advance Planning Document
CFR	Code of Federal Regulations
CMP	Civil Money Penalty
CPSC	Competitive Price Selection Criteria
CVV	Cash Value Voucher
CVB	Cash Value Benefit
DQ	Disqualification
EBT	Electronic Benefit Transfer
FDA	Food and Drug Administration
FI	Food Instrument
FMNP	Farmers' Market Nutrition Program
FNS	Food and Nutrition Service
HRV	High Risk Vendor
IHS	Indian Health Service
ITO	Indian Tribal Organization
MARL	Maximum Allowable Reimbursement Level
MOU	Memorandum of Understanding
MSR	Minimum Stocking Requirement
NSA	Nutrition Services and Administration
NUPC	National Universal Product Code
PAN	Primary Account Number
PAPD	Planning Advance Planning Document
POS	Point of Sale
SAM	System for Award Management
SNAP	Supplemental Nutrition Assistance Program
TIP	The Integrity Profile
USDA	United States Department of Agriculture
WIC	Special Supplemental Nutrition Program for Women, Infants and Children

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Appendix C Selected Regulation Citations

Regulatory Citation (7 CFR)	Content	Section
246.12(b)	Food Delivery Methods	2
246.12(a)	Management	2.1
246.12)(h)(1)(ii); 246.12(i)(1); 246.12(j)(1)	Delegation of Vendor Management Related Activities	2.1.1
246.12(c)	Issuance of Supplemental Foods, Food Instruments and Cash Value Vouchers	2.2
246.12(p)	FI and CVV Security	2.2.1.1
246.12(q)	FI and CVV Disposition	2.2.1.2
246.12(m)	Home Delivery	2.3
246.12(n)	Direct Distribution	2.4
246.12(f-l)	Retail	2.5
246.7(f)(2)(iv)	Issuance of FIs and CVVs in Retail	2.5.1
246.12(f)	Additional Requirements for FIs and CVVs in Retail	2.5.1.1
246.12(h)(3)(viii); 246.12(k)(5)	Redemption Procedures in Retail Food Delivery Systems	2.5.2
WPM 2014-3	Vendor Discounts and Incentives	2.5.3
246.12(a)	Electronic Benefit Transfer	2.6
246.12(h)(3)(xxvii); 246.12(z)(2)	EBT Minimum Lane Coverage	2.6.1
246.12(z)(3)(i); 246.12(aa)	EBT Costs and Fees	2.6.2
246.12(aa)(3)(i)	Third-Party Processing Costs and Fees	2.6.2.1
246.12(aa)(3)(ii)	Interchange Fees	2.6.2.2
246.12(aa)(4)(i)	Ongoing maintenance and operational costs	2.6.2.3
246.12(y)	EBT Management and Reporting	2.6.4
246.12(bb)	EBT Technical Standards and Requirements	2.6.5.1
246.12(bb)(3)	EBT Customer Service Standards	2.6.5.2
246.12(cc)	National Universal Product Code Database	2.6.5.3
246.12(w)(2)	Exemptions from the EBT Mandate	2.6.5.4
246.12(g)	Vendor Authorization	3
246.12(g)(8)	General Vendor Application/Authorization Requirements	3.1
246.12(g)(2)	Limiting Criteria	3.2
246.12(g)(3)	Vendor Selection Criteria	3.3
246.12(g)(3)	Federally Mandated Selection Criteria	3.3.1
246.12(g)(3)(i); 246.10(b)(2)(ii)(B)	Minimum Variety and Quantity of Supplemental Foods	3.3.1.1
246.12(g)(3)(ii)	Business Integrity	3.3.1.2
246.12(g)(3)(iii)	Current SNAP Disqualification or Civil Money Penalty for Hardship	3.3.1.3
246.12(g)(4)	Competitive Price	3.3.1.4
246.12(g)(3)(iv); WPM 2014-3	Incentive Items	3.3.1.5
246.12(aa)(4)(ii)	EBT Capability	3.3.1.6
246.12(g)(3)	State Agency Imposed Selection Criteria	3.3.2
246.12(g)(3)	Participant Access Considerations	3.3.3
246.12(h)	Vendor Agreements	4
246.12(h)(3)	Vendor Agreement Provisions	4.1
246.12(h)(4-8)	Additional Agreement Requirements	4.2

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Regulatory Citation (7 CFR)	Content	Section
246.12(g)(3)(xvii)	Terminating Vendor Agreements	4.3
246.12(i)	Vendor Training	5
246.12(i)	Interactive Training	5.1
246.4(a)(14)(xvi)	Vendor Cost Containment	6
246.12(j)	High Risk Vendor Identification System	7
246.12(j)	Monitoring & Investigations	8
246.12(l)	SANCTIONS	9
246.12(l)(1-2)	Vendor Sanctions	9.1
246.12(l)(1)(ix)	Participant Access Determination	9.1.1
246.4(a)(14)(xix); 246.12(l)(2)(i)	Pattern of Violations	9.1.2
246.12(l)(3)	Notification of Violations	9.1.3
246.12(l)(1)	Mandatory Federal Vendor Sanctions	9.1.4
246.12(l)(1)(i)	Permanent disqualification	9.1.4.1
246.12(l)(1)(ii)	Six year disqualification	9.1.4.2
246.12(l)(1)(iii)	Three year disqualification	9.1.4.3
246.12(l)(1)(iv)	One year disqualification	9.1.4.4
246.12(l)(1)(v)	Second mandatory sanction	9.1.4.5
246.12(l)(1)(vi)	Third or subsequent mandatory sanction	9.1.4.6
246.12(l)(1)(vii)	Disqualification based on a SNAP disqualification or CMP for hardship	9.1.4.7
246.12(l)(2)	State Agency Vendor Sanctions	9.1.5
246.12(l)(1)(x)	Civil Money Penalties	9.1.6
246.12(l)(1)(x)	Calculating a CMP	9.1.6.1
246.12(u)	Participant Sanctions	9.2
246.12(k)	Vendor Claims	10
246.18	Administrative Review	11
246.18(a)(1)(i)	Adverse Actions Subject to Full Administrative Review	11.1
246.18(a)(1)(ii)	Adverse Actions Subject to Abbreviated Administrative Review	11.2
246.18(a)(1)(iii)	Actions Not Subject to Review	11.3
246.12(v)(6)	Farmers and Farmers' Markets	11.4
246. 18(a)(4)(ii)	Administrative Review Procedures	11.5
246.18(b)(1)	Notification of Adverse Action	11.5.1
246.12(l)(3)	Notification to Vendors	11.5.1.1
246.12(l)(1)(xi)	Notification to FNS	11.5.1.2
246.18(b)	Full Administrative Review Procedures	11.5.2
246.18(c)	Abbreviated Administrative Review Procedures	11.5.3
246.12(v)	Farmers And Farmers' Markets	12
246.12(v)	Authorization of Farmers and Farmers' Markets	12.1
246.12(v)(1)	Farmer and Farmers' Market Agreements	12.2
246.12(v)(1)	Farmer and Farmers' Market Agreement Provisions	12.2.1
246.12(v)(8)	Monitoring Farmers and Farmers' Markets	12.3
246.26	Miscellaneous	13
246.26(e)	Confidentiality of Vendor Information	13.1
246.26(h)(3)	Agreements	13.1.1
246.26 (i)	Subpoenas and Search Warrants	13.1.3
246.25	Recordkeeping Requirements	13.2
246.25	State Agency Records	13.2.1
246.12(h)(3)(xvi)	Vendor Records	13.2.2

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Regulatory Citation (7 CFR)	Content	Section
246.12(h)(3) (xx)	Conflict of Interest	13.4
246.12(g)(10)	List of Infant Formula Providers	13.5
246.12(o)	Complaints	13.6
246.12(h)(3)(xxvi)	Reciprocal SNAP Disqualification for WIC Program Disqualifications	13.7
FNS Instruction 806-4	Military Commissaries	13.8
246.3(b); WPM 2014-5	Suspension and Debarment Procedures	13.9
246.19	FNS Monitoring And Review	14
246.19(a)(1)	Management Evaluations	14.1
246.19(a)(2)	Corrective Action Plans	14.2
246.23(a)	Claims against State Agencies	14.3
246.23(a)	Fraud/Misuse	14.3.1
246.23(a)(2)	Loss/Theft/Embezzlement	14.3.2
246.23(a)(4)	Improper Disposition	14.3.3
246.12(g)(4)(i)(D)	Failure to Achieve Above-50-Percent Vendor Cost Neutrality	14.3.4
246.23(b)	Interest	14.3.5
246.23(d)	Penalties	14.3.6
246.4	State Plan Requirements	15

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Appendix D Selected WIC Policy Memoranda

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United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA 22302-1500

February 7, 2014

SUBJECT: WIC Policy Memorandum #2014-3
Vendor Management: Incentive Items, Vendor Discounts and Coupons

TO: Special Nutrition Program Directors
All Regions

WIC State Agency Directors
All State Agencies

I. Introduction

The purpose of this memorandum is to provide comprehensive guidance to Special Supplemental Nutrition Program for Women, Infants and Children (WIC) State agencies regarding WIC-authorized vendors' in-store promotions. Approaches to marketing and in-store promotions that have been embraced by vendors must be carefully managed in order to ensure that the WIC Program continues to achieve the highest possible level of program integrity. For the purpose of this memorandum, in-store promotions include the provision of incentive items, as well as the use of vendor discounts and coupons. This guidance represents a compilation of relevant WIC regulatory provisions, previously-issued policy and guidance, and clarifications on aspects of these policies that have prompted recent questions.

This memorandum supersedes the following WIC memoranda:

- WIC Policy Memorandum 2012-3: *Vendors Offering Incentive Items to WIC Participants*
- WIC Policy Memorandum dated May 22, 1990: *Sales Tax on Manufacturer's Discount Coupons*
- WIC Policy Memorandum dated June 6, 1988: *Use of Manufacturers' Specials When Purchasing WIC Foods*

II. Definitions

Definitions of terms that are used throughout this memorandum are provided below.

Above-50-percent (A50) vendor: a vendor that derives more than 50 percent of its total annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by the Food and Nutrition Service (FNS)

Coupon: a digital or printed voucher that allows a customer to receive a product at a reduced price or at a higher quantity; *coupons* may be provided to customers by vendors, manufacturers or other entities

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In-store promotion: a sales promotion in which a vendor may offer *incentive items, vendor discounts* or *coupons* in order to increase sales of certain items or to encourage customer loyalty to the vendor

Incentive item: an item or service provided by a vendor to attract customers or encourage customer loyalty

Mixed basket transaction: a WIC electronic benefits transfer (EBT) transaction that includes WIC and non-WIC items and, therefore, requires more than one tender type; see attachment for information pertaining specifically to discounts in mixed basket transactions

Regular (non-A50) vendor: a vendor that does not derive more than 50 percent of its total annual food sales revenue from WIC food instruments; a vendor that is not an *above-50-percent vendor*

Vendor discount: an *in-store promotion* that reduces the price or increases the quantity of a given product; a *vendor discount* could also result from the use of a *coupon*

III. Equitable Treatment

Section 246.12(h)(3)(iii) of the Federal WIC Regulations requires WIC-authorized vendors to offer WIC Program participants, parents or caretakers of infant and child participants, and proxies the same courtesies that are offered to other (non-WIC) customers.

WIC-authorized vendors may not treat WIC customers differently from non-WIC customers by excluding them from in-store promotions—this includes disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions. Similarly, WIC-authorized vendors may not treat WIC customers differently by offering them incentive items, vendor discounts, coupons or other promotions that are not offered to non-WIC customers.

Failure to provide the same courtesies to WIC participants, as outlined above, is a violation of Federal WIC Regulations, thereby constituting a vendor violation. State agencies should ensure that WIC-authorized vendors are aware of this requirement and should include a provision outlining the requirement for equitable treatment of WIC participants in their vendor agreements. The consequences of noncompliance with this requirement should be included in State agencies' sanction schedules, as applicable.

IV. In-Store Promotions and Regular (Non-A50) Vendors

As stated in the "Equitable Treatment" section of this memorandum, the Federal WIC Regulations require that WIC-authorized vendors treat program participants with the same

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courtesies as other customers with respect to both food prices and services. Allowing participants to take advantage of in-store promotions, such as those outlined below in the "Vendor Discounts by Type" section of this memorandum, is consistent with this policy.

Additionally, allowing WIC participants to use vendor discounts in WIC purchases reinforces wise food purchasing practices, which is a goal of WIC nutrition education. Many State agencies have encouraged the use of coupons and other vendor discounts through their nutrition education programs in order to reach this goal and/or to reduce Program costs.

State agencies should ensure that participants are well-informed about the use of different types of in-store promotions and coupons so that both participants and the WIC Program are able to achieve the maximum benefit from such offers. State agencies should also ensure that both participants and vendors understand the temporary nature of some offers in order to reduce confusion at the point of sale.

Additional information regarding in-store promotions and regular vendors is outlined in the sections below.

A) Vendor Discounts by Type

Vendor discounts generally provide either a greater quantity (quantity discount) of, or a lower price (price discount) for, a food item. To be consistent with WIC's equitable treatment policy, State agencies should have policies in place that allow for the use of in-store promotions as well as manufacturers' coupons.

The most common types of vendor discounts are described below. WIC State agencies that are in the process of developing EBT systems can find technical information regarding these vendor discounts in the EBT/MIS section of the FNS WIC website, specifically in section 4.7.5 of the *WIC EBT Operating Rules*.

1) **Buy One, Get One Free (BOGO)**
   In this promotion, the WIC-authorized vendor sells one WIC food item and provides a second identical food item or a different item at no additional cost. For example, a vendor offers a free box of cereal with each box of cereal that is purchased. This is a quantity discount. Using a *buy one, get one free* promotion allows WIC participants to get additional quantities of WIC foods or non-WIC items at no cost. If the free item in a *buy one, get one free* promotion is a WIC food item, it should not be deducted from the participant's WIC benefits.

2) **Buy One, Get One at a Reduced Price**
   In this promotion, the WIC vendor sells one WIC food item at full price and sells either a second identical WIC food item or a different food item

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at a reduced price. For example, a vendor offers a half price box of cereal with each box of cereal that is purchased at regular price. A *buy one, get one at a reduced price* promotion is a price discount. In a transaction that only includes WIC items, this discount type only applies when the second, reduced price item is a WIC food item and the participant has the item in his or her benefits balance. In this case, the WIC Program would benefit from this vendor discount by being charged the lower price for the second box of cereal.

3) **Free Ounces Added to Food Item by Manufacturer (Bonus Size Items)**
In this promotion, a food manufacturer adds extra ounces to a product at no extra cost to the consumer. For example, instead of offering 16 ounces of cereal in a box, a manufacturer may temporarily offer a bonus size 18 ounce box of cereal at the same price. This promotion is a quantity discount. When a bonus size food item is purchased by a WIC participant, the vendor should redeem the WIC food instrument as if the original size (16 ounce) item were purchased. In order to take advantage of this type of discount, State agencies will need to employ a system of communication with food manufacturers regarding universal product codes (UPCs) for bonus size WIC-approved items.

4) **Transaction Discounts**
In this type of promotion, the WIC vendor applies a fixed amount discount or a discount percentage to the total dollar amount of the purchase. For example, the offer may be for $10 off or 10% off when $50 or more in groceries are purchased. A transaction discount is a price discount on the total purchase. In a transaction that only includes WIC items, the Program would benefit from the vendor discount being applied to the transaction.

5) **Store Loyalty/Rewards Cards**
WIC-authorized vendors may provide a card or token that provides additional vendor discounts for frequent or regular customers. WIC participants are not required to use loyalty/rewards cards, nor are WIC-authorized vendors required to scan a "dummy" card for WIC participants who do not have their own cards. Store loyalty/rewards cards may provide a variety of quantity and/or price discounts. These vendor discounts should be processed by vendors as outlined above, according to type.

6) **Manufacturers' Cents Off Coupons**
Manufacturers' cents off coupons allow customers to purchase certain items at a lower price. For example, a coupon may offer a price discount

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of 50 cents off a box of cereal. In a transaction that only includes WIC items, the value of the coupon would be applied to the WIC transaction, thus benefiting the Program.

NOTE: Vendor Discounts in a Mixed Basket Transaction

All of the discounts above may be applied to mixed basket purchases, as long as they are applied in accordance with the rules for processing mixed basket transactions that can be found in the *WIC EBT Operating Rules*. See attachment for examples of the application of discounts in mixed basket transactions.

B) Sales Tax on Manufacturers' Coupons

Pursuant to the Child Nutrition Act at 42 U.S.C.1786(c)(4), State agencies are prohibited from collecting sales taxes on WIC foods. However, some States collect sales tax on manufacturers' coupons. In some cases, this tax only applies to manufacturers' coupons that are used on taxable items and does not, therefore, apply to coupons used for WIC-authorized foods in a WIC transaction. Other States have exempted WIC purchases from the collection of sales tax on manufacturers' coupons through legislation or policy clarification. It is important to remember that manufacturers' coupons are not a WIC benefit; therefore, States are not prohibited from collecting sales tax on them. If a WIC participant uses a coupon when purchasing a WIC food item, sales tax may be collected on the value of the coupon tendered, but must not be collected on the actual WIC food item or paid for by the WIC participant or the WIC Program via the WIC food instrument.

If sales tax must be collected on a manufacturer's coupon in a WIC transaction, the following procedure must be used in order to prevent the Program or participant from being taxed:

1) Subtract the sales tax on the coupon from the face value of the coupon
2) Subtract the remainder of the coupon value from the retail price of the WIC-authorized food

Using this process, the sales tax is effectively paid by the coupon itself. For example, if sales tax on manufacturers' coupons is 5% and a participant presents a coupon for $1.00 off a WIC-authorized food that costs $3.00, the transaction would be processed as follows:

1) Sales tax subtracted from face value of coupon: $1.00 - $0.05 = $0.95
2) Remainder of coupon value subtracted from retail price of food item: $3.00 - $0.95 = $2.05

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In this example, the WIC Program would be charged $2.05 for the food item.

C) Cash Back
Cash back is not permitted as a result of vendor discounts in any WIC transaction. In a transaction that only includes WIC items, all vendor discounts, including manufacturers' coupons, must be applied to the WIC transaction, thus benefiting the Program. In a mixed-basket transaction, vendor discounts must follow the procedures described in the *WIC EBT Operating Rules*; depending on the specifics of the transaction, the participant, the Program or both would benefit from the vendor discounts, but cash back may not be given to the participant.

V. In-Store Promotions and Above-50-Percent (A50) Vendors

State agencies that choose to authorize above-50-percent vendors must prohibit A50s from offering incentive items or restrict the provision of incentive items to certain types and quantities of items.

Section 246.12(g)(3)(iv) of the Federal WIC regulations prohibits a State agency from authorizing or making payments to an A50 vendor that provides prohibited incentive items. Sections 246.12(g)(3)(iv)(A) and (B) list allowable and prohibited incentive items for A50 vendors. Additionally, WIC Policy Memorandum 2005-1, *Implementation of Certain WIC Vendor Provisions of P.L. 108-265*, which is available in the Policy section of the FNS WIC website, provides an in-depth discussion of the regulatory requirements regarding incentive items and A50 vendors.

To summarize these regulatory requirements, WIC State agencies may approve incentive items—including food, merchandise or services—that the vendor obtained at no cost or that cost the vendor less than $2. The vendor may also provide food sales or specials (vendor discounts) that involve no cost or less than $2 in cost to the vendor. This includes bonus size food items that were obtained from the manufacturer at no cost to the vendor, as well as any of the other types of vendor discounts explained in Section IV of this memorandum, as long as the cost to the vendor of providing these vendor discounts is less than $2. State agencies may not approve incentive items, including food, merchandise or services that are worth more than $2, or food sales or specials (vendor discounts) that cost the vendor more than $2. A50 vendors may not provide multiple incentive items or vendor discounts to customers per visit unless the cumulative value of these items is less than $2. Additionally, A50 vendors may not provide services that result in a conflict of interest (such as assistance applying for WIC benefits), lottery tickets, cash, or any item that incurs a liability for the WIC Program or violates any Federal, State or local law or regulation.

If a State agency allows A50 vendors to provide incentive items to customers, it must provide written approval or disapproval of requests for permission to provide allowable incentive

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items to customers. The State agency must maintain documentation of the approval process, including invoices or similar documents collected from vendors that show that each approved incentive item was either obtained at no cost or at a cost of less than $2. In order to reduce the administrative burden of this process, the State agency may provide A50 vendors with a list of pre-approved incentive items at the time of authorization.

WIC State agencies may not authorize, continue the authorization of, or make payments to, an A50 vendor that provides or indicates an intention to provide prohibited incentive items to customers. Evidence of such intent includes advertising the availability of prohibited incentive items. If a vendor shows a pattern of providing prohibited incentive items, the State agency should impose the mandatory vendor sanction for this violation: a one-year disqualification in accordance with 7 CFR 246.12(l)(1)(iv).

VI. Conclusion

WIC State agencies must ensure compliance with WIC Program requirements for authorized vendors relating to in-store promotions, including incentive items, vendor discounts, and coupons. These requirements should be clearly outlined in each State agency's vendor agreement, vendor handbook, policy and procedure manual, and vendor training materials.

If you have any questions about the information contained in this memorandum, please contact your FNS Regional Office.

Debra R. Whitford

DEBRA R. WHITFORD
Director
Supplemental Food Programs Division

Attachment

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ATTACHMENT: Discounts and Coupons in Mixed Basket Transactions
WIC Policy Memorandum #2014-3
Vendor Management: Incentive Items, Vendor Discounts and Coupons

In a mixed basket transaction, WIC and non-WIC items are scanned together in one transaction and paid for by the participant using multiple tender types. For example, a mixed basket transaction might include WIC eligible food items, SNAP-eligible food items, and items that are not WIC or SNAP eligible, such as diapers. In a scenario like this, the vendor's computer system would process the transaction, identifying and grouping each of the items by their payment type. If a vendor discount is applicable, the vendor's computer system would then use the rules set forth in the *WIC EBT Operating Rules* to apply the discount to the appropriate item or items.

For example, a WIC participant brings a box of WIC-eligible infant cereal, a package of SNAP-eligible ground turkey, and a box of diapers to the register to purchase.

The participant's totals for this example (with no applicable discounts) are as follows:
WIC-eligible infant cereal: $3 = Total charged to WIC
SNAP-eligible ground turkey: $5 = Total charged to SNAP
Box of diapers: $14 = Total charged to participant (cash)

Below are examples of how certain discount types would be processed in the example above.

Buy One, Get One at a Reduced Price
If the vendor has a *buy one, get one at a reduced price* special on the WIC-eligible infant cereal (second box is $1) and the participant brings a second box of the cereal to the register to purchase, the transaction will be processed as follows:

If the participant has two boxes of cereal on her WIC EBT card,
WIC-eligible infant cereal: $3 = Charged to WIC
WIC-eligible infant cereal: $1 = Charged to WIC
SNAP-eligible ground turkey: $5 = Total charged to SNAP
Box of diapers: $14 = Total charged to participant (cash)

If the participant has only one box of cereal on her WIC EBT card,
WIC-eligible infant cereal: $3 = Total charged to WIC
WIC-eligible infant cereal: $1 = Charged to SNAP
SNAP-eligible ground turkey: $5 = Charged to SNAP
Box of diapers: $14 = Total charged to participant (cash)

In the first scenario above, the WIC Program saves $2 on the participant's second box of cereal. In the second scenario, WIC pays the regular price for the first box of cereal and the participant saves $2 on the second box of cereal by using only $1 of her SNAP benefits. If the participant is out of SNAP benefits, the second box of cereal moves to her cash purchase and she pays $1. It should be noted that, if the participant prefers that the second/reduced

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price item not be deducted from her WIC benefits, the vendor must allow for the item to be moved into her SNAP or cash purchase.

Transaction Discounts

Unlike most of the other discount types, transaction discounts are not linked to a particular item or items, but instead apply to the entire purchase price. The recommended procedure for processing a transaction discount is outlined below.

If the vendor offers a transaction discount to buy $10 worth of groceries, get 10% off, for example, the transaction would be processed as follows:

WIC-eligible infant cereal: $3 - $.30 (10% discount) = $2.70 = Total charged to WIC
WIC CVB-eligible apples: $3 - $.30 (10% discount) = $2.70 = Total charged to WIC CVB
SNAP-eligible ground turkey: $5 - $.50 (10% discount) = $4.50 = Total charged to SNAP
Box of diapers: $14 – $1.40 (10% discount) = $12.60 = Total charged to participant (cash)

In this scenario, the 10% discount is applied proportionally across the transaction. In this $25 purchase, a discount of $2.50 was applied such that the WIC Program saved $.30 cents on the infant cereal, the participant retained the $.30 discount in her CVB for future fruit and vegetable purchases, the participant retained the $.50 discount in her SNAP benefits for future purchases, and she saved $1.40 on her cash purchase of diapers.

Manufacturers' Cents Off Coupons

If the participant presents a coupon for two dollars off a diaper purchase, the coupon is applied to the diapers and the participant, rather than the WIC Program or SNAP, would benefit by saving $2 on her cash purchase. If that same participant presented a one dollar off coupon for her WIC-eligible infant cereal, that coupon would be applied to the infant cereal being paid for with WIC EBT, and the WIC Program would benefit by being charged $1 less for the infant cereal.

After presenting coupons for diapers and infant cereal, the participant's totals are as follows:

WIC-eligible infant cereal: $3 - $1 (coupon) = $2 = Total charged to WIC
SNAP-eligible ground turkey: $5 = Total charged to SNAP
Box of diapers: $14 - $2 (coupon) = $12 = Total charged to participant (cash)

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INTERAGENCY AGREEMENT

U.S. DEPARTMENT OF AGRICULTURE
FOOD AND NUTRITION SERVICE
SPECIAL NUTRITION PROGRAMS

U.S. DEPARTMENT OF DEFENSE
OFFICE OF THE DEPUTY ASSISTANT SECRETARY (MP&FM), PERSONNEL ADMINISTRATION AND SERVICES DIRECTORATE

MEMORANDUM OF UNDERSTANDING

Military Commissaries as WIC Program Vendors

It is the joint policy of the Department of Agriculture and the Department of Defense to foster cooperation between State agencies administering the Special Supplemental Food Program for Women, Infants and Children (WIC) and military commissaries which may act as authorized WIC food vendors. The WIC Program serves to improve the health and nutritional status of pregnant, breastfeeding and postpartum women, infants and children under 5 years old, through provision of supplemental foods and nutrition education. Commissaries serve the purchase needs of active and retired military personnel and their dependents. Insofar as military personnel or their dependents may participate in the WIC Program, it is appropriate for commissaries to serve as WIC Program food vendors.

The purpose of this memorandum of understanding is to outline the basic responsibilities of WIC State agencies or their designated local agencies (hereafter referred to as State agencies) and military commissaries which have been authorized to be WIC food vendors.

1. In order to be an authorized WIC food vendor, the commissary shall fulfill State criteria for authorization and shall sign an agreement or contract with the State or local agency.

2. The State WIC-agency shall agree that commissaries shall be reimbursed for the provision of authorized supplemental foods to participants, based on the standard commissary price system of procurement costs plus a percentage surcharge. The State agency shall further agree that commissaries are only obliged to serve active or retired military personnel and their dependents.

3. The State agency shall provide the commissary a List of approved WIC supplemental foods. The State agency may not direct the commissary to carry a specific brand of merchandise, if that product does not fall within the items authorized for sale in commissaries or if the commissary carries an equivalent product from the approved list of WIC foods.

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4. The commissary shall comply with applicable Federal regulations and State agency guidelines for WIC food vendors, such as: provision of supplemental foods to participants, completion and submission of food instruments (also called WIC checks, vouchers, coupons or drafts), acceptance of WIC vendor training within funding/personnel constraints, and other State agency guidelines agreed to by the appropriate commissary headquarters except those excluded in item (5) below. The commissary shall not discriminate on the basis of race, color, national origin, sex, age or handicap.

5. In view of Federal immunity from State claims or review, the State agency may not conduct on-site monitoring reviews of commissaries (except upon invitation by the constituted military authority) or require claims to be paid. However, a State agency may review redeemed food instruments prior to payment. If the food instruments are found to contain errors or omissions, payment may be denied unless or until further justification or correction is provided by the submitting commissary.

If the State agency identifies a possible problem, it shall write the commanding officer of the installation requesting repayment, investigation, or other appropriate action. The commanding officer of the installation or his designee shall take necessary action and promptly reply to the State agency, including repayment if appropriate.

6. If the State agency wishes to further pursue problem resolution, it shah refer the case to the Food and Nutrition Service (FNS), U.S. Department of Agriculture. FNS, in conjunction with the Department of Defense, may conduct on-site monitoring reviews and submit claims to commissaries for the WIC Program.

7. State agencies are authorized to use the general guidelines above in writing agreements with commissaries, based on Section 246.12(f) of WIC Regulations. Authority: Section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786); WIC Program Regulations (7 CFR Part 246).

GEORGE A. BRALEY
Deputy Administrator
Special Nutrition Programs
Food and Nutrition Service
U.S. Department of Agriculture

FEB 07 1989
Date

LTG R. DEAN TICE, USA, Deputy Assistant
Secretary of Defense for Military
Personnel and Force Management
U.S. Department of Defense

7 March 1989
Date

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March 19, 2014

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA 22302-1500

SUBJECT: WIC Policy Memo #2014 – 5
Reporting Permanently Disqualified WIC-Only Authorized Store Owners to the System for Award Management (SAM)

TO: Regional Directors
Special Nutrition Programs
All Regions

WIC State Agency Directors
All Regions

The purpose of this memorandum is to inform WIC State agencies of a new requirement to notify the Food and Nutrition Service (FNS) when they permanently disqualify a WIC-only authorized store owner. Executive Order 12549, Debarment and Suspension, and Departmental Regulations at 2 CFR 417, Nonprocurement Debarment and Suspension, require FNS to conduct business only with responsible persons and entities and to alert other Federal agencies of program violators through a government-wide system, the System for Award Management (SAM). The General Services Administration Excluded Parties List System migrated to SAM, effective July 2012. FNS and other Federal agencies protect themselves from doing business with those individuals who would commit fraud and other unethical business practices by checking the SAM as they award future loans, contracts, grants and other program benefits.

The Supplemental Nutrition Assistance Program (SNAP) and WIC Program have reciprocal disqualification requirements for retail store owners authorized by both SNAP and WIC. SNAP is already using SAM to notify appropriate FNS staff and other government agencies when these store owners are permanently disqualified from the Programs. However, to complete FNS' reporting requirement, the WIC Program must now enter permanently disqualified WIC-only authorized store owners into SAM.

Please use the attached memorandum template to inform FNS of WIC-only authorized store owner(s) your State agency has permanently disqualified during the preceding quarter. FNS WIC Program staff will enter the information into SAM. Notices are due to FNS each quarter not later than 30 days following the end of each quarter.

Please contact your respective Regional Office if you have any questions concerning this requirement.

Debra R. Whitford

DEBRA R. WHITFORD
Director
Supplemental Food Programs Division

Attachment

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Attachment

SAM Memorandum Template

TO: Director
Supplemental Food Programs Division
Food and Nutrition Service, USDA
3101 Park Center Drive, Room 520
Alexandria, VA 22302

FROM: WIC State Agency

DATE:

SUBJECT: Permanent Disqualification of WIC-Only Retail Store Owner

The following retail store owner(s)/store(s) are permanently disqualified. The required information follows:

Name and Address: Complete name and address of retail store owner and store.

Reason for DQ: Description of the cause for permanent disqualification.

Active Date: The effective date of the disqualification.

Please add the referenced information regarding the retail store owner into the SAM. If you have any questions regarding this action, please contact agency POC at contact information.

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Appendix E WIC Vendor Management Tip Sheets {Redacted}

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