



1 OCTOBER 2001
TO
30 SEPTEMBER 2002

** = MANDATORY SANCTIONS

Underlined bold & italic Letters = Revised 10-18-01

V-1: APPLICANT VENDOR SELECTION AND AUTHORIZATION

Rev.10-18-01

GOAL

To ensure that only vendors which will be a benefit to the Program are accepted and maintain their authorization.

PROCEDURE

- A. Retail grocers, food stores, and registered pharmacies located in the State of Rhode Island may request participation as authorized vendors in the WIC Program. An application will only be issued to a grocery or pharmacy owner, partner or corporate officer acceptable to HEALTH WIC Program. Mobile stores and home food delivery companies are not eligible to be WIC Vendors. Persons or entities may also apply up to thirty days before commencing operations of a grocery or pharmacy.
- B. A Vendor Application Package, consisting of a Letter of Introduction, a Vendor Application Form (WIC-31), a WIC Price List, Redemption Procedures, a sample WIC check, a WIC-Approved Foods list, a Vendor Minimum Inventory, and WIC's Guide to Retailers is sent to the vendor, only. The Vendor Application, Price List, proof of ownership, and copy of a recent driver's license or other positive photo identification are returned to the State office for review after completion by the vendor.

The vendor application and WIC Price List must be signed by the establishment owner, partner or a corporate official acceptable to HEALTH WIC PROGRAM, provided they have the authority to sign on behalf of the company. The applicant must provide evidence of ownership and/or control, satisfactory to the HEALTH WIC Program, of the operations of the grocery or pharmacy at the location for which the application is being submitted.

- C. For the purposes of the HEALTH WIC Program the terms vendor, applicant or applicant vendor, except as described above, shall refer to the business and any person, firm, corporation, officer, owner or manager or any entity who/which has or has had a controlling or partnership interest in, or managerial control of the business with respect to the business' WIC vendor application or re-application for participation in the Program and in compliance with any Food And Consumer Service (FNS) Program's rules, regulations or procedures.
1. The vendor shall report any relatives who own, operate, manage or work in the store or any other store presently or formerly a vendor on the WIC Program. Failure to report will constitute withholding of information and be subject to a one year disqualification (see Policy V-4, I.E.7) and categorize the vendor as a potential for risk vendor.
 2. The vendor shall report the involvement of any individual residing at the same address as anyone involved with the ownership, management, or operation of the vendor, or of any other store presently or formerly on the WIC Program. Failure to report will suffer the same penalty as in (1.) above.
- D. If the vendor has withheld, misrepresented or falsified any information required by the application process, the application will be denied and/or any subsequent Vendor Agreement relating thereto will be immediately rendered null and void, upon discovery.
- If the vendor has participated in any actions which are violations of Program rules or accepted WIC checks prior to authorization, (in accordance with Vendor Compliance, V-4) the application will be denied and/or any subsequent Vendor Agreement relating thereto will be immediately rendered null and void, upon discovery.
- The vendor may not be accepted if it has been debarred or suspended from participating in any transactions involving federal funds or other assistance with grantees and subgrantees of federal funds under the terms of 7 CFR Part 3017.
- E. A vendor will not be accepted if it shows potential for risk (see Policy V-2).
- F. FNS and WIC Compliance (Applies to in state or out of state compliance).
1. Unless needed to serve an area (Section S, below), a grocery vendor will not be approved unless vendor is authorized by the Food Stamp Program under the current ownership. If the Vendor is disqualified from the Food Stamp Program as a result of disqualification from the WIC Program, the Vendor may not reapply until FSP authorization is reinstated

2. (a) A vendor will not be approved if a vendor as a vendor, owner, officer, partner, manager or individual:
- (i) Has not paid in full any fiscal claim, penalty, or fine owed to any USDA or other Federal or State Program or if the Vendor has not corrected any previous violation.
 - (ii) Has committed or been convicted of any violation of or been found in violation of any of the laws and/or regulations, or rules of any USDA or other Federal or State Program, or the terms of any previous Vendor Participation Agreement. The vendor will not be accepted for from one to *six* years from the time of the last violation committed, or from the time it was determined the violation had been committed, or prior to the end of any disqualification, sentence, or sanction imposed with respect to that violation; whichever last occurs.
If the sanction was a civil money penalty, or fine or other monetary settlement imposed in lieu of a disqualification or agreed to as part of resolution of a charge of violation of USDA rules, the vendor may not be accepted during the period of time the monetary penalty or settlement is in lieu of, beginning with the date the sanction was imposed. **Re-applicant(s) must serve this time under the WIC Program before he/she can be re-approved as a WIC Vendor** or such term as consistent with the nature of the act and penalties for a similar act as set forth in Policy V - 4. The HEALTH WIC PROGRAM may accept such a vendor if it deems vendor would be a special benefit to the Program and acceptance to be in the best interests of the Program, and impose an alternative penalty and/or special conditions of participation in lieu of denial of participation.
 - (iii) Is owned, in whole or in part, or is managed by any person who has committed or been convicted of any violation of or found in violation of the laws, regulations, or rules, of any above USDA Program in accordance with the above.
 - (iv) Employs any person who has committed or been convicted of any violation of, or found in violation of, any of the laws, regulations, or rules of any USDA Program in accordance with the above, whether such violations occurred in relation to that applicant store while the store was under previous ownership, or any other store where such person committed such violations unless such person is under on-site supervision of a superior during all hours of WIC related activity and is not allowed to take part in any WIC check transactions.
 - (v) Has committed any violation of the laws, rules, or regulations of any USDA Program while under disqualification or other sanction by any USDA Program, or when not participating in such Program; in accordance with Policy V-4, Vendor Compliance.
 - (vi) Where there is evidence of an attempt to circumvent, or assist in a circumvention of, a period of disqualification from any USDA Program or a civil money penalty imposed for violations of the rules or regulations of any USDA Program in accordance with Policy V-4 or Program vendor selection and authorization rules and requirements.
 - (vii) Where there is a likelihood that a former owner, who would not him/herself qualify, still retains direct or indirect ownership in, control over or interest in the business or its operations.
- (b) **Re-application/Re- approval** of Vendor Agreement - When reliable evidence or likelihood exists of violations of the regulations, rules, or procedures of any USDA Program in accordance with (a), above or Policies V-2 or V-4, such evidence shall be grounds for **denial** of the WIC Vendor Agreement. The Rhode Island Department of HEALTH WIC Program may **deny** vendor participation in the Program for a period in accordance with (a), **above**, or until such time as the vendor is no longer subject to, or under judicial, administrative penalties, sanctions **and/or sanction reviews**, or other punishment, whichever last occurs. Any of the conditions of (a) above, shall constitute a violation for purposes of **re-approval of a vendor even when it has been served under any USDA Program but not under the WIC Program. Applicant(s) or re-applicant(s) must serve this time under the WIC Program before he/she can be re-approved as a WIC Vendor.**

3. The HEALTH WIC PROGRAM may, at its option, enter into a conditional Vendor Participation Agreement when a vendor is pending judicial or administrative finding, decision, or applicant sanction for an alleged violation, or being readmitted following an allegation of violation, or for special authorization needs as provided for in O, below.
4. Each applicant vendor, including re-*applications*, will be reviewed for compliance with any current or previous WIC Agreement for the past three years from the date of application or from the termination of the most recent Agreement.

A vendor will not be accepted or renewed if it meets any of the following criteria:

- (a) Is currently suspended or disqualified from any USDA Program for non-compliance, or is under threat of disqualification related to pending charges. This shall not be subject to administrative or judicial review under the WIC Program.
- (b) Committed three violations of WIC Program rules such as would be grounds for a 90 day or less disqualification under the provisions of Policy V-4: Vendor Compliance.
- (c) Committed two violations, and/or was issued two notices of violation, of a type described in Policy V-4: Vendor Compliance, as Violations and Sanction Types A, B, C, D, E, F; or committed serious, deliberate, or widespread violations described under I or J of that policy.
- (d) Received two suspensions or disqualifications during the preceding three years. Such vendors shall not be renewed or approved for participation for from one to three years from the date of termination of their current or most recent Agreement, in accordance with Policy V-4.
- (e) Has been determined to be charging excessive prices, in accordance with Policy V-10.
- (f) If federal regulations for the WIC Program are adopted which change the maximum disqualification or suspension term or standards for vendor authorization the *HEALTH WIC Program* may modify the terms of disqualification or non-approval for participation in accordance with the standards set forth in the new federal regulations.
- (g) If the WIC Program has reason to believe a change of ownership or control may have occurred and the vendor fails to furnish sufficient proof that a change has not occurred.

For purposes of this Section, all of the provisions of 2, (a), above, which pertain to vendor violations, ownership, employment and so forth, shall apply.

- G. Vendors must be in good standing with all other HEALTH units, such as Food Protection and Sanitation and Board of Medical Licensure & Discipline, as applicable.
- H. Prior to a site visit, the following items will be reviewed for completeness and acceptability in conformance with applicant selection standards and criteria:
 1. Application form WIC-31 *completed*, *WIC Price Sheet*, proof of ownership, photo identification
 2. *USDA active authorization*
 3. No debarment or suspension
 3. Prior USDA and prior WIC compliance
 4. Food Protection/Board of Medical Licensure & Discipline status
 5. Acceptable prices
 6. No potential for risk
- I. If the vendor is acceptable according to the above criteria and if openings exist in accordance with *Q*, below, an on site visit is conducted at the location of the applicant store using the Vendor Application Site Visit Form (WIC-32) including WIC food availability, check handling and redemption, willingness to cooperate in vendor monitoring, willingness to fulfill obligations of the Vendor Participation Agreement and prices.

- J. The Vendor applicant must demonstrate that inclusion of the store or pharmacy would prove to be a benefit to the program. The vendor must demonstrate cooperation with Program staff, participants and procedures as well as comprehension and acceptance of Program goals and objectives.
A Vendor deemed to be a potential for risk (in accordance with Policy V-2) is not considered to be a benefit to the Program.
- K. The applicant must stock a minimum inventory and supply of WIC-Approved Foods at competitive prices.
1. A minimum inventory shall be defined as the WIC Vendor Minimum Inventory Requirements in effect at the time:
 - (a) For a grocery or food store, the WIC-Approved Food Groups are milk, cereal, cheese, juice, eggs, infant formula, beans, peanut butter, and infant cereal. For the categories of milk, eggs, and infant cereal, two types are preferred but not required.

Stores authorized to accept checks for Special Infant Formula must maintain the minimum inventory for such products.
 - (b) For a registered pharmacy, the WIC-Approved Food groups are special formula and infant formula. The pharmacy must also stock the required minimum inventory of any other food items for which it accepts WIC checks and the store must have in stock two pounds of two types of special formula.
 - (c) The registered pharmacy shall obtain and make available within two working days any formula nutritional product requested by a WIC shopper and specified on a WIC check in the amount, form, size and type specified on at least two WIC checks, as presented, provided the product is available to retail pharmacies, at less than or equal to the maximum allowed price for the product.

The WIC Office, will make every effort to match checks to packing, but where this is not possible Vendor must break package/case to complete the amount specified on the check.
 2. An applicant will not be approved if its shelf price(s) for any WIC-Approved food(s) is excessive as defined in policy V-10. An exception to this policy may be made when a clinic area has fewer than four full line WIC-Approved food vendors, or a city or town less than two, or if the vendor is, or would be, the lowest WIC price store in the area. A clinic area is defined as those census tracts in which a clinic has at least 25% of the participants or in which 10% of its participants reside.
- L. Acceptance or denial will be predicated on a full consideration of minimum inventory of foods, overall needs of the Program, FNS and WIC compliance, prices of WIC foods, need for additional vendors, application data, site visit, benefit to the Program, business integrity, other applicant vendor criteria and the impact of that store's acceptance on the Program's ability to effectively monitor or assess all applicant or authorized vendors.

A vendor cannot be accepted or renewed if its potential or likelihood to violate the Program's rules would require special, burdensome or disproportionate monitoring efforts by the Program.
- M. Combined Grocery/Liquor Establishments

A grocer vendor will not be accepted if the vendor also sells alcoholic beverages at the same location. In order to be considered as a separate location, any alcoholic beverages must be displayed and sold in a separate physical unit, with no direct in building access between the grocery and liquor sales units. Said units must have separate entrances, no shared entrance, a physical barrier between which prevents access, and registers for each unit and within each unit.
- N. The WIC Program will review applicant vendors on a regular basis. Vendor monitors will plan part of each month, up to 20% of each month's total visits, to schedule applicant vendor site visits so that any applicant can expect an answer within a reasonable period of time.

Applicant site visits may be curtailed during July, August and September at the discretion of the Program Chief to concentrate resources on the Agreement re-application process.

- O. The WIC Program will review the records of existing vendors each year prior to Agreement re-application. The review will be based upon criteria used for applicant vendors, and information submitted by vendor on re-application forms or otherwise required by HEALTH WIC Program, other information received or acquired by HEALTH WIC Program and other re-application criteria, including all criteria mentioned above. Only vendors who meet all criteria will be re-approved.
1. Re-applications will also be denied if a vendor:
 - a. Redeems fewer than 10 WIC checks in any one month period on two or more occasions during the consecutive 15 month period preceding the re-application review.
 - b. If the vendor's prices are or have been in excess of the excessive price standard (Policy V-10) for 2 months during the consecutive 15 month period preceding the re-application review.
 - c. If the vendor's completed application and its requirements are not received within the allowed time period and/or due date.
 2. Neither the FSP decision to impose a Civil Money Penalty (CMP) nor the HEALTH WIC Program's participant access determination shall be subject to administrative review under the WIC Program.
 3. At the sole discretion of HEALTH WIC PROGRAM, approximately one half (1/2) of vendors not designated as potential for risk may have their Agreements extended for the Federal Fiscal Year 2000 (10/1/2001 - 9/30/2002). The other half of those not designated as potential for risk may be granted a two year Agreement.
 4. Vendors classified as potential for risk and Vendors whose current authorization has been in effect for less than twenty-four (24) consecutive months prior to July 1, in a given year, will be granted only up to a one year contract. At HEALTH WIC Program's sole discretion, new Vendors may upon review have their contracts extended for an additional year.
- P. Applicant Training
1. Prior to approval/re-approval, all applicant vendors must undergo Vendor Training under the auspices of HEALTH WIC PROGRAM WIC Staff. Such training shall consist of at least an orientation to the purposes and goals of the WIC Program, its capped funding and impact on the number of people served, WIC-Approved Foods, Minimum Inventory requirements, WIC Check redemption procedures, excessive price policies, and other Program vendor policies and procedures as are normally a part of formal vendor training sessions. HEALTH WIC PROGRAM may add such other topics it deems necessary.
 2. In general, these training sessions will take place at the HEALTH WIC PROGRAM, although HEALTH WIC PROGRAM has the prerogative to designate other locations where it deems training would be more efficient or effective
- Q. Maximum Number of Authorized Vendors
1. As a rule, the number of authorized retail grocer vendors may not exceed 225 and of pharmacies may not exceed 40. Pharmacy counters in WIC approved stores shall be counted as a pharmacy for the purpose of determining the maximum number of authorized vendors and pharmacy vendors, and whether an opening exists for an applicant.
 2. When it is in the interests of the effective and efficient administration of the Program, an exception may be allowed for a temporary period of time at the discretion of the HEALTH WIC PROGRAM. Such circumstances may include such conditions as the following:
 - a. The vendor would be the only grocer or pharmacy in a clinic area, or a city or town.
 - b. The vendor's prices are significantly below the state average for WIC-Approved foods and the vendor carries at least 75% of the allowed types or brands and usually has in stock sufficient quantities of foods to redeem more than two infant and two non infant maximum food packages, in addition to the minimum inventory requirements.

- c. In the case of pharmacies, the HEALTH WIC Program shall consider the following priority system, which is based on the relative price, diversity of inventory and participant shopping convenience in authorizing a pharmacy in excess of the maximum number:
 - (i) No store is authorized in an area and the store's prices are more than 10% below the statewide WIC average for special formulas and other WIC foods, the store meets the minimum inventory for all WIC food categories and types and the store stocks four or more special formulas.
 - (ii) No store such as in (i) is authorized in an area and the pharmacy carries four or more special formulas and its prices for special formulas and contract brand infant formulas are more than 10% below the statewide averages.
 3. As needed, the applicant vendors will be reviewed to bring the number authorized up to the maximum allowed level.
 - a. Except as provided for in 2, above, and b, below, and vendors being considered for contract re-approval or extension, the appropriate number of applicants will then be selected for authorization in order of lowest composite food prices for WIC foods, provided fully and correctly completed application and related items have been received by the state WIC office. Price information may be updated as needed, such as more recent redemption reports and vendor price lists.
 - b. In order to permit applicant pharmacies on a waiting list an opportunity to demonstrate they can be a benefit to the Program, up to eight of the lowest formula and special formula volume active vendors may be denied re-approval or extension.
 4. The WIC Program reserves the right to further limit vendor participation, application and/or application review in order to ensure that effective vendor monitoring and education is maintained.
- R. A decision is then sent to the applicant vendor in writing. If acceptance is denied, the decision notice shall contain the causes for denial and an opportunity to appeal the action and the time period for requesting an appeal (minimum of 15 days). Vendors who are denied may be reconsidered according to the following criteria:
1. Vendors denied solely on the basis of sufficient vendors in the state or the local area shall be reconsidered when openings become available.
 2. Vendors denied on the basis of violations, sentence, or other sanctions imposed or pending may reapply after the stipulated period.
 3. Vendors denied on the basis of previous disqualification or other noncompliance with rules of any FNS Program, or WIC vendor agreement may reapply when the noncompliance sanction period is completed.
 4. A Vendor served notice that it does not meet criteria will be considered as a withdrawn application if it does not contact the State WIC office within 15 days of the date of the notice to claim conformance with the criterion. Such a vendor may not reapply for at least 90 days.
 5. A Vendor given a final decision of denial on its application may not reapply for at least six months from the date of the decision letter, or for such longer period of time commensurate with sanctions as set forth in policy V-4.
- S. Special Authorization
1. The HEALTH WIC Program may solicit vendors to provide such services as are needed and review those who express an interest in authorization and may make a selection based upon the vendors' ability to provide needed services, lowest price, largest selection of foods, and such other indicators of benefit to the Program as are appropriate.
 2. Such selections may be made to provide service in a defined area where there is no authorized WIC grocer and/or pharmacy, where particular WIC foods are unavailable, and for other needs.

3. If the number of participants in need of service in an area is twenty or less, the HEALTH WIC Program may limit the number of vendors selected to provide such service in such area to one. This selection may be reviewed at the time of re-application of the vendor agreement and revised selection(s) made, as benefit to the Program indicates.
4. To meet special participant needs vendors may be authorized to provide all services or foods or only certain services or foods, as appropriate, when the need for special services is determined.
5. For foods which are unavailable through retail vendors or which have an average retail price more than 15% above the average price for the food type (e.g., formula), the Program may make such arrangements for the participant to obtain such foods through specialized providers (e.g., low priced retailers, hospital clinics or pharmacies, HEALTH WIC Program center clinics, HEALTH WIC PROGRAM, manufacturers, wholesalers/resellers etc.), based on price and accessibility.
6. The HEALTH WIC Program may offer temporary provisional authorization to prevent disruption of service to participants when an applicant is replacing a store which has recently been a high WIC volume vendor, the ownership and/or management is/are authorized at other locations and the agency determines that the vendor is likely to be and remain in conformance with the preponderance of vendor selection and performance criteria and that the vendor's prices for WIC foods are less than 95% of the statewide average according to HEALTH WIC PROGRAM analysis.
7. The HEALTH WIC PROGRAM may authorize a retail grocer to redeem checks for a special formula product designated by the HEALTH WIC PROGRAM. If a WIC authorized store has a pharmacy counter (owned by the same company), it may be authorized to offer any approved WIC special formula and be issued a separate stamp for tracking purposes (If so designated, the pharmacy counter must meet all requirements for WIC pharmacy vendors.). The decision to authorize shall include consideration of whether the store's price for the product is less than that charged by other vendors, using the statewide average or other price measures selected by the HEALTH WIC PROGRAM.
8. The HEALTH WIC PROGRAM may authorize such arrangements for the participant or go out to bid so that the Program may make available such foods through specialized providers (e.g., low priced retailers, hospital clinics or pharmacies, HEALTH WIC Program center clinics, HEALTH WIC PROGRAM, manufacturers etc.), based on price and accessibility. The foods would include, but not be limited to, specialty low volume formula.

V-2: Identification of Potential for Risk Vendors

Rev.10-18-01

Goal

To focus vendor monitoring efforts on those vendors with the greater potential or likelihood to abuse or err in complying with WIC Program requirements.

I. Indicators

Potential for risk vendors are those applicants or participating vendors who demonstrate or indicate the potential or likelihood to violate the Program's regulations, policies, or the terms of the vendor agreement in any manner. The Program will employ such procedures as may be helpful in identifying potential for risk vendors. Indicators of potential for risk or likelihood may include, but are not limited to, the following:

- A. Identifiable quantitative criteria such as high or disproportionate volume, questionable pricing patterns, etc.
- B. A history of errors, violations, warnings, notices or sanctions related to any USDA Program, including imposition of a Food Stamp Program CMP or bond requirement for approval to accept Food Stamp Benefits. Vendor, court and administrative records of the WIC Program and the Food and Nutrition Service (FNS) will be reviewed to determine this potential.
- C. Violations of any state, federal or local business or food delivery or government ethics law, or regulation; or violation of any law where the unlawful conduct of the vendor relates to the business, the operation thereof or the use of the business premises (including violations of laws or rules pertaining to food, HEALTH WIC Program and sanitation requirements, weights and measures, pricing, packaging, consumer protection, lottery and the like); or to criminal behavior related to violence, weapons or illicit drugs or to threat of or committing physical violence; or violation of government business conduct rules, or attempts to induce agents of state, local or federal agencies to violate ethics rules or to improperly influence the actions of such an agent; or where evidence exists of a likelihood of such behavior, actions or violations.
- D. High or other questionable prices or charges.
- E. Errors in check redemption practices.
- F. A high ratio of full packages being redeemed on the same day.
- G. Low inventory, especially in relation to level of redemptions.
- H. Complaints received from participants, local agencies, other vendors, or the public.
- I. Reports of vendor errors or violations received during participant surveys of vendor services, or interviews.
- J. Actual violations, or circumstances leading to the likelihood of violations.
- K. Ineffective supervision of vendor employees.
- L. Lack of cooperation with vendor monitoring or vendor education.
- M. Lack of understanding or support of the purposes, goals or needs for the Program.
- N. Lack of knowledge or comprehension about program procedures or WIC-Approved foods.
- O. Lack of cooperation with Program participants, the HEALTH WIC PROGRAM, or the Department of Agriculture.
- P. The business integrity and reputation of the vendor.
- Q. Vendor withdrawal from participation, or of an application, following written notification of violation, regardless of any settlement language between the vendor and HEALTH WIC PROGRAM, unless all HEALTH WIC PROGRAM charges are adjudicated as unjustified, unsubstantiated, unwarranted or improper.

- R. Failure to report involvement of any owner or management personnel of a store, or their immediate relatives, in the operating of any other WIC vendor.
- S. Failure to respond to the re-application offer by the designated due date for filing of all information.
- T. Non- return of a previously issued WIC Vendor Stamp.
- U. Such other relevant factors as may reasonably indicate the likelihood of vendor violations.

II. Review of Potential for Risk Vendors

When a vendor is identified as a potential for risk, priority is given to use of program resources for case review, monitoring, site visits, review of food instruments redeemed, investigation and other methods.

- A. If review of redeemed food instruments (as defined in Policy V-4,IA1a) reveals actual or suspected errors, overcharges, or other pricing violations or patterns associated with potential violations then appropriate investigative, sanction, claim or penalty procedures will be followed.
- B. Additional site visits may focus not only on all vendor procedures but also on specific actual or potential violation(s).
- C. Additional information may be sought from local agency staff, participants, or others and FNS may be contacted regarding any Food Stamp Program concerns.
- D. Review of vendor records related to inventory, redemption and fiscal operations with regard to the WIC Program.
- E. Available resources for special investigative activities including compliance purchases may be utilized (see items following this Policy).

III. Follow-up Activities

The Potential for Risk vendor will be intensively monitored until such time as compliance with all program regulations and procedures is assured and/or sanctions are implemented. Steps to assure compliance or take sanctions may include but are not limited to the following:

- A. Special education and training at the HEALTH WIC Program, the vendor's location or any other location, given by vendor monitoring or program administrative staff, or other appropriate parties.
- B. Appropriate letters of notice describing the vendor's responsibilities and the penalties for noncompliance.
- C. A written compliance agreement may be required from the vendor for the purpose of the vendor's giving written assurance of future compliance, understanding of his responsibilities and understanding of the penalties for future violations.
- D. Sanction procedures may be instituted as set forth in the Vendor Compliance Policy V-4.

V-3: VENDOR EDUCATION AND TRAINING**Goal**

To delineate education and training, both initial and ongoing, of vendors.

Procedure

- A. When a store applies for the WIC Program, a copy of the Allowed Foods List, Redemption Terms, Applicant Minimum Inventory and the "WIC's Guide to Retailers" pamphlet is distributed. This provides basic orientation to the rules and operations of the Program.
- B. Before a vendor is accepted, the vendor owner, or management official acceptable to HEALTH WIC PROGRAM, shall attend a vendor training at a time and place designated by HEALTH WIC PROGRAM. Such training shall usually be at the HEALTH WIC PROGRAM, although HEALTH WIC PROGRAM may designate another location
- C. A vendor monitoring staff person will also visit the store to further explain the Program. This includes check redemption procedures, allowed foods, provisions of the Vendor Participation Agreement, and minimum inventory requirements.
- D. As the allowed foods list changes, or any other vendor related aspect of the Program changes, vendors shall be advised both in writing and during vendor monitoring visits.
- E. As determined by HEALTH WIC PROGRAM, vendors shall be required to attend training sessions at the HEALTH WIC Program Department. A vendor may request to be rescheduled up to two times for a particular session. Such request must be received during normal working hours on at least the day preceding a session. The Office of Supplemental Nutrition has the sole prerogative to grant or deny the request.
- F. Failure to attend a complete training session is grounds for termination, disqualification and/or other sanctions in accordance with the Vendor Agreement and Policy V-4.
- G. In their regular contacts with vendors, the monitors will provide additional training.
- 8/99 H. While investigating complaints or inquiries, or potential for risk, the monitors will educate vendors on an as needed basis.
- I. Written notices to vendors will be distributed as needed. These may include information about Program changes, procedural reminders, vendor sanctions, and education about WIC foods, nutrition, and HEALTH WIC Program. Vendors are required to maintain a file, book, or other readily accessible compilation of such notices.

V-4: VENDOR COMPLIANCE

Rev.10-18-01

GOAL

To ensure vendor compliance through a policy which provides the HEALTH WIC Program with administrative actions for dealing with WIC vendors (including applicants) or other persons or entities found to be in violation of contract requirements or Program regulations, rules, or procedures.

PROCEDURE

I. GENERAL CONDITIONS

When during the course of a single investigation, the HEALTH WIC Program determines that the vendor has committed multiple violations (which may include violations subject to HEALTH WIC Program sanctions), the HEALTH WIC Program shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the HEALTH WIC Program shall include all violations in the notice of sanction. If a mandatory sanction is not upheld on appeal, then the HEALTH WIC Program may impose a HEALTH WIC Program -established sanction.

The HEALTH WIC Program shall not accept voluntary withdrawal or use non re-approval of the vendor contract instead of disqualification, but shall enter the disqualification on the record.

Prior to imposing a disqualification, the HEALTH WIC Program shall determine, in its sole discretion, and document in the vendor file, whether the disqualification would result in inadequate participant access for all mandatory sanctions (except for conviction for trafficking / illegal sales). This determination will be based on the unavailability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such other vendors.

If the HEALTH WIC Program determines that a disqualification would result in inadequate participant access, then the HEALTH WIC Program shall impose a civil money penalty in lieu of disqualification, except for the third or subsequent violation [and conviction for trafficking / illegal sales]. The amount of a civil money penalty shall equal the average monthly WIC redemptions for the [six] month period [Explanation - The number of months must be at least six months, but may be more than six months] ending with the month immediately preceding the month during which the notice of sanction is dated, multiplied times 10 percent (.10), and then multiplied times the number of months for which the vendor would have been disqualified, provided that the civil money penalty shall not exceed \$10,000 for each violation, and provided further that the civil money penalty in lieu of permanent disqualification shall be \$10,000. If multiple violations are revealed by a single investigation, the total civil money penalty shall not exceed \$40,000.

If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty within 30 days of the notice of sanction or for the periods provided in an installment plan, subject to revision for good cause, the HEALTH WIC Program shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

When during the course of a single investigation, the HEALTH WIC Program determines that the vendor has committed multiple violations (which may include violations subject to HEALTH WIC Program sanctions), the HEALTH WIC Program shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the HEALTH WIC Program shall include all violations in the notice of sanction. If a mandatory sanction is not upheld on appeal, then the HEALTH WIC Program may impose a HEALTH WIC Program -established sanction.

When a vendor, who had previously been assessed a mandatory sanction [except for a conviction for trafficking / illegal sales], receives another mandatory sanction for the same or other mandatory violations, the HEALTH WIC Program shall double the sanction for the second violation. Civil money penalties may only be doubled up to the previously-noted \$10,000 / \$40,000 limits.

When a vendor, who had previously been assessed two mandatory sanctions [except for a conviction for trafficking / illegal sales], receives another mandatory sanction for the same or other mandatory violations, the HEALTH WIC Program shall double the sanction for the third violation. The HEALTH WIC Program shall not impose a civil money penalty in lieu of disqualification for the third mandatory violation. A fourth or subsequent violation shall be treated in the same manner as the third; the sanction for the fourth or subsequent violation shall be doubled and civil money penalties shall not be substituted for disqualification.

The HEALTH WIC Program shall not provide prior warning that violations were occurring before imposing sanctions

Violations and Sanction Types - The following are the maximum penalties to be imposed for violation or abuse of Program rules, regulations or terms of the Vendor Participation Agreement (for applicant vendors, the penalty shall be a period of denial of participation equivalent to the disqualification term):

A. Permanent Disqualification-Mandatory

1. IN GENERAL - HEALTH WIC PROGRAM shall permanently disqualify from participation in the program authorized under this section any vendor, person, party or entity convicted in court for a single incidence of:
 - a. trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or
 - b. selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act 921 U.S.C. 802)) in exchange for food instruments (including any item described in subparagraph (a) issued in lieu of a food instrument under this section).
2. NOTICE OF DISQUALIFICATION - HEALTH WIC PROGRAM shall-
 - a. provide the vendor with notification of the disqualification; and
 - b. make the disqualification effective on the date of mail or other delivery to the store or other place of business of vendor or residence of vendor of the notice of disqualification.
3. PROHIBITION OF RECEIPT OF LOST REVENUES-A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification.

B. CRIMINAL FORFEITURE:

1. IN GENERAL- Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (A)(1)(a) issued in lieu of a food instrument under this section), funds, assets, or property that have a value of \$100 or more and that are the subject of a grant or other form of assistance under this section to forfeit to the United States all property described in paragraph (3).
2. APPLICABLE LAWS-A provision of law described in this paragraph is-
 - a. section 12(g) of the national School Lunch Act (42 U.S.C. 1760(g)); and
 - b. any other Federal or Rhode Island law imposing a penalty for embezzlement, willful misapplication stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (A)(1)(a) issued in lieu of a food instrument under this section), funds, assets or property.
3. PROPERTY SUBJECT TO FORFEITURE-The following property shall be subject to forfeiture under paragraph (1):
 - a. All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).
 - b. All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

4. PROCEDURES; INTEREST OF OWNER-Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 413 of the comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.
5. PROCEEDS-The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used-
 - a. first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete for forfeiture proceeding;
 - b. second, to reimburse the office of Inspector General of the Department of Agriculture for any costs incurred by the office in the law enforcement effort resulting in the forfeiture;
 - c. third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and
 - d. fourth, by the HEALTH WIC Program to carry out approval, reauthorization, and compliance investigations of vendors and shall be applied as Program Income.

The penalties and provisions described in the above sections A & B shall be imposed whenever a vendor is so convicted. In all other cases, penalties shall be imposed as provided for, below:

C. Six Year Disqualification

A six-year disqualification shall be imposed for the following violations, whether or not the vendor has a prior history of noncompliance, warnings, or lack of cooperation:

1. Mandatory- HEALTH WIC PROGRAM shall disqualify a vendor for six (6) years from participation in the program authorized under this section any vendor, person, party or entity guilty of a single incidence of an administrative finding of -
 - a. trafficking (; i.e. buying and selling) in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or
 - b. selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act 921 U.S.C. 802)) in exchange for food instruments (including any item described in subparagraph (a) issued in lieu of a food instrument under this section).
2. When a Vendor, who has previously been assessed a mandatory sanctioned receives another mandatory sanction of any type listed in this section, or D or E below, the HEALTH WIC Program shall double the sanction period of the second violation. Only if participant access is inadequate, the state must impose a Civil Money Penalty (CMP) in lieu of disqualification. Civil money penalties may only be doubled up to the previously-noted \$10,000 / \$40,000 limits
3. A third or subsequent violation of any type of mandatory sanction listed in this section, or D or E below. Health will double the disqualification period for the third or subsequent mandatory violation . No option of a CMP is allowed
4. NOTICE OF DISQUALIFICATION - HEALTH WIC PROGRAM shall-
 - a. Provide the vendor with notification of the disqualification.

D. Three Year Disqualification
(* denotes a mandatory sanction)

A three year disqualification shall be imposed for the following violations, whether or not the vendor has a prior history of noncompliance, warnings, or lack of cooperation:

- ** 1. A pattern (more than once) of charging WIC participants more for supplemental food than non-WIC customers or charging WIC participants more than the current shelf or contract price; a "pattern" is defined as 10% over the current shelf price. One example is charging according to the check type, any "fixed" or "set" price or any otherwise incorrect price rather than the correct price for the food quantities, types and/or brands sold in exchange for each check, except when the incorrect price is less than the correct price, as proven by the vendor to the satisfaction of HEALTH WIC PROGRAM. This is tested on check types with natural variability in price.
- ** 2. A pattern (more than once) of charging the Program for supplemental foods not received by the participant.
- ** 3. A pattern (more than once) of receiving, transacting, and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person. This shall include, but not be limited to:
- Misuse, or unauthorized use of a WIC vendor stamp or facsimile thereof.
 - Accepting or depositing WIC checks while disqualified or terminated, or while not authorized as a participating WIC Vendor.
 - Not returning the WIC Vendor stamp as requested within the allowed time period and/or date.**
- ** 4. A pattern (more than once) of redemption of checks for non food items, other than alcohol, alcoholic beverages, tobacco products, cash firearms, ammunition, explosives, or controlled substances.
- ** 5. One instance of the redemption of checks for alcohol, alcoholic beverages or tobacco products.
- ** 6. A pattern (more than once) of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time
- ** 7. A pattern (more than once) of exchange of credit or rain check type privilege for WIC checks
- E. Variable Term Disqualification
(* denotes mandatory sanction)
- ** 1. In the event of a disqualification **and/or assessment of CMP** from the Food Stamp Program (FSP), a vendor shall be disqualified or terminated from WIC for the term of the sanction or termination from the FSP, without right of appeal. The WIC disqualification shall be for the same length of time as the FSP disqualification. **WIC disqualification will start on the date FSP authorization has stopped/ended and/or vendor is ordered to stop accepting food benefits or may begin at a later date than the FSP disqualification.**
2. The **HEALTH WIC Program** shall disqualify a vendor who has been assessed a civil money penalty for hardship in FSP under 7 CFR 278.6.] [Explanation - If the **HEALTH WIC Program** opts to do this, then the regulations mandate the following provisions.] The length of disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in FSP. Such disqualification may not be imposed unless the **HEALTH WIC Program** has first determined that the disqualification would not result in inadequate participant access, using the same procedures as in paragraph 2 of the General Conditions for Mandatory Sanctions above. If the **HEALTH WIC Program** determines that inadequate participant access would result, then neither a disqualification nor a civil money penalty in lieu of disqualification may be imposed. The HEALTH WIC PROGRAM may, however, in the case of Inadequate Participant Access only, impose an alternative penalty and/or special conditions of participation in lieu of disqualification if the HEALTH WIC PROGRAM deems

such an alternative or condition to be in the best interests of the Program, as long as it does not conflict with the provisions of D above or 6 below.

3. Failure to abide by any of the provisions or requirements of any HEALTH WIC PROGRAM Order, Consent Order, Consent Agreement, Court Order or other directive, corrective plan etc. shall be grounds for imposition of the penalty stipulated in such document or, if no penalty is stipulated in the document for a failure, the penalty originally proposed by HEALTH WIC PROGRAM which gave rise to the order, or otherwise provided for in regulations, vendor agreement or WIC policy.

F. One Year Disqualification
(** denotes mandatory sanctions)

A vendor should generally be disqualified for a period of one year (or not more than one year for non-mandatory sanctions) for the following violations.

1. For any of the non-mandatory violations described in E, above, when the review of the violations shows that the violations were not the result of vendor policy; for example, if there were less than two occurrences of the above violations.
2. Within any three year period, for any three occurrences of any violation(s) listed in G, below, or a second disqualification for any violations listed in G, below, or failure to correct such a violation and notify HEALTH WIC PROGRAM of such correction as directed by HEALTH WIC PROGRAM following a disqualification for the same violation.
3. Accepting a check more than thirty days or one month, whichever last occurs, after the date of issue or first valid use date.
4. Not entering the price of the WIC foods on the face of the check, in the presence of the participant, before requiring the participant to countersign the check.
5. The alteration of a check or making any check entry in any manner or entering a signature or representation of a signature in lieu of the participant except as specified in the Vendor Participation Agreement.
6. Misrepresenting, falsifying, or withholding any authorization, information, records or documents needed by the HEALTH WIC PROGRAM to assess, review, or monitor the vendor's participation or operations or establish a claim, credit or debit with respect to the WIC Program or refusing to authorize HEALTH WIC PROGRAM to obtain such information or records from another party keeper of such records (e.g. a bank, partner, corporation, etc.). The penalty shall be for one year.
7. Failure to follow instructions of the HEALTH WIC PROGRAM for correcting any violation cited in G to J, below, or for payment of any claim by HEALTH WIC PROGRAM against the vendor, unless a greater period of disqualification is provided for above.
8. Any policy or practice adopted by a vendor which results in the deliberate or widespread commission of the violations listed under G to J, below or which demonstrates a disregard for Program regulations.
- ** 9. A pattern (more than once) of the sale of non WIC-Approved food item(s), including charging for supplemental foods provided in excess of those provided for on the WIC check.
- ** 10. The sale of any brand of infant formula other than a brand specified on the WIC check exchanged for said sale.
11. Failure to cooperate with vendor monitoring or inspection by Program officials or failure to provide food instruments upon request.
12. The violation of the civil rights of a participant or threatening or committing physical violence against a WIC participant, payee, or alternate shopper or a WIC or HEALTH WIC PROGRAM employee, official or other representative or acts of criminal behavior related to weapons, illicit drugs on the vendor premises, or the sale or intent to sell illicit drugs; unless a longer term is called for under A, B, or C above.

13. Attempting to influence or impede the official actions of a WIC, HEALTH WIC PROGRAM, state, local or federal official through bribe, favor, coercion or threat.
14. The unauthorized possession or transfer of a WIC vendor stamp or facsimile thereof, unauthorized reproduction, receipt or possession of a WIC vendor stamp or facsimile thereof.
15. Any act prohibited by Chapter 23-13 of the Rhode Island General Laws, as amended, except where a different sanction is provided for below.
16. The **HEALTH WIC Program** shall not accept voluntary withdrawal or use non **re-approval** of the vendor contract as an alternative for disqualification, but shall enter the disqualification on the record.
17. The **HEALTH WIC Program** shall not impose a civil money penalty based on an FSP civil money penalty.
18. If a vendor is sanctioned by any local, state or federal authority for any violation of business or food delivery related laws, rules, or regulations; or for violation of any law where the unlawful conduct of the vendor relates to the business, the operation thereof, or the use of the business premises; poses a threat to the HEALTH WIC Program or safety of participants or Program or HEALTH WIC PROGRAM officials; or relates to criminal behavior related to weapons or illicit drugs or to threat or commission of physical violence; the vendor shall be disqualified from WIC for the term of the sanction or sentence from such other authority, not to exceed one year if, because of such violation, it is determined that the vendor's continued participation will not further the purposes of the Program or that the vendor will no longer be a benefit to the Program. Where no sanction term is set for such violation, the Program may review the vendor's participation, and terminate such participation if the violation is such that the vendor would no longer be a benefit to the Program.

If the vendor is debarred or suspended from participating in any transactions involving federal funds or other assistance with grantees and subgrantees of federal funds under the terms of 7 CFR Part 3017, the vendor **and all the stores under his/her ownership/administration** shall be disqualified for the period of time it is debarred and/or suspended.

G. Six Month Disqualification

A disqualification of six months should generally be imposed for the following violations unless the evaluation shows a different period to be appropriate:

1. Any of the violations referred to in F, above, if it is determined that WIC vendor education was severely limited or non-existent. Mandatory sanctions are exempt from this provision
2. Any of the violations in F, above, where vendor policy is not established or where the severity or frequency of violation is lessened or limited. . Mandatory sanctions are exempt from this provision
3. Charging in excess of the Excessive Price Standard for WIC foods in accordance with Policy V-10.
4. Redeeming less than 10 checks in any two months during any consecutive twelve month period.
5. Within any three year period, a second disqualification for any violation(s) listed in H or I, below; failure to correct such a violation as directed by HEALTH WIC PROGRAM and notify HEALTH WIC PROGRAM of such, following disqualification for same, or any three occurrences of any of the violation(s) in H or I, below. Mandatory sanctions are exempt from this provision
6. Failure to inform the HEALTH WIC PROGRAM of a change in ownership, address, or cessation of operations.

H. Ninety Day Disqualification

A disqualification of 90 days should generally be imposed for the following violations, except those described in I, below unless the evaluation shows a different period to be appropriate:

1. Failure to affix the WIC vendor stamp on a WIC check prior to deposit.

2. Acceptance or deposit of WIC checks prior to the date of issue or valid use date.
3. Deposit of checks after sixty days following the issue or first valid use date.
4. Submitting a check that exceeds the maximum price authorized on the face of the check.
5. Failure to comply with "Check Redemption Terms" of the Vendor Participation Agreement (note: except those failures for which a longer period of disqualification is provided for above). . Mandatory sanctions are exempt from this provision
6. Failure to comply with "Fiscal Terms" of the Vendor Participation Agreement (note: same exception as in 5, above). . Mandatory sanctions are exempt from this provision
7. Failure to comply with any other terms of the Vendor Participation Agreement (note: same exception as in 5, above). . Mandatory sanctions are exempt from this provision
8. Violation of any state, federal or local law, regulation, or rule pertaining to business practices or food, HEALTH WIC Program and sanitation requirements including, weights, measures, pricing, packaging, consumer protection and the like; unless a greater period of disqualification is provided for above.
9. Failure to adhere to conditions of Restricted Authorization (Policy V-1, Q).
10. Within any three year period, a second disqualification for any violation(s) listed in I, below, or failure to correct such a violation and notify HEALTH WIC PROGRAM of such correction, as directed by HEALTH WIC PROGRAM, following disqualification for same, or any three occurrences of any violation(s) in I, below.

I. Sixty Day Disqualification

A disqualification of sixty days should generally be imposed for the following violations, unless the evaluation shows a different period to be appropriate:

1. Failure to submit and/or resubmit the completed and/or corrected WIC Vendor Participation Agreement Re-Application Packet within the allowed period time specified on the Re-application package. . The period of disqualification is to begin once the packet is received and in any event the current Agreement and participation shall terminate September 30 of the current Agreement year.

J. Thirty Day Disqualification

A disqualification of thirty days should generally be imposed for the following violations, unless the evaluation shows a different period to be appropriate:

1. Failure to meet the minimum inventory requirements for WIC-Approved Foods.
2. Violations as listed in H, above, where it is appropriate to reduce the 90 day disqualification, as provided for in this policy. . Mandatory sanctions are exempt from this provision
3. Failure to post the price of a WIC food either on the container or food or in a conspicuous location at the store.

K. Other sanctions which may be imposed include, but are not limited to, the following:

1. Disqualification or non re-approval of the vendor participation agreement(s), based upon evidence reflecting on the business integrity or reputation of the vendor, such as records of conviction, removal from other programs, civil litigation, evidence of an attempt to circumvent a judicial or administrative sanction, evidence of prior fraudulent behavior of officers, management or employees or other evidence, where such circumstances indicate a likelihood of harm to the WIC Program or that the vendor poses a potential for risk in accordance with Policy V-2. Unless a mandatory sanctions, which are exempt from this provision, this period cannot exceed one year.

2. Fiscal Claims Against Vendors

- a. The HEALTH WIC Program may assess such claim as is appropriate related to any improper redemption in the provision of supplemental foods, in the price charged to the Program on any food instrument(s) (as defined in Policy V-4, IA1a) or for other burden on Program resources. Payment of such claim shall be in addition to any appropriate disqualification, denial or non-re-approval in accordance with this Policy and/or Policy V-1.

Claim may be made for amount paid on any food instrument(s) improperly redeemed or charged and banking, data processing, investigation and reasonable administrative costs incurred by the Department in the course of discovering, calculating, developing, collecting and so forth such claim.

Bank fees - If the WIC contract bank rejects a check because it was deposited by vendor in violation of WIC redemption rules, the bank may debit the vendor's account for the amount of the "Returned Check" fee called for in the contract between the bank and the HEALTH WIC Program (note: the fee in 1/99 is \$.85/check). Each month, the bank will total the returned checks by vendor and initiate an ACH debit for the appropriate amount. When vendor receives notice of returned items, vendor may contact the HEALTH WIC Program to show cause why the debit should not be imposed or be reversed.

- b. If the claimed costs exceed the amount improperly charged by the vendor plus the currently \$2.00 service charge, the state shall provide vendor with an explanation of how the amount of the claim was determined.
- c. If vendor disagrees with the claim, or the amount of the claim, vendor may request a review within twenty days of the postmark date of the claim. The vendor is entitled to submit any evidence to show why any or all of the claim should not be due, and to meet with the Program's manager of the HEALTH WIC Program's vendor unit to seek cancellation or adjustment of the amount of the claim.
- d. If vendor disagrees with the claim after the above review, vendor may request an Administrative Hearing, within thirty days of postmark date of the HEALTH WIC Program's final decision on the review.
- e. Subject to any review or appeal as above, failure to pay any portion or all of the money claim according to the schedule determined by HEALTH WIC PROGRAM shall be grounds for disqualification, denial or non re-approval for a period of up to one year for a non-mandatory sanction, or a time which best reflects double the maximum penalty for the related violation or abuse as set forth above unless the vendor pays the full remaining amount due within thirty days of being notified of such a failure. The total period may not exceed one year. The HEALTH WIC PROGRAM may recover the amount of the claim via an ACH debit on the vendor's bank account made by the WIC contract bank.

3. Fines

Fines shall be imposed under Section 23-13-14 of the General Laws of the State, subject to the requirements in N below, in addition to the appropriate administrative sanction in accordance with this Policy and/or Policy V-1.

4. Probation

A previously sanctioned vendor if subsequently authorized as a vendor shall serve a period of probationary authorization for a period equal to the most recent period of sanction, or one year, whichever is greater, and shall be subject to such special conditions imposed by HEALTH WIC PROGRAM such as termination for any offense with a 15 day warning or opportunity to correct, termination prior to hearing, additional monitoring, reporting and training requirements, price or volume restrictions, etc. This provision is subject to appeal.

5. Concurrent violations

Should a site visit, a complaint, investigation and/or an analysis determine two or more concurrent violations of WIC Program rules, the prescribed penalties as delineated above shall be to assess the most severe violation. Doubled only in the case of mandatory sanctions in a second or greater number of instances.

L. Additional Violations

Notwithstanding the above, the HEALTH WIC Program may define additional vendor practices or procedures as violations or abuses of Program rules or regulations and apply appropriate sanctions in a future contract based on the severity and nature of the Program violations, actual or potential harm to Program participants, staff or goals and objectives and such other factors as the HEALTH WIC Program determines appropriate.

M. For all Mandatory sanctions, the HEALTH WIC Program shall not accept voluntary withdrawal or use non re-approval of the vendor contract instead of disqualification, but shall enter the disqualification on the record.

N. GENERAL STATE CONDITIONS

1. The HEALTH WIC Program shall impose sanctions, including disqualifications, civil money penalties, and fines for violations for which there are not any mandatory sanctions.
2. A disqualification period shall not exceed one year for all of the violations investigated as part of a single investigation.
3. A civil money penalty or fine shall not exceed \$10,000 for each violation, and shall not exceed \$40,000 for all of the violations investigated as part of a single investigation.
4. The HEALTH WIC Program shall determine the amount of a civil money penalty or fine "in the same manner as for mandatory sanctions; see item 3 under the General Conditions for Mandatory Sanctions". Fines and civil money penalties shall become due for payment with "the same timing as for mandatory sanctions; see item 4 under the General Conditions for Mandatory Sanctions", and, if such payment is not made, the HEALTH WIC Program shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty or fine was assessed.
5. The HEALTH WIC Program shall not accept voluntary withdrawal or use non re-approval of the vendor contract as an alternative for disqualification, but shall enter the disqualification on the record.
6. The HEALTH WIC Program shall not impose a civil money penalty based on an FSP civil money penalty.

II. ADMINISTRATIVE ACTION

A. Evaluating the Violation and Sanction Term

When a vendor has committed more than one violation for which this Policy stipulates different penalties the vendor shall be disqualified for whichever term is longest, in relation to the terms specified for the violation(s) committed.

With respect to any sanction for which a specified term is set forth, the program administrator may make a determination that other than the stipulated maximum term is called for. In making this determination the administrator may consider factors which include, but are not limited to:

1. Whether the violation was an error committed or omitted in the performance of required procedural activities (ex: "misreading" an issue date although the date was looked at).
2. Previous sanctions - If state sanctions have once or twice before been imposed, a third sanction, for any violation(s), non-mandatory sanctions, additive up to one year
3. The extent of prior warning and opportunity for corrections of non-mandatory sanctions (see B 5 below).
4. The extent of vendor education.

5. The extent of potential risk the practice holds for compromising the HEALTH WIC Program/nutritional effectiveness of the Program and/or its fiscal integrity.
6. Except for violations listed under Procedure, I, A 1; B 1-3; C 1-3; D 1-7; E 5-6; and F 11, for which the penalty as stated shall be imposed (Mandatory Sanctions), the number and severity of the violation(s) under review, including a pattern of violations, based on the current violations and/or a history of previous violations.
7. Vendor cooperation in the monitoring, education, investigation, sanction, or correction process; in responding to requests for action or information; both in the current instance as well as in the past; or willingness to comply in the future.
8. Hardship to participants if the vendor is disqualified (See C, below).
9. If the vendor continues to violate Program rules following notice of disqualification, the disqualification period shall be extended by the period of the time the vendor remains in violation or continues to violate Program rules, in addition to the sanction period stipulated in Violations and Sanction Types, above, for the additional violations.
10. Any other factors relevant to the efficient and effective administration of the Program.

B. Sanction Steps

1. Initial discovery takes place and if there is a problem, an effort is made to provide educational assistance to the vendor to correct the problem. The vendor shall develop a plan of correction acceptable to HEALTH WIC PROGRAM at this time, and a notice of violation will be issued. The vendor is made aware that a subsequent review will be made to see if the problem has been resolved.
2. If the review reveals that a problem still exists, a final warning letter is sent. This warning letter, with details of previous actions taken, is to contain a time frame in which compliance is to be expected.
3. Sufficient or insufficient compliance by the vendor is determined at the end of the time period stated in the final warning. Insufficient compliance shall result in the appropriate sanction being applied.
4. Expedited Sanctions
 - a. A final warning should be sent upon initial discovery of any violation that carries a maximum penalty of more than 90 days or of any other violation if the vendor has received a previous warning or notice of violation or applicant deficiency. If previously sanctioned, then the new sanction may be imposed forthwith.
 - b. If there is evidence that the vendor has received vendor education on his related responsibilities prior to committing the violation, final warning notice may be sent upon initial discovery of the violation. If compliance is not achieved in accordance with instructions of the HEALTH WIC PROGRAM, sanctions may be imposed.
5. If the review following a final warning letter or notice reveals a repeat violation or corrective action by the vendor is insufficient, then a disqualification from participation as a vendor will be implemented.
6. The disqualification is implemented by notice to the vendor, by demanding return of the store's WIC vendor stamp, and/or by notifying the bank not to honor WIC checks deposited by the disqualified vendor.

A minimum of 15 days advance notice of the effective date of the action shall be provided to the vendor. Notice shall be in writing and contain notice of the action and the causes for and the effective date of the action, and notice of the opportunity to appeal the actions (if applicable) and the time period for requesting an appeal.

Exempt from the above notification requirement are permanent disqualifications based on convictions for trafficking and/or illegal sales; in those two instances, the disqualification is effective upon the vendor's receipt of the disqualification notice.

7. Disqualification of 90 Days or Less - At the end of the disqualification period, the vendor must notify the HEALTH WIC Program that the vendor is in compliance with all requirements. Upon verification of vendor compliance by the HEALTH WIC Program, the vendor may be restored to participating status if the time period is within the same fiscal year. If this does not occur until the following fiscal year, the agreement will terminate and vendor will be required to re-apply.

If the vendor fails to demonstrate compliance at the end of the disqualification period, disqualification shall be extended by the period of time set forth under Violations and Sanction Types, above, up to a period not exceeding one year.

8. Disqualification of more than 90 Days - The vendor's Participation Agreement shall be terminated, and the Food Stamp Program (FSP) Field Office notified of such. The vendor shall not be reinstated until after he reapplies and is found by the HEALTH WIC PROGRAM to meet all applicant vendor criteria. Depending on the nature of the violation (particularly a mandatory disqualification), WIC Program disqualification may result in a FSP disqualification up to the same period and not subject to FSP administrative and judicial review (Section 278.6(e)(8) of FSP Regulations).

9. The above procedures for providing warning and an opportunity to correct violations will generally apply only in cases where the type of violation and extent of Program harm is less, and the likelihood of verifiable correction is greater, and future compliance readily assured. In other cases, however, the disqualification may be imposed without initiating or completing any of the above steps for warning and opportunity to correct. Such circumstances may include but are not limited to, any of the following:

- a. The violations are uncovered as a result of compliance purchase investigations.
- b. The violations are of a type which are usually understood to be illegal, dishonest, fraudulent, or abusive practices.
- c. The vendor has been previously sanctioned by or from a federal, state, or local administered FNS program or the agency operating such program.
- d. The violations and evidence show deliberate disregard of the regulations, or knowledge of the owner(s) or management of the firm, or policy of the business.
- e. The violations involve prohibited transactions between firms or individuals.
- f. The vendor withheld, or gave misleading, information, whether during the application process or while authorized, or violated Program rules while not an authorized vendor, or committed or has been charged with any violation of Program rules while under sanction by any FNS Program.
- g. Circumstances exist at or in proximity to the store which pose a threat to the HEALTH WIC Program, safety, civil rights or welfare of a WIC enrollee, payee, authorized shopper or a WIC or HEALTH WIC PROGRAM staff, official or other representative.

10. The vendor may be required to immediately refund or pay any related claim (see K, 2, above), separate and apart from any other warning or sanction activities. Failure to immediately pay the claim shall be grounds for disqualification of up to one year, in the absence of review and/or appeal, or following a review and/or appeal deciding in favor of a claim.

C. Inadequate Participant Access

Prior to disqualifying the vendor, the HEALTH WIC Program shall determine, in its sole discretion, and document in the vendor file, whether the disqualification would result in inadequate participant access for all mandatory sanctions (EXCEPT IN THE CASE OF A THIRD VIOLATION OF A MANDATORY SANCTION OR ITEMS LISTED IN IA, PERMANENT DISQUALIFICATION, ABOVE,). This determination will be based on the unavailability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such other vendors. Any determination of participant access shall consider the following and such additional factors as may be relevant:

1. Whether there are other vendors in the area who can provide the WIC-Approved foods as described in Policy V-1 Vendor Applicant Selection.
2. Whether the access is no less than the access or inconvenience the affected participants experience in securing any other essentials or non-essentials of life.
3. Since it is likely that vendors who violate the Program are not providing participants with the appropriate nutritional benefits of the Program, or are diverting funds from other needy persons, the period of disqualification set forth in this policy is the preferred sanction, unless the conclusive weight of evidence is to the contrary.
4. That violators divert legitimate WIC related business from those vendors who adhere to Program regulations.
5. That when the violation is such that it also involves participation by participants/payees, the HEALTH WIC Program and nutritional benefits and the integrity of the Program itself are severely compromised.

If the HEALTH WIC Program determines that a disqualification would result in inadequate participant access, then the HEALTH WIC Program shall impose a civil money penalty in lieu of disqualification, except for the third or subsequent violation [and conviction for trafficking / illegal sales]. The amount of a civil money penalty shall equal the average monthly WIC redemptions for the [six] month period [Explanation - The number of months must be at least six months, but may be more than six months] ending with the month immediately preceding the month during which the notice of sanction is dated, multiplied times 10 percent (.10), and then multiplied times the number of months for which the vendor would have been disqualified, provided that the civil money penalty shall not exceed \$10,000 for each violation, and provided further that the civil money penalty in lieu of permanent disqualification shall be \$10,000. If multiple violations are revealed by a single investigation, the total civil money penalty shall not exceed \$40,000.

- a. If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty within 30 days of the notice of sanction [the periods provided in an installment plan, subject to revision for good cause, the HEALTH WIC Program shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).
- b. When during the course of a single investigation, the HEALTH WIC Program determines that the vendor has committed multiple violations (which may include violations subject to HEALTH WIC Program sanctions), the HEALTH WIC Program shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the HEALTH WIC Program shall include all violations in the notice of sanction. If a mandatory sanction is not upheld on appeal, then the HEALTH WIC Program may impose a HEALTH WIC Program-established sanction.
- c. When a vendor, who had previously been assessed a mandatory sanction [except for a conviction for trafficking / illegal sales], receives another mandatory sanction for the same or other mandatory violations, the HEALTH WIC Program shall double the sanction for the second violation. Civil money penalties may only be doubled up to the previously-noted \$10,000 / \$40,000 limits.
- d. When a vendor, who had previously been assessed two mandatory sanctions [except for a conviction for trafficking / illegal sales], receives another mandatory sanction for the same or other mandatory violations, the HEALTH WIC Program shall double the sanction for the third violation. The HEALTH WIC Program shall not impose a civil money penalty in lieu of disqualification for the third mandatory violation. A fourth or subsequent violation shall be treated in the same manner as the third; the sanction for the fourth or subsequent violation shall be doubled and civil money penalties shall not be substituted for disqualification.
- e. The HEALTH WIC Program shall not provide prior warning that violations were occurring before imposing mandatory sanctions.

D. Prosecution

A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state, or local laws.

E. Delegation

The HEALTH WIC Program may delegate, refer, or assign activities related to prosecution, collection of claims, monitoring, or investigation of vendors to any other party qualified and or/empowered to perform such activities.

F. Appeal of Sanctions

Federal Appeal Conditions

1. The vendor may appeal the denial of an application for authorization or if, during the course of a contract, the vendor is disqualified or any other adverse action is taken, except that expiration of the contract and the HEALTH WIC Program's participant access determination for a mandatory or HEALTH WIC Program violation shall not be subject to administrative appeal.
2. Disqualification of a vendor from FSP may result in disqualification from WIC. Such disqualification from WIC shall not be subject to administrative or judicial appeal under the WIC Program. A WIC disqualification based on an FSP civil money penalty is subject to appeal, although not with respect to the participant access decision; also, the appeal of the reciprocal WIC disqualification may not challenge the FSP decision to impose the civil money penalty.
3. Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program
4. Except for disqualifications based on convictions for trafficking / illegal sales, which shall be effective on the date of receipt of the notice, the HEALTH WIC Program may take adverse action against the vendor 15 days after the HEALTH WIC Program provides the vendor with written notice.

When a food vendor's participation is adversely affected by any other HEALTH WIC Program action it may appeal the action under the provisions of policy A-2 Administrative Appeal to HEALTH WIC Program Decisions.

As noted above, except for disqualifications based on convictions for trafficking or illegal sales, which shall be effective on the date of receipt of the notice, the HEALTH WIC Program may implement the sanction or other adverse action following the fifteen day notification period, and not postpone the action until a hearing decision is reached. The state may consider such factors as participant inconvenience, potential for continuing harm to the program, vendor history of violations, previous decisions in similar cases, information provided by vendor and other factors the state considers relevant to the case.

The HEALTH WIC Program may at its option offer the opportunity for a vendor so affected to meet with the HEALTH WIC Program in informal conference, separate and apart from any appeal procedure. At such a conference a vendor may have the opportunity to present any information that the decision was in error, that there were extenuating circumstances, or that there are additional factors to be taken into consideration in determining or reversing the sanction. Such requests or convening of such informal conference shall not impede or delay any administrative appeal process unless such delay is determined to be in the interests of the Program by the HEALTH WIC Program.

G. Once the sanction is upheld, the Regional Office and the Food Stamp Program shall be notified within 15 days.

V-5 VENDOR MONITORING VISITS

Goal

To provide a regular pattern of visits to vendors to monitor their compliance with the laws, rules and procedures of the WIC Program.

Procedure

I. Regular Visits

- 8/99
- A. The vendor monitoring staff shall regularly schedule monitoring visits each week.
 1. Primary emphasis shall be on potential for *potential for risk* visits.
 2. A list of vendors needing monitoring visits will be drawn up based on V-2, Selection of Vendors for Monitoring, and other considerations and time since last visit.
 - B. All visits shall be recorded on a Vendor Site Visit Report (WIC-33)
 - C. If needed, review WIC-related inventory, pricing, redemption, deposit or other records to establish the facts about any possible violation.
 - D. At each visit, the availability of WIC allowed foods shall be recorded on a Vendor Inventory Review (WIC-34A).
 - E. Any problems noted shall be discussed with the vendor at the conclusion of the visit. A plan of correction shall be developed by the Vendor and the WIC representative. A time frame shall be stipulated for compliance.
 - F. In the event of improperly completed checks, immediate steps should be taken. Missing prices should be recorded. The vendor should record his minimum price, unless he can document otherwise. Contact a Program supervisor if in doubt. A "stop payment" can be placed if a check is not/cannot be corrected.
 - G. Any complaints about a particular vendor shall be discussed during any monitoring contact.
 - H. Any failure to comply shall be noted and brought to the attention of the Asst. HEALTH WIC Program Administrator .
 - I. Each day, the Asst. HEALTH WIC Program Administrator shall review all vendor contact record forms and discuss necessary follow-up with Monitoring Staff.
 - J. All forms shall be retained in the vendor's file.
 - K. Site visits for applicants shall be regularly scheduled, up to 20% of each month's site visits. If feasible, visits should be made within two weeks of the receipt of a correctly completed application and recorded on a vendor Application Site Visit Form (WIC-32).

Applicant site visits may be curtailed during July, August and September at the discretion of the Program Chief to concentrate resources on the Agreement renewal/reapplication process.
 - L. Documentation

1. All visits shall be noted on the Vendor Monitoring Log (WIC-28) during the visit and signed by the vendor staff person and the person in charge of the store at the time. The following codes will define the type of visit:
 - S - Periodic site visit or education visit.
 - CB - Call back; to follow-up on questions arising from a site visit.
 - P - Problem; additional visits related to complaints, possible deficiencies or violations, or other problems.
 - A - Application visits related to the store's request to be a WIC authorized vendor.
 - O - Other; miscellaneous visits to deliver or pick up materials or items, answer minor questions (if no WIC-33 completed)).
2. On the first working day of each month, total that month's visits on the WIC-28. The logs will be maintained by month.

II. Additional Investigations

Any probable violations should be followed up with, as appropriate, such activities as:

1. Review of checks redeemed.
2. Interviews or surveys of participants, local agency staff, other vendors, or other parties.
3. Follow-up on-site visits.
4. Compliance investigations.
5. Inventory audits.

Such activities may be conducted by state agency staff; independent consultants, investigators, or aides; or referred to other agencies of the HEALTH WIC PROGRAM or to other state agencies, as appropriate and available.

V-6 Participant or Local Agency Complaints Regarding Vendors

Goal

To provide a mechanism to transmit and respond to complaints about vendors.

Procedure

- A. Any complainant or complaint, except from another vendor, shall be referred to the Community HEALTH WIC Program Liaison. Local agencies should complete and forward a Vendor Question/Complaint Form with full details, including how to contact the complainant. The local agency may call in addition to sending the form.

Obtain as much of the following as possible:

- 1. Date, what occurred, store staff involved.
 - 2. Checks involved, if any
 - 3. Signed statement by complainant (i.e., ask complainant to sign completed form.)
- B. The Liaison shall forward the complaint form to the Vendor Unit Supervisor. The Supervisor shall assess the merits of the complaint and plan follow-up with vendor monitors.
 - C. If a complaint is verified the vendor and vendor monitoring staff person will immediately develop a plan of correction. All occurrences shall be noted on a Vendor Contact Record form.
 - D. Failure to comply with the plan of correction may result in a warning letter or a sanction.
 - E. A pattern of complaints may also be considered by the state agency as grounds for a warning letter or sanction.

V-7 Vendor Reports on Participants Choosing Non-WIC Foods**Goal**

To provide a mechanism for dealing with participants who attempt to buy non-WIC foods.

Procedure

- A. When a vendor notices that a participant has chosen nonallowable food items to purchase with WIC checks he should:
 1. Ask a participant to exchange nonallowable food items for foods listed on the WIC Allowed Foods list.
 2. Write down the participant's name, date of selecting wrong foods, WIC ID number and local agency, as well as the types of nonallowable food items she was trying to purchase.
 3. Call the Rhode Island Department of HEALTH WIC Program and relate the incident as it occurred.
- B. At this point the Rhode Island Department of HEALTH WIC Program WIC staff liaison person for the local agency in question will:
 1. Call the local agency and report the incident as told by the vendor, naming the participant and types of food that the participant had incorrectly chosen.
 2. File a report on the incident at the Rhode Island Department of HEALTH WIC Program
- C. The local agency will then:
 1. Flag the chart of the participant in question, with recount of the incident.
 2. At the next check pickup the participant will be referred to the nutritionist or nurse for an education session that covers the following information:
 - a. What occurred, and where, in a tone such that the participant is given the benefit of the doubt. (For instance: It was reported that you tried to purchase such and such with your WIC checks; since these are not allowable WIC foods, we feel that perhaps you did not get the appropriate education concerning the list-or, perhaps you lost your list ... here is another one...).
 - b. Attempt to discover the reason for non-WIC food choice (ex., food intolerance, lack of knowledge?).
 - c. Go over the list category by category naming allowed items.
 - d. Then tell why each food was chosen and why it is important for the participant to purchase it.
 - e. Ask if the participant has any questions and answer them.
- D. The state liaison would then do a follow-up call with local to see what occurred, and so record on the same report originated earlier.

- E. A determination will be made of the participant's intention and the severity of any actual Program violation. The local agency will take appropriate additional measures (warning letter, suspension) if warranted.
- F. Other participant redemption violations will be handled in a similar manner.

V-8: VENDOR MINIMUM INVENTORY REQUIREMENTS**Goal**

To ensure that each authorized WIC vendor maintains a sufficient minimum inventory of WIC Allowed Foods.

Procedure

- A. For each food group, the vendor shall maintain a minimum inventory according to the WIC Vendor Minimum Inventory Requirements in effect at the time. (WIC-39)
- B. The minimum inventory must be comprised only of foods designated by the HEALTH WIC PROGRAM as WIC ALLOWED or Contract Brand.
- C. The HEALTH WIC PROGRAM reserves the right to exclude excessive priced, damaged, outdated, unsanitary or contaminated foods in calculating inventory levels.
- D. For purposes of determining compliance with this Policy, the HEALTH WIC PROGRAM representative shall consider only such inventory as displayed, shown in shopping areas or shown by on-site store staff during the time of a monitoring visit. The foods must be reasonably accessible and available for vendor monitoring review and for WIC customer purchase at the time of the monitoring visit.
- E. Failure to comply with the WIC Allowed Foods List and Minimum Inventory Requirements shall be noted as a deficiency when a store is surveyed.
- F. If the store is a pharmacy and it accepts checks for a food group, the vendor must meet the minimum inventory requirement for said group and cannot accept a check that lists a food group for which the vendor does not meet the minimum inventory requirement.
- G. Grocery stores authorized to provide special formula products must maintain the minimum inventory quantities for said products.
- H. Vendor applicants shall be required to comply with the WIC Allowed Foods List and such minimum inventory as required by Vendor Applicant Selection Policy V-1.

V-9: MONTHLY SUMMARY - VENDOR STATUS (WIC-29)**Rev. 8/99****Goal**

To record changes in vendor status and the accomplishment of each step in that process in order to insure vendor participation is in accord with related regulations and procedures.

Procedures

- A. When any change in vendor status is anticipated or accomplished, record the vendor name and the nature of the change under the correct heading on the WIC-29.
- B. Business Change - Record any changes in ownership, name, or location by listing the date. The "Comments" column should describe the nature of the change.
- C. There is a group of columns related to sanction/termination activities. Record the date and reason each activity takes place and note pertinent comments in that column.
- D. Four columns pertain to adding vendors to the Program. Record the date of each step in the appropriate column.

"Add" pertains to the date the Agreement is completed by both parties.
"Stamp" pertains to the date of stamp delivery.
- E. Record vendors being investigated by state or federal agency(s) with dates, notes, and comments.
- F. Maintain separate sheet(s) for each month.
- G. On the first working day of each month, total the activities for that month.

POLICY V-10: EXCESSIVE PRICE STANDARD

Rev.10-18-01

Goal

To ensure that Program food funds are utilized for the maximum benefit to eligible persons, by preventing excessive charges by vendors.

Policy

The "Maximum Value" printed on each check is not a guide to vendors to set prices by. The value is a single item edit to prevent the bank from paying a serious overcharge that might occur from fraud, error, mispricing etc. by any vendor. Excessive price standards for vendors are based upon comparative prices of each vendor in relation to prices charged to WIC by other WIC vendors. It is the responsibility of the vendor to set prices that are not unduly higher than prices charged to WIC by other vendors, as herein defined and set forth.

Procedure

A. Classification of stores - WIC vendors shall be classified according to the following:

Category	Sub Category
1. Grocer	Small -
a.	One or two cash registers
b.	Medium - Three or four cash registers
c.	Large - Three or more stores and/or five or more cash registers per store
d.	<u><i>Commissary of the United States</i></u>
2. Pharmacy	a. One or two sites
	b. Three or more sites

B. Excessive Price Standard - Prices listed, reported, posted or charged for WIC foods shall not be excessive, as compared with those of other Rhode Island WIC vendors.

1. For all foods, prices shall not exceed the lesser of 15% above the state average cost charged to WIC, for all WIC vendors, or 10% above the average charges for the vendor's subcategory; for any WIC food, food group, combination of foods, WIC food package(s) or check type(s), (regardless of type, brand, weight or volume provided) as disclosed by Program redemption or vendor price records.
2. Infant formula - the per unit price charged to WIC must be less than the lesser of 15% above the manufacturer's wholesale 75 case price, 15% above the most recent statewide average redemption price for the brand, type and ingredient base, or 10% above the average charges for the vendor's subcategory. Vendors must also adhere to the "mark up" policy in Appendix II, A, 4 of the Vendor Participation Agreement.

C. Review vendors whose prices for WIC foods exceed the excessive price standard.

D. If vendor's pricing is 5% or more over the standard (regardless of type, brand, weight or volume) for any WIC food, food package(s) or check type(s) a second time within a 15 month period after receiving a warning, or after receiving a warning letter under E, F or G, below, disqualify the vendor or not renew the Vendor Agreement.

E. If vendor's pricing is in excess of the standard by less than 5% (regardless of type, brand, weight or volume) for any WIC food, food package(s) or check type(s) a second time within a 15 month period after receiving a warning, or after receiving

a warning letter under F or G, below, issue a final warning and notice of disqualification if prices are not reduced to within the standard.

- F. If vendor's charges exceed the standard by less than 5%, (regardless of type, brand, weight or volume) for any WIC food, food package(s) or check type(s) a third time within a 15 month period after receiving a warning letter such as described in D, E, F or G, herein, the State may disqualify the vendor or not renew the Vendor Agreement. Before taking such action, the State should consider factors including but not limited to:

The standard is exceeded by more than 3%.

The vendor's progress in reducing prices and charges

Low variation patterns of charges or charges are mostly near the maximum allowed

Charges are more than posted or reported prices.

If disqualification or denial of re-approval action is not taken, the vendor shall be given one final opportunity to reduce charges to less than the excessive price standard.

- G. If charges are 10% or more above the state average, or 5% or more above the charges of vendors in the store's designated subcategory (item or combination), the Program may issue a letter warning the vendor that composite and/or item prices are near or above the excessive price standard and notifying that prices must be reduced to or maintained below the standard.

- H. Any data indicating above average increases in a particular vendor's pricing may also be reviewed.

- I. Next, compare the check prices with the prices listed on the store's most recent price list. If the price is more than those on the price list, overcharging is possible. Prior to a site visit, compare the store's price list with prices from comparable stores in the month the check was cashed.

- J. If a pattern of excessive pricing or charging is discovered or suspected, an on site visit or compliance investigation may be made to verify store prices and determine if pricing violations are occurring.

1. If shelf prices are below those charged, evaluate for possible overcharging. A pattern of such discrepancies is grounds for warning letter, claim, investigation or sanction. Vendors must remit overcharges within 15 days of notification.

2. While reviewing redemption reports or actual checks, also review for specific vendors reported to be taking checks without completing prices, charging fixed charges, charging different prices for WIC, or other redemption violations. An on site visit or compliance investigation may be utilized to verify store prices or redemption practices. Notice, warning, or sanction may be applied in accordance with Program procedures.

- K. For applicants the determination of excessive pricing may be based upon vendor price reports, redemptions by authorized vendors and/or method(s) of estimating or projecting the applicant's charges for WIC foods if authorized.

POLICY V-11: VENDOR REIMBURSEMENT FOR CHECKS NOT PROCESSED Rev.10-18-01

Goal

To provide a consistent procedure for reimbursing vendors for WIC checks accepted which cannot be processed; to ensure accountability through recording and documenting of such transactions; and to decrease the incidence of improper redemption procedures.

Procedure

Subject to the following procedures, the vendor shall have an opportunity to correct or justify an actual or alleged overcharge or error, or defend against a HEALTH WIC Program charge or claim for alleged overcharge or error. Only if the HEALTH WIC Program is satisfied with the correction or justification, then it may provide payment or adjust the payment to the vendor accordingly. The HEALTH WIC PROGRAM may deny any reimbursement if overcharge or errors are not sufficiently justified, corrective action not taken, or overcharges or errors are repeated.

A. General

Reimbursements are subject to instructions on the most recent WIC-70B Vendor Instruction about handling checks. No check will be reimbursed unless the check, request for reimbursement and acceptable justification and explanation are received at the WIC Office, HEALTH WIC PROGRAM, within 15 days of the date of rejection and not more than 75 days after the First Day to Use printed on the check. Checks returned for no vendor stamp or improper stamp must be stamped and redeposited within the valid dates and will not be reimbursed if submitted to HEALTH WIC PROGRAM after that date.

B. Checks exceeding the redemption limit

1. The vendor may request reimbursement for checks on which the price exceeds the stipulated maximum limit following rejection by the WIC bank (see B, below).
2. Justification from the vendor for the value of the item(s) must be provided. Except for nonstandard formula, reimbursement will not be made in excess of the authorized maximum.
3. If the price in the judgment of the HEALTH WIC PROGRAM is valid, correct, proper and reasonable, reimbursement of the amount deemed proper will be made up to the limit stipulated on the check. The HEALTH WIC PROGRAM will also determine if two dollars will be deducted from the value of each reimbursement based on appropriateness of vendor's redemption procedures. The WIC ACH authorization code for the checks will be input with the net amount.
4. The completed checks will be forwarded to the Vendor Manager or his/her designee to determine the reimbursement. Reimbursement may be made by return of original or replacement checks to vendor for redeposit or by ACH credit via the WIC contract bank
5. When documentation is received from the Contracted Bank, a copy of the reimbursement letter is filed in the vendor's file.

C. Checks redeemed with improper redemption procedures:

1. Refer to most recent Vendor Instruction (WIC-70B) for current reimbursement policies and procedures.
2. Vendors submitting check (s) for reimbursement which have been redeemed with procedural error, incompleteness alteration or exceeding the price limit shall provide complete justification as to the reasons why the improper redemption procedures were used.
3. Consult with the Vendor Manager, or other supervisory personnel as designated by the program administrator, for a determination of the adequacy of the justification for the improper procedures, and for a decision on whether the HEALTH WIC Program should reimburse the vendor.

4. The Vendor Staff shall review the vendors' record for past instances of violations of check redemption procedures. If the vendor's record shows a history of such violations, the vendor shall not be reimbursed and shall be so advised in a letter stipulating the reason.

Only checks redeemed or deposited for the first time during a single thirty day period and submitted in a single request may be considered for reimbursement.

- a. All such requests must be made within a reasonable time of the vendor's acceptance of said checks.
 - b. Checks should not be considered for reimbursement if received by State WIC Office more than 15 days following date of rejection and not more than 75 days after the First Day to Use printed on the check.
 - c. The WIC Program will deny reimbursement for any check with questionable price, signature alteration, correction, etc., in the sole judgement of the HEALTH WIC PROGRAM.
6. The vendor monitors will conduct an educational contact with the vendor regarding correct redemption procedures, emphasizing the HEALTH WIC Program's policy of not reimbursing vendors more than once during the term of a vendor agreement for errors or violations of redemption procedures.
 7. If the program administrator or designee approves the exception to reimbursement procedure and approves reimbursement of the vendor for the value of the check, prepare corrected checks as stated in above.
 8. The HEALTH WIC Program or Bank will generate the appropriate reimbursement letter from HEALTH WIC Program, noting the reason the bank returned the check, the vendor stamp number, and the amounts and dates of the original check(s). The Bank will include on the letter a HEALTH WIC Program statement reiterating the proper check redemption procedures and violations thereof involved in the particular case and a warning notice that future reimbursements will not be made in case of vendor error or violation.
 9. When received from the Contracted Bank, a copy of the letter will be filed in the vendor reimbursement file and in the vendor's file.
 10. When reimbursements are made for improperly redeemed checks, two dollars will be deducted from the approved value of each check as a service fee.

If the price on the WIC check is two dollars or less, there will be no reimbursement value.
 11. The reimbursement letter will list the reimbursements, noting the improper redemption procedure used and information about the original and any replacement checks.
 12. Only a limited number of checks will be reimbursed. Vendors will not be reimbursed if their WIC check rejection rate for the past six months exceeds the average for all vendors by 15%.

D. Other Requests for Reimbursement

1. In general, checks accepted by an unauthorized party will not be reimbursed nor permitted to be deposited for payment.
2. Any other vendor request for reimbursement of WIC check(s) which can not be processed through banking procedure shall be evaluated by the vendor monitor and the Vendor Manager or designee.
3. If it is decided to grant an exception to the check processing procedures, the vendor monitor and the Vendor Manager, administrator or designee decides upon the most efficient method for doing so. If an exception is not to be granted, and the vendor is not to be reimbursed, notify the vendor by letter.
4. In instances where resubmission will result in vendor reimbursement the arrangements may be made between the HEALTH WIC Program the appropriate bank, and the vendor.

5. In instances which require the issuance of replacement check(s), a suitable letter will be sent by the state or Bank to the vendor stipulating the reason the checks were not processed, the number, amount, and date of the original and replacement checks, and such suitable information as may assist the vendor to avoid a recurrence of the need for such check replacement.
6. Check reimbursement procedures will be followed as stated above, including, if appropriate, deducting the service fee, if the reimbursement stemmed from vendor error or violation.
7. Record the relevant check data and reasons for the incident.

POLICY V-12: CHANGE OF VENDOR OWNERSHIP Rev.10-16-01

Goal

To evaluate each "change of ownership" to determine if there is a continuity of the business, management and personnel at the store.

I. Policy

- A. The retail store shall notify the WIC Office in advance is there is a modification or change of ownership, change of operations and/or control to be the subject of a determination of a "continuity of the business" and shall provide to the HEALTH WIC Program all information requested by the HEALTH WIC Program necessary for the proper review of the transaction. All information provided by the retail store at the request of the HEALTH WIC Program will be kept confidential. Failure to notify in advance will result in immediate termination of the Vendor Participation Agreement and will jeopardize the new application. (Vendor Participation Agreement, IB5).
- B. Continuity of the business, for purposes of this policy, is defined as:
1. Change of a single proprietorship to a partnership or corporation where the original sole proprietor remains a partner or shareholder with at least a 45% interest in the new partnership/corporation.
 2. Change in a partnership by adding partners where the original partners still maintain at least a 45% interest in the new partnership.
 3. Change in a partnership by loss of one or more partners. This would include conversion of a partnership to sole proprietorship through loss of one or more partners, where the one of the original partners still maintains at least a 45% interest in the business. In the case of a change to a sole proprietorship, one of the original partners must have 100% interest.
 4. Incorporation of an existing partnership where the original partners still maintain at least a 66% interest in the corporation.
 5. Corporate mergers or buy-outs where the original corporation is merged with another or becomes a subsidiary.
 6. In reviewing B4 and B5, the HEALTH WIC Program may deny the retail store a determination of "continuity of the business" even though it meets all other criteria identified in this policy if the HEALTH WIC Program determines that the change in the structure of the business was for an inappropriate reason. In reviewing the purpose for which the business structure was changed, the HEALTH WIC Program may review the following circumstances regarding the transaction to justify the denial:
 - (a) undercapitalization;
 - (b) failure to adhere to corporate formalities;
 - (c) substantial intermingling of corporate and personal affairs;
 - (d) the use of the corporate form to perpetrate fraud; and
 - (e) any other circumstances relevant to the determination of the appropriateness of the transaction.
 7. Appointment by the Court of a Receiver to oversee the assets and operation of the Vendor.
 8. Appointment by the Court of an Executor to oversee the assets and operation of the Vendor.
- C. Continuity of management and personnel is defined as when a majority of the management and personnel in the store that deal with the WIC policy and procedure and WIC transactions will continue to be employed in the same position under the new ownership structure.
- D. Instances where there is no continuity of the business as defined in B will be considered a "modification/change of operations/ownership/ control, etc."; the WIC agreement is immediately considered null and void and the procedures described in Policy V-1 will be implemented or hardship procedures described in C., below will be followed if prenotification of the change of ownership is received.

- E. Instances where there is a continuity of the business, management and personnel will be considered a "modification of ownership" rather than a "change of ownership" and will be processed as follows:
1. The "new" business entity will be permitted to continue to transact WIC food instruments (as defined in Policy V-4, IA1a) maintained.
 2. Additional review or training of the "new" proprietary person(s) will be required.
 3. The appropriate signatory authority of the "new" business entity will be required to sign a new agreement and a Certification of Prospective or Modification of Store Ownership form (WIC-56), a Certification of Prospective or Modification of Store Ownership - Court Appointed Receiver (WIC-56A), or a Certification of Prospective or Modification of Store Ownership - Probate Court Appointed Executor (WIC-56B), signifying their continued intent to conform with WIC Policy and Procedures.
 4. The vendor number will change and the modification of the ownership will be transparent to WIC participants and clinic employees.
- F. Instances where there is a continuity of the business but no continuity of management and personnel will be considered a "modification of ownership" and will be processed as follows:
1. The "new" business entity will be required to undergo training before being able to continue transacting WIC food instruments (as defined in Policy V-4, IA1a).
 2. Arrangements will be made to forward participants to alternate stores until the "new" business entity receives training.
 3. The appropriate signature authority of the "new" business entity will be required to sign a new agreement signifying their continued intent to conform with WIC Policy and Procedures.
 4. The "new" business entity will be placed on probationary status for six months during which time the store will be reviewed to ensure continued compliance with WIC Policy and Procedures.
 5. The vendor number will not change, however, there will be service disruption until the appropriate training is held. In such instances training will be expedited to the extent feasible.
- II. Procedure
- A. The "old" and "new" business entities must notify the HEALTH WIC Program vendor unit of reported/identified change/modification of retail store operation and/or ownership, as soon as identified.
- B. The HEALTH WIC Program will determine appropriate status of change/modification of operation/ownership based on this policy.
- C. When the HEALTH WIC Program is informed that an authorized WIC retail store plans to change operation/ownership, as described in D, above, and the HEALTH WIC Program determines Inadequate Participant Access (not inconvenience) would occur, the HEALTH WIC Program may:
1. Instruct the owner to schedule a store review and application pickup date.
 2. Conduct review or data scheduled and complete new store paperwork with written justification for Inadequate Participant Access. The HEALTH WIC Program will review the prospective store's application package in an expedited manner. If the prospective storeowner's application package is approved by the HEALTH WIC Program, the store will be provided Probationary Authorization only. A follow-up unannounced probationary review will be required within 6 months of the change of ownership to insure that the new store ownership is continuing to adhere to all WIC Selection and Limitation Criteria.
- D. The HEALTH WIC Program will complete follow-up action as required.

D. Extended Monitoring Fees.

Following initial discovery of a violation, when a subsequent site visit results in a final warning notice or letter, the vendor shall be required to pay a \$50.00 Extended Monitoring Fee. Such fee must be paid not less than 30 days following the notice of final warning and notice of fee due. Failure to pay the fee within 30 days following notice shall result in disqualification from the Program until such time as the fee is received by the HEALTH WIC PROGRAM or the Vendor's existing Participation Agreement expires, whichever occurs first.

E. Repayment of Investigation Costs.

The State may assess such claim as is appropriate for reimbursement for costs related to a vendor investigation or audit incurred by the Department in the course of discovering, calculating, developing, implementing, etc. any claim or sanction imposed relating to vendor violations, as provided for in Policy V-4, G.

II. Processing of Fees

Since fees are charged as vendor reimbursement for HEALTH WIC PROGRAM vendor related activities, funds received should be used to restore Program Services and Administration funds expended.

A. As checks arrive, use established Department procedures for logging receipts.

B. Secure all receipts received during a two week period.

C. Biweekly, process Request For Expenditure Credit against a related accounts for all fees received during that biweekly period.