

Vendor Violation Points and Sanctions

I. Vendor Violation Points and Sanction Procedures

- a. The State Agency shall determine the type and level of sanctions to be applied against food vendors based upon the severity, nature and *pattern* of the Program violations observed
- b. The State Agency does not have to provide the vendor with prior warning that violations were occurring before conducting compliance purchases or imposing any of the State Agency violation points or sanctions described.
- c. If a State Agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a sanction, the State Agency will notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State Agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation. The State Agency will document in the vendor file the reason why the notification would compromise the investigation. The State Agency may conduct another compliance buy visit after the notification of violation is received by the vendor, or presumed to be received by the vendor, consistent with the State Agency's procedures for providing such notification.
 - i. Notification is not required for violations involving a vendor's redemptions exceeding its inventories, since there are no initial violations in such instances. Notification is not required for WIC vendor disqualifications or civil money penalties based on Supplemental Nutrition Assistance Program (SNAP/FOOD STAMP PROGRAM) sanctions. Neither is notification required for violations that only require one incidence before a sanction is imposed). Notification is not required if such notice could compromise covert investigations of the vendor being conducted by the Supplemental Nutrition Assistance Program (SNAP/FOOD STAMP PROGRAM), the USDA Office of the Inspector General, the State Police, or other authorities, as well as the WIC investigation being conducted by the State agency; the term "investigation" does not exclusively refer to WIC investigations.
 - ii. Such notice will include violations for a pattern of: overcharging; receiving, transacting and/or redeeming checks outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; charging for supplemental food not received by the participant; providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for checks; or providing unauthorized food items in exchange for checks, including charging

for supplemental foods provided in excess of those listed on the check. This notice requirement also applies to any violations for which a pattern of violations must be established in order to impose a State agency vendor sanction per 7 CFR 246.12(l) (2).

- iii. In making the determination regarding notification of the vendor, there are a number of factors which the State agency will review – for example, the severity of the initial violation, the compliance history of the vendor, or whether the vendor has been determined to be high risk consistent with 7 CFR 246.12(j)(3). The State agency has the discretion to determine which factors to consider and how much weight should be assigned to each factor. If the State agency decides not to send the notice, the basis for this decision will be documented in the vendor file.

d. Establishing a pattern of violations.

- i. Mandatory Federal Disqualifications: Those Mandatory Federal Sanctions identified as requiring a pattern are assigned a disqualification based on at least three (3) independent documented repeated violations during any compliance investigation.
- ii. State Agency Sanctions: All State Agency sanctions require documentation of a pattern of the same violation. A pattern of violations can be based on at least three (3) independent documented violations during any compliance investigation, or at least three (3) documented independent violations obtained through objective data or other non-compliance purchase investigations during a ninety (90) day period. The vendor will be provided a warning letter after each of the first two violations and given a fifteen (15) day period in which to take corrective action after each warning letter.
- iii. The State agency may assign violation points based on the first finding of a State agency-established violation as long as such points do not result in a State agency sanction, i.e., a disqualification or monetary penalty / fine. Violation points operating in the same manner as initial violations do not violate the requirement that State agency sanctions may only be imposed based on a pattern of violative incidences.
- iv. When conducting inventory audits, a pattern can be established during a single review of the vendor's redemption records depending on the magnitude of shortfalls and the period of time over which they occur.
- v. A pattern of violations does not need to be present when applying a permanent disqualification, a six (6) year disqualification and the sale of alcohol or alcoholic beverages or tobacco products in exchange for checks.

- e. When more than one violation is detected during a single investigation, the disqualification period will be based on the most serious violation.
 - f. The State Agency may not accept voluntary withdrawal of a vendor from the WIC Program as an alternative to disqualification.
 - g. Any vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will be subject to a fine of not more than \$25,000 (Public Law 105-336) or imprisonment for not more than five (5) years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one (1) year or both. (CFR §245.12 (h) (3) (xx))
- II. **Mandatory disqualification periods are assigned for the following WIC violations in according to 7 CFR 246.12:**
- a. **Permanent Disqualification from the WIC Program**
 - i. A vendor convicted of trafficking in checks or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for checks.
 - ii. Permanent Disqualification from the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program)
 - b. **Six (6) Year Disqualification from the WIC Program**
 - i. One incidence of buying or selling checks for cash (trafficking); or
 - ii. One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for checks.
 - c. **Three (3) Year Disqualification from the WIC Program**
 - i. One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for checks;
 - ii. A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time;
 - iii. A pattern of vendor overcharges;
 - iv. A pattern of receiving, transacting and/or redeeming checks outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;
 - v. A pattern of charging for supplemental food not received by the participant; or

- vi. A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for checks.
- d. **One (1) Year Disqualification from the WIC Program**
- i. A pattern of providing unauthorized food items in exchange for checks , including charging for supplemental foods provided in excess of those listed on the check.
- e. **Second Mandatory Sanction**
- i. When a vendor, who previously has been assessed a sanction for any of the mandatory sanctions listed above, receives another sanction for any of these violations, the State agency must double the second sanction. Civil money penalties may only be doubled up to the limits allowed as defined by this agreement
- f. **Third or Subsequent Mandatory Sanction.**
- i. When a vendor, who previously has been assessed two or more sanctions for any of the mandatory sanctions listed above, receives another sanction for any of these violations, the State agency must double the third sanction and all subsequent sanctions. The State agency may not impose civil money penalties in lieu of disqualification for third or subsequent mandatory sanctions.
- g. **Disqualification from the WIC Program Based on a Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) Disqualification.**
- i. The State agency will disqualify a vendor who has been disqualified from the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program). The disqualification will be for the same length of time as the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) disqualification. The WIC disqualification may begin at a later date than the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) disqualification, and is not subject to administrative or judicial review under the WIC Program.
- h. **Civil Money Penalties in Lieu of Disqualification**
- i. The State agency may impose a civil money penalty in lieu of a permanent disqualification when it determines, in its sole discretion and documents that
 1. Such action would result in inadequate participant access;
 2. The vendor had, at the time of the violation, an effective policy and training program in effect to prevent trafficking: and the ownership of the vendor was not aware of, did not

approve of, and was not involved in the conduct of the violation. Any documented polices must have been dated in written form and the training documented prior to the violation;

- ii. The State agency may impose a civil money penalty in lieu of a six (6) to one (1) year mandatory disqualification when it determines, in its sole discretion and documents that such action would result in inadequate participant access.
- iii. If the State Agency permits a vendor to continue to participate in the Program in lieu of permanent disqualification, the State Agency shall assess the vendor a civil money penalty in an amount determined by the State Agency and in accordance with the following criteria:
 1. The maximum amount of civil penalty shall not exceed \$11,000 for each violation and \$44,000 for the total amount of civil money penalty or fines for multiple violations occurring during a single investigation.
 2. If a vendor does not pay, only partially pays, or fails to timely pay (includes failure to pay with an installment plan) a civil money penalty within thirty (30) days of receipt of a notification letter, the State Agency will disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed.
- iv. Formula for calculation of civil money penalties: multiply average redemptions by 10%; multiply result by the number of months for which the vendor would be disqualified.
- v. The State Agency may allow an installment plan to be utilized for the payment of civil money penalties provided that the installment plan is in compliance with Federal and State laws concerning the collection of interest on such debts.

III. State Agency Violations and Points for Violations

- a. Violation points can be assigned for a pattern of any violation or based on the first finding of a State agency-established violation as long as such points do not result in a State agency sanction, i.e., a disqualification or monetary penalty / fine, that is documented during any redemption analysis, monitoring visit(s), other formal visit(s) or follow-up of previous problems, inventory audits, or any other objective means.
- b. All State Agency warnings and violation points are cumulative and will be kept current for a period of two (2) years as long as the vendor is authorized on the Program. Warnings and violation points accrued for each violation will be dropped two (2) years after the date of the violation regardless of a renewal of a vendor agreement. The Utah WIC program will not remove any State agency violation points unless it is determined

by any objective means, fair hearings, and/or judiciary declarations that these points need to be removed.

- c. Food vendors may be subject to violation points in addition to claims for improper redemption, overcharged checks, or reimbursement for overcharges.
- d. The State agency may impose a civil money penalty (CMP) in lieu of a State Agency disqualification sanction. The Civil Money calculation and collection will be the same as stated under the mandatory disqualifications and sanctions in accordance with 7 CFR 246.12.
- e. The maximum amount of penalty for State Agency violations shall not exceed \$11,000 for each violation and \$44,000 for the total amount of civil money penalty or fines for multiple violations occurring during a single investigation.
- f. If the vendor is assigned or accumulates greater than five (5) violation points in any two-year period, the vendor will be required to submit a corrective action plan outlining the steps that will be taken to address the violations that were documented.
- g. The following violations are assigned specific State Agency violation points and sanctions. State Agency violation points and sanctions are commensurate with the number of points accumulated for one or more of these violations in any combination:

Any combined total of:

- 5 – 9 points** = Initial or follow-up warning letter with required corrective action plan.
 - 10 - 14 points** = Follow-up warning letter with required training.
 - 15 - 17 points** = State Agency Sanction - 3 month disqualification or CMP
 - 18 - 19 points** = State Agency Sanction - 6 month disqualification or CMP
 - 20 or > points** = State Agency Sanction - 1 year disqualification or CMP
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- 1) Failure to attend or complete the mandatory annual training sessions as outlined in the WIC Vendor Agreement after one mutual opportunity to reschedule will result in a written warning. Subsequent incidents will result in points.....8
- 2) An initial finding of a Civil Rights discrimination against a WIC participant (as determined by the Office of Adjudication and Compliance) and/or failure to serve a WIC Client without a justified

	judicial or legal basis will receive a written warning prior to documenting another incidence of a violation that requires a pattern of incidences (in situations where providing notification would not compromise the investigation). The second incident will result in sanction points	10
3)	Failure to provide purchase invoices from the wholesaler and/or other points of purchase, and/or inventory records and/or documentation of sales data during monitoring visits or when requested to do so by the State Agency	10
4)	Providing infant formula that was not purchased from the State Agency approved wholesalers, distributors, and/or retailers or through infant formula manufacturers registered with the Food and Drug Administration that provide infant formula	10
5)	Failure to maintain adequate inventory of WIC foods in accordance to the peer group of Vendor identified during three compliance purchases or per finding during any monitoring or any store on-site visits after being given one opportunity to correct the inadequacy.	8
6)	Failure to reimburse/refund the State Agency for an overcharge after a thirty (30) day notification	8
7)	Failure to provide and document training to all employees who handle WIC transactions or failure to allow monitoring or training of the vendor by WIC representatives or failure to submit a corrective action plan	8
8)	Failure to provide WIC checks for review when requested during monitoring of the vendor.	8
9)	Charging a price for any WIC eligible food item which has exceeded the average cost plus three (3) standard deviations of the same WIC eligible food item in other WIC authorized vendors in the same peer group	8
10)	Requiring cash to be paid in whole or part to redeem WIC checks	8
11)	Charging sales tax on WIC food items	8
12)	Using the WIC acronym or logo, service mark, or close facsimiles in the name of the vendor, for any advertising, promotional material, and incentives. Using tags or labels with the WIC acronym or logo, service mark, or close facsimiles on WIC-approved products. Using channel strips or shelf-talkers with the WIC acronym or logo, service mark, or close facsimiles without State Agency approval	8

- 13) The vendor intentionally amended, adjusted, corrected, blotted out, or made markings over or concealed any validations or adjustment documentation (written or stamped) made by the State Agency on the original WIC check or on any electronic copies of the WIC check.8
- 14) The vendor provided incentives or promotions inconsistent with the provisions in the Utah WIC Vendor Agreement8
- 15) Knowingly entering false information or altering information on the WIC check.-----8
- 16) Verifiable discourteous treatment of a WIC participant or a pattern of allegations of such treatment.....5
- 17) Limiting the number of checks that could be redeemed at the authorized vendor.....5
- 18) Contacting WIC participants to correct discrepancies as a result of non-payment or in an attempt to recover funds for checks not paid by the State Agency or those checks where refunds were requested for overcharge5
- 19) Failure to ask for the Utah WIC ID Packet at the time of transaction to verify signatures on the face of the check with the Utah WIC ID Packet verified through objective evidence such as compliance purchases.5
- 20) The vendor attempted to redeem a WIC check in which the dates or the quantities/sizes of WIC prescribed foods or signatures have been altered and/or additional items have been typed or written on the front.3
- 21) Prices not clearly marked on food items or shelf3
- 22) Failure to provide current prices on WIC food commodities during monitoring visits or when requested to do so by the State Agency.....3
- 23) Stocking or selling out of date and/or inconsumable WIC food commodities to WIC participants. This will include any WIC product that has a specific expiration date, sell by, best if sold by or similar wording with a date printed on the container.....3
- 24) Duplication or using an unauthorized, lost, or stolen stamp.....3
- 25) Redemption of a brand name food item when a store brand/private label is identified on the Utah WIC Authorized Food Card3

26)	Non-matching date stamped on check compared against actual date transacted if imprinted on the back of the check or verified by another method.....	3
27)	A pattern of three or more attempted redemptions or redemption of WIC checks not in accordance with the redemption procedures within any calendar month and greater than or equal to 1% of all checks redeemed or attempted to be redeemed by the vendor being rejected for any reason within the calendar month. (Inappropriate redemption includes: accepted outside of authorized dates; date on check does not match redemption date on back; missing authorized signature; missing total amount; accepted above the maximum allowable reimbursement amount [food instruments] or above the fixed maximum value [cash-value vouchers] as outlined in the WIC vendor agreement and WIC vendor training materials within any calendar month).....	2
28)	Submitting WIC checks for redemption missing the vendor identification stamp equal to or greater than ten (10) WIC checks within any calendar month and greater than or equal to 1% of all checks redeemed by the vendor being rejected for any reason within the calendar month.....	2
29)	Failure to accept a certified letter or leave a certified letter unclaimed from the State WIC Agency	2
30)	Asking the WIC participant to place the authorized signature on the front of the check (s) before the purchase price has been written on the check	2
31)	Requesting a WIC participant to produce any additional forms of ID other than the WIC ID Packet when redeeming WIC checks.....	
32)	Failure to report a lost or stolen stamp within two (2) working days.....	2
33)	Failure to allow an authorized Utah WIC food item to be purchased	2
34)	Any failure to comply with the Utah WIC Vendor Agreement as stated in the Vendor Responsibilities or any failure to comply with the redemption procedures not otherwise noted.....	2

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- h. The vendor will be notified in writing regarding any points assessed and the type of violation(s) found.
 - i. All vendors with 10-14 State Agency violation points will be required to receive training by the State or Local Agency on the violation(s) in

question within thirty (30) days of the notice of awarding the violation points. This training will be documented and sent to the State WIC Office.

- j. The Utah WIC Program shall provide the appropriate FNS (Food and Nutrition Service) Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) office with a copy of the notice of administrative action and information on vendors it has either imposed a civil money penalty in lieu of disqualification or disqualified from the WIC Program based in whole or in part of any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:
 - 1) A pattern of claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time
 - 2) Exchanging cash, credit or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances, as defined in section 802 of title 21 of the United States Code, for checks;
 - 3) A pattern of receiving, transacting and/or redeeming WIC checks outside of authorized channels
 - 4) A pattern of exchanging non-food items for a WIC check
 - 5) A pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price
 - 6) A pattern of charging for food items not received by the WIC customer or for foods provided in excess of those listed on the checks
 - 7) One incident of providing alcohol or tobacco in exchange for a WIC check
- k. Prior to disqualifying a food vendor, the State Agency will consider whether the disqualification would create undue hardships for WIC participants. An undue hardship will be defined as if there is no other WIC authorized vendor within twenty (20) miles. In deciding whether or not to postpone adverse action until a hearing decision is rendered, the State Agency may consider any other relevant criteria in addition to the above.
- l. The State Agency will terminate this agreement on not less than thirty (30) days written notice due to: 1) changes in the present agreement which would require all authorized vendors to complete a new agreement; 2)

failure of the vendor to fulfill in a timely and satisfactory manner, its obligations under this agreement; 3) unavailability or decrease in federal and/or state funding; 4) participant caseload management to effectively manage funding in which the vendor with the highest cost per food package will be terminated and where such termination would not affect participant access as defined in this agreement; 5) a change in the Federal Regulations or recommended change which results in the necessity to decrease the number of vendors to maintain a cost-effective Program or alters the way vendors are selected, qualified, accumulation of violation points, disqualification; and 6) fraud or abuse of the WIC Program as described in the Agreement.

- m. All vendors participating in the Utah WIC Program have the right to a Fair Hearing when any adverse action (i.e. violation points, denial of payment, disqualification or denial of application) could affect the vendor's participation in the WIC Program. Expiration of a contract or agreement with a food vendor is not subject to appeal. Requests for a Fair Hearing must be made within thirty (30) days from the date of the notice of adverse action. Direct all requests for a Fair Hearing to the State WIC Office.
- n. **Referral to law enforcement authorities.** When appropriate, the State must refer vendors who violate program requirements to Federal, State, or local authorities for prosecution under applicable statutes.