

**8.04** **Civil Money Penalty**

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**POLICY:**

As an alternate sanction, a civil money penalty may be assessed against Vendors in lieu of disqualification in order to emphasize the seriousness of WIC Program compliance and to allow the Vendor to continue to serve an otherwise uncovered participant group.

**PROCEDURE:**

**A. Determination of Eligibility for a Civil Money Penalty**

Under special circumstances, the State Agency may choose to waive disqualification of an abusive or non-compliant Vendor. The State Agency is **not** required to offer a civil money penalty to a Vendor in the process of disqualification for major offenses or while maintaining a disqualification on a Vendor who had accumulated a number of minor offenses.

1. A civil money penalty will **only** be offered to a Vendor in lieu of disqualification when inadequate participant access would otherwise occur (see **Policy 8.03 Inadequate Participant Access**).
2. Determination of eligibility of a Vendor for a civil money penalty will be made by the State Agency prior to the notification of disqualification so that the Vendor will be made aware of any alternative at the time of notification.
3. The State Agency must assure that a Vendor selected to pay a civil money penalty can be monitored successfully.
4. The potential for inadequate participant access must be examined each time a Vendor is disqualified through a review and documentation of the authorization status of all Vendors within a ten (10) mile distance of the disqualified Vendor as well as a review and documentation of any geographical barrier(s) which would restrict participant access.

**B. When a Civil Money Penalty Will Not be Offered**

1. Regardless of inadequate participant access, a civil money penalty **will not** be offered when the disqualification is based on:
  - a. A Vendor is convicted of trafficking in SNAP or WIC food benefits;
  - b. A Vendor is convicted of selling firearms, ammunition, explosives, or, controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.C.S. 802)) in exchange for food stamps or WIC drafts;
  - c. A Vendor has been disqualified or received a civil money penalty for two or more sanctions that are federally mandated (see **Sanction Listing**);

**8.04**

**Civil Money Penalty**

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- d. A Vendor has been assessed a civil money penalty from the SNAP Program in lieu of disqualification;
- e. A Vendor's refusal to be monitored or refusal to supply the WIC Program with supplier invoices;
- f. A Vendor's refusal to accept mandatory training;

**C. Written Notice of Disqualification Action**

- 1. The State Agency will send the Vendor a written notice of the disqualification action including:
  - a. The cause(s) for the disqualification;
  - b. The effective date of the action;
  - c. The Vendor's right to appeal;
  - d. The procedures to be followed to file an appeal; and
  - e. Notification that the State Agency has decided to offer a civil money penalty in lieu of disqualification and that they will be contacted to schedule a conference to discuss the offer.

**D. Vendor Conference to Discuss a Civil Money Penalty**

- 1. The State Agency will contact the Vendor to schedule a conference to offer the alternative of the civil money penalty in lieu of the disqualification.
- 2. The conference will cover the following:
  - a. The amount of the civil money penalty;
  - b. The method of payment of the penalty available to the Vendor; and
  - c. Discussion of all compliance issues, not just those brought about by the disqualification.
- 3. The Vendor will be advised of the following during the conference:
  - a. That acceptance/payment of the civil money penalty settles all past compliance issues, but does not relieve the Vendor of its obligation to document the resolution of the identified problem(s) or protect the Vendor from future sanctions or disqualification for continued non-compliance;
  - b. That a civil money penalty does not relieve the Vendor of financial liability for previous compliance issues such as outstanding overcharge recoveries or

8.04

Civil Money Penalty

payments due for sale of unauthorized foods. Such outstanding liabilities must be paid in addition to the civil money penalty;

- c. That the past violations settled by the civil money penalty may be considered, at the discretion of the State Agency, if additional violations of the same nature occur in the future;
- d. That the Vendor has fifteen (15) days after the conference to accept the civil money penalty in lieu of disqualification; and
- e. That this civil money penalty settlement does not prohibit further WIC investigations.

**E. Calculating a Civil Money Penalty**

1. The State Agency will calculate all civil money penalties using a standard formula, in accordance with the federal guidelines specified in § 3.91(b)(3)(v) of this title.
2. The civil money penalty shall not exceed the maximum amount specified in § 3.91(b)(3)(v) per violation, and the total penalties for violations investigated as part of a single investigation shall not exceed the maximum amount for such investigations, even if the formula indicates that a higher penalty is warranted.
3. The calculation formula is as follows:
  - a. The State Agency shall determine the average monthly redemptions for the most recent six (6) month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
  - b. Multiply the average monthly redemptions by 10% (.10).
  - c. Multiply the product from Step 2 by the number of months for which the store would have been disqualified.
4. Example: A Vendor receives notification of a one (1) year disqualification in October 20\_\_. The civil money penalty in lieu of disqualification would be calculated as follows:

Month	Redemptions
September	\$4,650
August	\$4,075
July	\$5,120
June	\$5,580
May	\$4,890
April	\$4,990
Total	\$29,305
Average	\$4,884.17

- \$4,884.17 (average monthly)

8.04

Civil Money Penalty

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redemptions) x 10% = \$488.42

- \$488.42 x 12 months (disqualification period) = \$5,861.04

5. For violations warranting permanent disqualification, the penalty will be the maximum amount specified in § 3.91(b)(3)(v) of this title for each violation. If multiple violations are found during a single investigation, the State Agency will impose a civil money penalty (CMP) for each violation. However, the total amount of penalties for violations found in a single investigation shall not exceed the maximum penalty specified in § 3.91(b)(3)(v) for such investigations.

**F. Payment of a Civil Money Penalty**

1. The State Agency will determine the method of a civil money penalty payment by one of the following:
  - a. A lump sum payment of the civil money penalty which must be received on or before the date that the disqualification was to be effective; or
  - b. By installment payments in which the following conditions must be met:
2. The first payment must be received by the State Agency on or before the date that the disqualification was to be effective; and
3. Subsequent installment payments which will be of equal amounts, the total number of which cannot exceed one half the number of months of the alternative disqualification, and must be received at the State Office by the fifteenth (15<sup>th</sup>) of the prior month to maintain eligibility for the coming month; and

A Vendor who does not make any installment payment by the due date will be notified by the State Agency that the civil money penalty balance is due within ten (10) days or the disqualification action will be enforced.

4. All payments (lump sum or installment) must be made by certified check or money order to:

**West Virginia WIC Program  
Room 519  
350 Capitol Street  
Charleston, WV 25301-3717**

*All payments must include the Vendor's name and authorization number.*

1. A Vendor who does not pay, only partially pays, or fails to timely pay a civil money payment including installment payments will be disqualified for the length of the

**8.04**

**Civil Money Penalty**

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disqualification period corresponding to the violation for which the civil money penalty was assessed.