

8.13 Sanction Schedule

POLICY:

Vendors who fail to comply, either intentionally or unintentionally, with the Vendor Agreement or policies of the WV WIC Program shall be sanctioned. Sanctions may include warning letters, mandatory retraining, administrative fines, suspensions, terminations, disqualifications, civil money penalties, or any combinations of sanctions. Sanctions shall be imposed consistently among vendors and shall be fully documented.

The WV WIC Program may sanction Vendors for any violations of the terms of the Vendor Agreement, federal or state statutes or regulations, WIC Program Policies and Procedures, and/or other applicable statutes, rules, or regulations. The imposition of sanctions does not exclude or replace any other applicable criminal or civil sanctions, penalties, or remedies under any federal, state, or local laws. When the State agency determines a vendor has committed multiple violations, the State will sanction the vendor for the period corresponding to the most serious mandatory violation. If a mandatory sanction is not upheld on appeal, then the State agency may impose a State agency-established sanction.

Vendor violations and/or sanctions from preceding Vendor Agreement periods may impact future vendor authorization in subsequent Vendor Agreement periods. Also, violations of the WIC Program that occurred during the previous Vendor Agreement period may be carried over and used as a basis for imposing sanctions, such as, administrative fines, civil money penalties, monetary claims, termination, disqualification, criminal prosecution, and denial of an application for a WIC Vendor Agreement during subsequent Vendor Agreement periods.

PROCEDURE:

A. Mandatory Federal Sanctions

| MANDATORY FEDERAL SANCTIONS | | | | |
|---|--|---------------------------------|---------------------------------|---------------------------------|
| VIOLATION DESCRIPTION | CORRESPONDING SANCTION | 1ST INCIDENCE | 2ND INCIDENCE | 3RD INCIDENCE |
| Federal/USDA 246.12(l)(1)(i) Vendors convicted of buying or selling eWIC benefits for cash (trafficking); 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 eWIC food benefits or cash-value benefits. | Termination of Vendor Agreement and Permanent Disqualification | Permanent Disqualification | N/A | N/A |

8.13 Sanction Schedule

| | | | | |
|---|---|---|-----|-----|
| Federal/USDA 246.12(l)(1)(vii) Vendor is disqualified from the Supplemental Nutrition Assistance Program (SNAP). | Termination of the Vendor Agreement and Disqualification for the same length of time as the SNAP disqualification (may begin at a later date) | Disqualification for the same length of time as the SNAP disqualification | N/A | N/A |
| Federal/USDA 246.12(l)(i)(ii)(A) One incidence of buying or selling eWIC benefits or cash-value benefits for cash (trafficking). | Termination of Vendor Agreement and 6-year disqualification | 6-year disqualification | N/A | N/A |
| Federal/USDA 246.12(l)(i)(ii)(B) One incidence of selling firearms, ammunition, explosives or controlled substances [as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)] in exchange for eWIC food benefits or cash-value benefits. | Termination of Vendor Agreement and 6-year disqualification | 6-year disqualification | N/A | N/A |

| | | | | |
|---|---|-------------------------|------------|-------------------------|
| Federal/USDA 246.12(l)(i)(ii)(iii)(A) One incidence of sale of alcohol or alcoholic, beverages, tobacco products in exchange for eWIC food benefits or cash-value benefits. | Termination of Vendor Agreement and 3-year disqualification | 3-year disqualification | N/A | N/A |
| Federal/USDA 246.12(l)(i)(ii)(iii)(B) 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. | Termination of Vendor Agreement and 3-year disqualification | WL | WL and MRT | 3-year disqualification |
| Federal/USDA 246.12(l)(i)(ii)(iii)(D) A pattern of receiving, transacting, and/or redeeming eWIC food benefits or cash-value benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person. | Termination of Vendor Agreement and 3-year disqualification | WL | WL and MRT | 3-year disqualification |

8.13 Sanction Schedule

| | | | | |
|--|---|----|------------|-------------------------|
| Federal/USDA 246.12(l)(i)(ii)(iii)(E) A pattern of charging for supplemental food not received by the WIC participant. | Termination of Vendor Agreement and 3-year disqualification | WL | WL and MRT | 3-year disqualification |
| Federal/USDA 246.12(l)(i)(ii)(iii)(F) 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 eWIC food benefits or cash-value benefits. | Termination of Vendor Agreement and 3-year disqualification | WL | WL and MRT | 3-year disqualification |
| Federal/USDA 246.12(l)(i)(ii)(iii)(iv) A pattern of providing unauthorized food items in exchange for eWIC food benefits or cash-value benefits, including charging for supplemental foods provided in excess of those listed on the eWIC food benefits or cash-value benefits. | Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | 1-year disqualification |
| Federal/USDA 246.12(l)(i)(ii)(iii)(iv)(B) A pattern of providing prohibited incentive items to customers, other than items obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit does not exceed the less-than-\$2 nominal value limit. | Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | 1-year disqualification |

8.13 Sanction Schedule

B. Mandatory State Sanctions

| MANDATORY STATE SANCTIONS | | | | |
|--|--|---------------|---------------|--|
| VIOLATION DESCRIPTION | CORRESPONDING SANCTION | 1ST INCIDENCE | 2ND INCIDENCE | 3RD INCIDENCE |
| A pattern of a vendor failing to purchase infant formula from licensed wholesalers, distributors and retailers listed with West Virginia WIC Program or from infant formula manufacturers registered with the Food and Drug Administration. | Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | 1-year disqualification |
| A pattern of a vendor failing to remit payment for overcharges as requested by the Program. This includes return of reimbursement check issued for payment the bank for insufficient funds. | Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | 1-year disqualification |
| A pattern of vendor refusing to allow WIC State Agency Representatives the opportunity to review eWIC transactions or pertinent records, or fails to provide evidence of proofs-of-purchase (invoices) of WIC foods within 21 calendar days of the date of the request during investigations, or provided documentation is altered, incorrect or fabricated. *Invoices or receipts to verify the purchase of WIC foods from an Approved Supplier/Distributor should be maintained for a period of the three (3) year Vendor Agreement. | Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | 1-year disqualification |
| A pattern of scanning (or manually entering) UPCs that are not affixed to authorized food items being purchased by the WIC customer. | Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | 1-year disqualification |
| A pattern of a vendor issuing "rain checks" or due bills in exchange or in lieu of eWIC benefits. | Administrative Fine OR Termination of Vendor Agreement and 1-year disqualification | | | \$400 Administrative Fine OR 1-year disqualification for second pattern established within consecutive 12-month period |

8.13 Sanction Schedule

| | | | | |
|---|--|----|------------|---|
| A pattern of a vendor requiring other cash purchases or a minimum purchase as a condition to use eWIC benefits. | Administrative Fine OR Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | \$400 Administrative Fine OR 1-year disqualification for second pattern established within consecutive 12-month period |
| A pattern of a vendor requiring WIC customers to contribute cash or provide copayment on any portion of the total purchase amount of an eWIC transaction excluding overage of cash-value benefits. | Administrative Fine OR Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | \$400 Administrative Fine OR 1-year disqualification for second pattern established within consecutive 12-month period |
| A pattern of a vendor limiting the choices and quantities of authorized food items listed on a customer's eWIC benefits card (i.e. not allowing participant to utilize entire food package, requiring purchase of a single brand when other WIC approved brands are available). | Administrative Fine OR Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | \$400 Administrative Fine OR 1-year disqualification for second pattern established within consecutive 12-month period |
| A pattern of a vendor providing cash or credit for the return of items purchased with eWIC benefits. | Administrative Fine OR Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | \$400 Administrative Fine OR 1-year disqualification for second pattern established within consecutive 12-month period |
| A pattern of a vendor allowing the exchange of authorized WIC foods for authorized foods other than the exact same brand and size. | Administrative Fine OR Termination of Vendor Agreement and 1-year disqualification | WL | WL and MRT | \$400 Administrative Fine OR 1-year disqualification for second pattern established within consecutive 12-month period |

8.13 Sanction Schedule

| | | | | |
|---|---|----|------------|---|
| A pattern of vendor with integrated point of sale system inappropriately mapping or failing to map items to WIC cash value benefits. | Administrative Fine OR Termination of Vendor Agreement and 6-month disqualification | WL | WL and MRT | \$200 Administrative Fine OR 6-month disqualification for second pattern established within |
| A pattern of a vendor requiring WIC customers to provide identification. | Administrative Fine OR Termination of Vendor Agreement and 6-month disqualification | WL | WL and MRT | \$200 Administrative Fine OR 6-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of a vendor refusing to allow WIC customers the same courtesies as offered to other customers, including but not limited to use coupons, Buy One Get One Free offers, sales promotions, discount offers or store loyalty program. This does not include sale price as vendors are required to charge WIC customers the sale price or be considered overcharging which a federal sanction. | Administrative Fine OR Termination of Vendor Agreement and 6-month disqualification | WL | WL and MRT | \$200 Administrative Fine OR 6-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of a vendor misusing the WIC acronym or facsimiles in the name of the vendor or in advertising or other promotional materials. | Administrative Fine OR Termination of Vendor Agreement and 6-month disqualification | WL | WL and MRT | \$200 Administrative Fine OR 6-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of a vendor not displaying a "WIC Authorized" or similar shelf label within a section of the store, an entire food category, and/or on more than 25 approved WIC products. | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$200 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |

8.13 Sanction Schedule

| | | | | |
|---|---|----|------------|---|
| A pattern of failing to display prices or clearly mark the prices for all WIC foods on the shelf, product or nearby area. | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$100 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of failing to maintain the minimum variety and inventory of WIC approved foods and infant formula.***** | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$100 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of allowing WIC Approved products to remain in the customer purchase area which is beyond manufacturer's expiration date. | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$100 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of violating WIC customer's confidentiality. | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$100 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of a vendor failing to provide WIC customers a printed receipt at the end of each eWIC transaction. | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$100 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |

8.13 Sanction Schedule

| | | | | |
|--|---|----|------------|--|
| A pattern of a vendor failing to maintain and keep an up to date Approved Product List (APL) file within their point of sale system/device resulting in a WIC item not being able to be scanned/purchased. | Administrative Fine OR Termination of Vendor Agreement and 3-month disqualification | WL | WL and MRT | \$100 Administrative Fine OR 3-month disqualification for second pattern established within consecutive 36-month period |
| A pattern of a vendor displaying a “WIC Authorized” or similar shelf label on an unauthorized WIC food item. | Administrative Fine OR Termination of Vendor Agreement and 30-day disqualification | WL | WL and MRT | \$50 Administrative Fine OR 30-Day disqualification for second pattern established within consecutive 36-month period |
| A pattern of a vendor with integrated point of sale system failing to provide WIC customers with a mid-transaction receipt. | Administrative Fine OR Termination of Vendor Agreement and 30-day disqualification | WL | WL and MRT | \$50 Administrative Fine OR 30-Day disqualification for second pattern established within consecutive 36-month period |
| A pattern of failing to post the Authorized WIC Vendor door decal conspicuously facing the outside parking lot at each entrance to the store. | Administrative Fine OR Termination of Vendor Agreement and 30-day disqualification | WL | WL and MRT | \$50 Administrative Fine OR 30-Day disqualification for second pattern established within consecutive 36-month period |
| A pattern of failing to have WIC materials available in the store which includes current Vendor Handbook, Cashier Training Manual, and the WIC Authorized Shopping Guide at each cashier checkout station. | Administrative Fine OR Termination of Vendor Agreement and 30-day disqualification | WL | WL and MRT | \$50 Administrative Fine OR 30-Day disqualification for second pattern established within consecutive 36-month period |

8.13 Sanction Schedule

| | | | | |
|---|--|----|------------|--|
| A pattern of failing to have at least one lane open during operating hours to process WIC EBT transactions. | Administrative Fine OR Termination of Vendor Agreement and 30-day disqualification | WL | WL and MRT | \$50 Administrative Fine OR 30-Day disqualification for second pattern established within consecutive 36-month period |
| A pattern of failing to provide WIC customers a printed eWIC balance inquiry upon request. | Administrative Fine OR Termination of Vendor Agreement and 30-day disqualification | WL | WL and MRT | \$50 Administrative Fine OR 30-Day disqualification for second pattern established within consecutive 36-month period |

| MANDATORY STATE SELECTION CRITERIA | |
|---|------------------------------|
| SELECTION CRITERION DESCRIPTION | CORRESPONDING SANCTION |
| Vendor fails to notify the WIC Program with change of ownership or location or cessation of operations***. | Termination of agreement**** |
| Vendor has conflict of interest with the WIC Program. | Termination of agreement**** |
| Vendor is unable to process split tender for cash-value benefits. | Termination of agreement**** |
| Vendor fails to submit competitive prices on the vendor price survey. | Termination of agreement**** |
| Vendor knowingly provides false information to the WIC Program. | Termination of agreement**** |
| Vendor threatens and/or verbally abuses State/Federal staff. | Termination of agreement**** |
| Vendor refuses to permit State/Federal personnel to perform onsite compliance monitoring. | Termination of agreement**** |
| Vendor does not have a valid State of West Virginia business license to operate as a food retailer in West Virginia. | Termination of agreement**** |
| Vendor fails to have a valid Public Health permit. | Termination of agreement**** |
| Vendor or authorized vendor representative fails to attend mandatory WIC training sessions as scheduled by the State Agency. This includes mandatory retraining, authorization training and/or annual training. | Termination of agreement**** |

8.13 Sanction Schedule

| | |
|---|------------------------------|
| Any activity by vendor officers, managers, employees or representatives which violates any provision of the Vendor Agreement not specifically addressed in this violation list will be considered a breach of contract. | Termination of agreement**** |
| Vendor does not maintain or has a lapse in SNAP authorization. | Termination of agreement**** |

- **WL = Warning Letter**
- **MRT = Mandatory Retraining at location designated by the State Office**
- **Also subject to reimbursement for improperly redeemed eWIC food benefits and cash-value benefits.**
- ****State agency sanctions are based on a pattern of 2 or more violation incidences and may include disqualifications, civil money penalties assessed in lieu of disqualification, or administrative fines.**
- *****Vendor ceasing operation for any reason except due to temporary closure from casualty losses, natural disaster, or renovations for improvements.**
- ******Termination of agreement does not include period of disqualification.**
- *******Out of date food items DO NOT count toward minimum stock**
- **Disqualification includes termination of contract. In instances of disqualification as a result of SNAP disqualification, the WIC disqualification shall be for the same length as SNAP disqualification period but may begin later than the imposed SNAP disqualification.**
- **A pattern of violations must be established in order for the State to impose a federal sanction. A pattern of violations is established by 2 or more instances of the same violation.**
- **Second mandatory sanction. When a vendor, who previously has been assessed a sanction for any violation, receives another sanction for any one of those same violations, the State agency will double the second sanction. Civil money penalties may only be doubled up to the limits allowed.**
- **Third or subsequent mandatory sanction. When a vendor, who previously has been assessed two or more sanctions or any violation, receives another sanction for any one of those violations, the State agency will double the third sanction and all subsequent sanctions. The state agency will not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violation(s).**