

# **Rhode Island WIC Program Retail Vendor Policies**



## **Operations Manual Section 3 Appendix**

*Revisions are italicized*

**Policy V-1: APPLICANT VENDOR SELECTION AND AUTHORIZATION**

GOAL

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

PROCEDURE

- A. Retail grocers, food stores (known as grocers), and registered pharmacies (known as pharmacies) located in the State of Rhode Island may request initial participation as authorized vendors in the WIC Program throughout the year. An application will only be accepted from a grocery or pharmacy owner, partner or corporate officer acceptable to WIC. 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 portal is available online for new and existing vendors. All required materials will be available at RIDOH website.
  - a. Vendor Application
  - b. WIC Price List
  - c. WIC-Approved Foods list
  - d. Vendor Minimum Inventor
  - e. WIC Bulletins
  - f. Vendor Policy

The applicant vendor returns the:

- a. Vendor Application signature page from Online Vendor Application Portal
- b. Price Surveys,
- c. Proof of ownership,
- d. Annual reconciliation or Quarterly reconciliation tax forms for last four quarters (T – 204 or T204CIG, both sides)
- e. Current copy of Health Department License, SNAP license and Permit to make sales
- f. Copy of a recent driver's license or other positive photo identification, and
- g. List names of stores, owner, partnership, manager, spouse, and clerk to WIC for review after completion by the vendor.

The establishment owner, partner or a corporate official (provided they have the authority to sign on behalf of the company) must sign the Vendor Application signature page. The applicant must provide evidence of ownership and/or control, satisfactory to the Rhode Island Department of Health (RIDOH) 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 RIDOH 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 Nutrition Service (FNS) Program's rules, regulations or procedures.
- 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, 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 sub grantees 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 Programs' Compliance in Rhode Island or in other states)
  - 1. Unless needed to serve an area (Section S, below), a grocery vendor will not be approved unless the vendor is authorized by the Supplemental Nutrition Assistance Program (SNAP) under the current ownership. If the Vendor is disqualified from the SNAP as a result of disqualification from the WIC Program, the Vendor may not reapply until SNAP 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 they 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 RIDOH 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 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 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 RIDOH 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 RIDOH 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 section 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 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 standards for vendor authorization the RIDOH 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.

**G If new WIC Vendor is determined to be an “Above 50% Vendor” (A50%V), they will not be authorized by WIC.**

The “potentially Above 50% Vendor” (PA50%V) peer group will be assigned to applicants who have the potential for total WIC sales to comprise more than 50% of their total food sales.

The “Above 50% Vendor” (A50%V) Peer group will be applied to those Vendors whose total WIC sales comprise 50% or more of their total food sales.

The redemption histories of all new WIC authorized grocery (i.e., non-pharmacy, non-farmers market) vendors will be reviewed during the application process. To identify a potentially Above 50% Vendor (PA50%V) the following information will be considered:

- (a) If the applicant is a new business with no redemption history
- (b) Recent Supplemental Nutrition Assistance Program (SNAP) redemption data for the applicant
- (c) Self-reported total gross food sales for the prior year
- (d) Recent State of Rhode Island Quarterly Reconciling for Monthly Filers Form (Form T- 204M-R)
- (e) Recent State of Rhode Island “Sales and Use Tax Return Annual Reconciliation” or “Profit Corporation Annual Report”
- (f) Projected WIC food sales based on WIC’s analysis of peer group food redemption profiles.

A new vendor with no food sales history or SNAP sales history will be considered a potentially A50%V for the first six months of WIC authorization. A new branch of a national chain grocery store will not be considered as a potential A50%V.

During this six month period of time, the potential A50%V’s redemptions will be monitored to ensure their reimbursements are no greater than the statewide average price of their peer group, or the maximum allowed price for their peer group (whichever is the lower amount).

The RIDOH WIC Program does not authorize A50%V. Newly authorized stores identified as potential A50%V, will be given a six-month probationary period. During this time, monthly redemption data will be reviewed to identify if, in fact, the probationary WIC vendor is an A50%V. If this is confirmed, they will be terminated from the WIC Program.

- H. Vendors must be in good standing with all other RIDOH units, such as Food Protection and Sanitation and Board of Medical Licensure & Discipline, as applicable.
- I. Applicants must document and provide proof upon request that infant formula available in their store has been purchased from the RIDOH WIC Authorized List of Infant Formula Providers. In addition, they must agree to only purchase infant formula from sources on this WIC authorized list.

The State maintains a list of State-licensed wholesalers, distributors, retailers and infant formula manufacturers registered with the Food and Drug Administration (FDA). WIC-authorized retail vendors are required to purchase infants formula only from sources on the list.

- J. 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 completed, WIC Price Sheet, proof of ownership, photo identification
  2. USDA active authorization (required for grocery applicants)
  3. No debarment or suspension
  3. Prior USDA and prior WIC compliance
  4. Food Protection Licensure
  5. Acceptable prices
  6. No potential for risk
- K. If the vendor is acceptable according to the above criteria and if openings exist in accordance with section 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, eWIC readiness, willingness to cooperate in vendor monitoring, willingness to fulfill obligations of the Vendor Participation Agreement and prices.
- L. 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.
- M. The grocer applicant must stock a variety of staple foods for sale including fresh, frozen and/or canned fruits and vegetables, fresh, frozen and/or canned meats, dairy products, and grain products such as bread, rice and pasta and 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, baby foods, beans, peanut butter, fruits and vegetables, whole grains, canned fish, yogurt and infant cereal. For the categories of milk and eggs, two types are preferred but not required. Contract brands are required for baby foods, formula and Infant cereal.

Stores authorized to redeem benefits for Special Infant Formula must maintain the minimum inventory for such products.
    - (b) For a registered pharmacy, the WIC-Approved Food groups are exempt formulas and medical foods. The pharmacy is not allowed to accept WIC benefits for standard infant formulas or food items.
    - (c) The registered pharmacy shall obtain and make available within two working days any exempt formula or medical foods requested by a WIC shopper and specified on a WIC benefit list in the amount, form, size and type specified on at least one months' worth of benefits, 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 food benefits to packing, but where this is not possible, Vendor must break package/case to complete the amount specified on the benefit list.

(d) Stores with three or less cash registers are not required to carry contract Soy formula as part of minimum inventory. Those stores shall obtain and make available within two working days, the contract soy formula requested by a WIC shopper.

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.
3. Acceptance or denial of grocers will be predicated on a full consideration of the variety of staple foods, 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, eWIC readiness, 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.

Acceptance or denial of pharmacies will be predicated on a full consideration of the 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.

O. 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.

- P. 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 from August to October at the discretion of the Program Chief to concentrate resources on the Agreement re-application process.



- Q. The RIDOH 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 RIDOH WIC Program, other information received or acquired by RIDOH 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 \$25 of WIC transactions in any one-month period on two or more occasions during the consecutive 12-month period preceding the re-application review.
    - b. If the vendor's prices are or have been in excess of the maximum price standard (Policy V-10) twice 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.
    - d. If the vendor is determined to be in A50%V category for last two quarters.
  2. Neither the SNAP decision to impose a Civil Money Penalty (CMP) nor the RIDOH WIC Program's participant access determination shall be subject to administrative review under the WIC Program.
  3. At the sole discretion of RIDOH WIC PROGRAM, approximately one half of vendors not designated as potential for risk may have their Agreements extended for the Federal Fiscal Year. 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 RIDOH WIC Program's sole discretion, new Vendors may upon review have their contracts extended for an additional year.
- R. Applicant Training
1. Prior to approval/re-approval, all applicant vendors must undergo Vendor Training under the auspices of RIDOH 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, eWIC transaction procedures, excessive price policies, and other Program vendor policies and procedures as are normally a part of formal vendor training sessions. RIDOH WIC Program may add such other topics it deems necessary.
  2. In general, these training sessions will take place at the RIDOH WIC Program, although RIDOH WIC Program has the prerogative to designate other locations where it deems training would be more efficient or effective.

3. Vendor application requires training and passing exam score in order to be approved as new vendor.
- S. Maximum Number of Authorized Vendors
1. As a rule, the number of authorized retail grocer vendors may not exceed 250 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 RIDOH 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 RIDOH WIC Program shall consider the following priority system, which is based on the relative price, ability to meet minimum inventory requirements, 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 section 2, above, and section 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.

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.
- T. 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 by requesting an appeal within 15 days of the date of the notice. 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.
- U. Special Authorization
1. The RIDOH 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 RIDOH 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

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Program may make such arrangements for the participant to obtain such foods through specialized providers (e.g., low priced retailers, hospital clinics or pharmacies, RIDOH WIC Program center clinics, RIDOH WIC Program, Formula warehouse, manufacturers, wholesalers/resellers etc.), based on price and accessibility.

6. The RIDOH 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 RIDOH WIC Program analysis.
7. The RIDOH WIC Program may authorize a retail grocer to transact for a special formula product designated by the RIDOH 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. 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 RIDOH WIC Program.
8. The RIDOH 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, RIDOH WIC Program center clinics, RIDOH WIC Program, manufacturers, Formula warehouse etc.), based on price and accessibility. The foods would include, but not be limited to, specialty low volume formula.

**Policy V-2: IDENTIFICATION OF POTENTIAL FOR RISK VENDORS**

## 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:

## V. 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 identifiable quantitative criteria:

- High or disproportionate volume,
  - Questionable pricing patterns,
  - High cost of redeemed food items,
  - Sanction points assigned to vendor for violations of WIC rules.
- B. A history of errors, violations, warnings, notices or sanctions related to any USDA Program, including imposition of a SNAP Civil Money Penalty or bond requirement for approval to accept SNAP 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:
- a. The business, the operation thereof or the use of the business premises (including violations of laws or rules pertaining to food, RIDOH WIC Program and sanitation requirements, weights and measures, pricing, packaging, consumer protection, lottery and the like); or to
  - b. Criminal behavior related to violence, weapons or illicit drugs or to threat of or committing physical violence; or
  - c. 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
  - d. Where evidence exists of a likelihood of such behavior, actions or violations.
- D. High or other questionable prices or charges.
- E. Errors in eWIC transaction and redemption practices.
- 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 RIDOH WIC Program, or the US 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 RIDOH WIC Program, unless all RIDOH 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. 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 eWIC transaction procedures, investigation and other methods.
- A. If review of redeemed food items (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 Supplemental Nutrition Assistance 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 RIDOH 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.

**Policy 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 RIDOH WIC Program, shall attend a vendor training at a time and place designated by RIDOH WIC Program. Such training shall usually be at the RIDOH WIC Program, although another location may be designated.  
  
Online Vendor Application training and passing exam score is required for new applicants.
- C. A vendor monitoring staff person will also visit the store to further explain the Program. This includes eWIC transaction and 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 RIDOH WIC Program, vendors shall be required to attend training sessions at the RIDOH 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.
- 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 RIDOH WIC Program. Vendors are required to maintain a file, book, or other readily accessible compilation of such notices.



**Policy V-4: VENDOR COMPLIANCE, Violations and Sanctions**

## GOAL

To ensure vendor compliance through a policy which provides the RIDOH 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

Potential high-risk vendors will be identified according to Policy 3. Based on that Policy's outlined criteria, authorized high-risk vendors will be ranked. Based on this prioritization, those ranked at highest risk will be investigated prior to those with a lower risk ranking. At a minimum, Compliance Investigations will be conducted at 10% of WIC authorized vendors on an annual basis, based on this prioritization.

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

The RIDOH 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 RIDOH 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 vendor under review and any geographic barriers to using such other vendors.

If the RIDOH WIC Program determines that a disqualification would result in inadequate participant access, then the RIDOH 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% (0.10), 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 \$11,000 for each violation, and provided further that the civil money penalty in lieu of permanent disqualification shall be \$11,000. If multiple violations are revealed by a single investigation, the total civil money penalty shall not exceed \$49,000.

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 RIDOH 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 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 RIDOH WIC Program shall double the sanction for the second violation. Civil money penalties may only be doubled up to the previously noted \$11,000 / \$49,000 limits.

The State will notify vendors of initial violation, for violations that require a pattern of occurrences in order to impose a sanction, prior to documenting another violation. However, this notice may be waived if it is determined it would compromise an investigation

The State agency sanctions may no longer be based on a single violation. A pattern of violation incidences must be established in order to impose a State agency sanction.

## II. Violations and Sanctions

WIC Program violations shall be determined by investigation, which includes on-site monitoring, transaction audits, inventory audits and undercover compliance buys conducted by the WIC Program, USDA staff, or their designees. The intent to commit a violation versus inadvertent human error is not a distinction that the WIC Program must establish in order to impose sanctions. Sanctions are imposed in order to protect the integrity and the nutritional goals of the WIC Program.

A point system to record vendor abuses has been developed. Each instance of a violation of Program rules has a set point value and a specific time period during which the points will remain on a vendor's record.

### A. USDA Mandatory Sanctions (WIC/ SNAP Vendor Disqualification Rule 7 CFR 246.12)

Mandatory Sanctions are those sanctions imposed due to non-compliance with federally mandated policies and procedures regarding the WIC Program, as designated by the USDA. Should a vendor be found in non-compliance of any of these policies, the vendor shall be immediately disqualified from the WIC Program.

“Incidence” refers to one “positive” compliance buy, or, in some instances below, to any single occurrence of a violation. “Number of incidences or occurrences” means the number of individual WIC items that result in a violation(s) during an investigation.

“Pattern” is defined as a minimum of two violations occurring within a six-month period.

**1. Class 1 Violations - Permanent Disqualification (Federal, Mandatory)**a) Conviction for Trafficking / Illegal Sales

A vendor convicted in court for the crime of trafficking in food instruments or for selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802) in exchange for WIC benefits will be **permanently disqualified**, effective on the date of receipt of the notice of disqualification.

**2. Class 2 Violations - Six Year Disqualification (Federal, Mandatory)**a) Buying or Selling Food Instruments for Cash (Trafficking) and Illegal Sales

The State Agency will disqualify a vendor for six years for one incidence of trafficking or 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 WIC benefits.

**3. Class 3 Violations - Three Year Disqualification (Federal, Mandatory)**a) Sales of Alcohol or Tobacco in Exchange for Food Instruments

The State Agency will disqualify a vendor for three years for one incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC benefits.

b) Sales Exceeding Documented Inventory

The State Agency will disqualify a vendor for three years for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item for a specific period of time.

c) Charging WIC Participants More Than Other Customer or Shelf / Contract Price (Overcharging)

The State Agency will disqualify the vendor for three years for a pattern of charging WIC customers more for supplemental food than non-WIC customers or charging WIC customers more than the current shelf or contract price.

d) Unauthorized Channels

The State Agency will disqualify the vendor for three years for a pattern of receiving, transacting, and/or redeeming WIC benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person.

e) Food Not Received

The State Agency will disqualify the vendor for three years for a pattern of charging for supplemental food not received by the WIC customer.

f) Credit and Certain Non-Food Items Exchanged for Food Instruments

The State Agency will disqualify the vendor for three years for 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 by section 102 of the Controlled Substances Act (21U.S.C. 802), in exchange for WIC benefits.

**4. Class 4 Violation - One (1) Year Disqualification (Federal, Mandatory)**

a) Unauthorized Food

The State Agency will disqualify the vendor for one year for a pattern of providing unauthorized food items in exchange for WIC benefits, including charging for food provided in excess of items listed on the benefit list.

**5. Class 5 Violation - Variable Length Disqualification (Federal, Mandatory)**

a) Disqualification from the Supplemental Nutrition Assistance Program

The State Agency will disqualify a vendor, which has been disqualified from the Supplemental Nutrition Assistance Program (SNAP). The WIC disqualification will be for the same length of time as the SNAP disqualification and the WIC disqualification may begin at a later date than the SNAP disqualification.

The State Agency will disqualify a vendor who has been assessed a civil money penalty for hardship in SNAP under 7 CFR 278.6. The length of disqualification will correspond to the period for which the vendor would otherwise have been disqualified in SNAP. Such disqualification may not be imposed unless the State Agency has first determined that the disqualification would not result in inadequate participant access. If the State Agency determines that inadequate participant access would result, then neither a disqualification nor a civil money penalty in lieu of disqualification may be imposed.

The State will notify vendors of initial violations requiring a pattern of occurrences in order to improve a sanction, prior to documenting another violation. However, this notice may be waived if it is determined it would compromise an investigation.

**B. Class 6 Violations - State Agency-Established Vendor Sanctions**

The State Agency will impose sanctions, including disqualification, civil money penalties, and fines for violations in addition to those listed under USDA Mandatory Sanctions.

A point system to record vendor abuses has been developed so that each instance of a violation of Program rules has a set point value and a specific time period during which the points will remain on a vendor's record.

The State Agency will impose a civil money penalty (CMP) in lieu of disqualification if, in the determination of the State Agency, inadequate participant access would result if the vendor were disqualified.

Class A violations:

One-year disqualification shall be assessed for each occurrence of any of the following violations in this class:

- Substitution of a WIC food item for another WIC food item not listed on the WIC benefit.
- Allowing a refund or an exchange for WIC or non-WIC food items.
- Scanning a UPC codebook or reference sheet. Scanning any UPC as a substitute, replacement or otherwise not actually affixed to the actual item being purchased.
- Not allowing the WIC customer to enter their own PIN on the PIN pad.

Class B violations:

After issuance of one (1) warning letter for any violation in this class a two hundred fifty-dollar (\$250.00) fine shall be assessed for each occurrence of any of the following violations in this class. The WIC Program will not issue a warning for each separate violation. After issuance of the warning letter, upon accumulation of five (5) Class B violations within a twelve-month period, a one-year disqualification shall be imposed. The option to pay a fine shall not be available at that time.

- Not providing refunds or not paying fines by the due date as requested by the WIC Program.
- Limiting WIC customers in their choice of WIC products, (i.e. forcing a WIC customer to purchase only least expensive or store brands or the most expensive products).
- Not notifying the Rhode Island WIC Program within thirty (30) days of a conviction or civil judgement related to a lack of business integrity.
- Issuance of store credit, IOU, or similar receipt to a WIC customer for unavailable WIC product(s).

Class C violations:

After issuance of one (1) warning letter for any violation in this class, a one hundred fifty-dollar (\$150.00) fine shall be assessed for each occurrence of any of the following violations in this class. The WIC Program will not issue a warning for each separate violation. After issuance of the warning letter, upon accumulation of five (5) Class C violations within a twelve-month period, a one-year disqualification shall be imposed. The option to pay a fine shall not be available at that time.

- Allowing the sale of a WIC food item that is spoiled or is sold to WIC customers after the expiration date, “sell by”, “best if used by”, “manufacturer suggested”, or other date limiting the sale or use of the food item.
- Allowing the return of any WIC purchases other than for identical WIC food items that are damaged, spoiled, or has exceeded its “sell by”, “best if used by”, “manufacturer suggested”, or other date limiting the sale or use of the food.

Class D violations:

After issuance of one (1) warning letter for any violation in this class, a one hundred dollar (\$100.00) fine shall be assessed for each occurrence of any of the following violations in this class. The WIC Program  
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will not issue a warning for each separate violation. After issuance of the warning letter, upon accumulation of five (5) Class D violations within a twelve- month period, a six-month disqualification shall be imposed. The option to pay a fine shall not be available at that time.

- Not providing savings to WIC customers through coupons or store offered promotions.
- Failure to provide any requested WIC approved food item within forty-eight (48) hours that is on the participant's benefits list
- Failure to provide a receipt at the end of the transaction showing the date of the transaction, product(s) purchased, and the remaining balance of available benefits.
- Failure to cooperate with Federal, State, and Local WIC Program personnel during announced and unannounced on-site vendor monitoring.

The WIC Program shall determine and document in the vendor file whether a disqualification based on state agency established sanctions would result in inadequate participant access. If the WIC Program determines that there shall be undue hardship for WIC participants if a vendor is disqualified based on a State Agency Established Sanction, the store shall be allowed to remain on the program until such time that undue hardship no longer exists. A fine of one thousand dollars (\$1,000.00) shall be paid by the vendor to continue to accept WIC benefits. A review may be requested to determine if the disqualification is warranted. At such time that the WIC Program determines that undue hardship for WIC participants no longer exists, the vendor shall be notified that the original disqualification shall be effective fifteen (15) days after receipt of the letter. The vendor may request a review for the sole purpose of arguing the issue of undue hardship for WIC participants.

A fine is payable fifteen (15) days from the receipt of the notice. If payment of the fine is not paid, only partially paid, or not timely paid, the WIC Program shall disqualify the vendor for the length of the disqualification corresponding to the violation(s) documented in the notice up to a maximum of one (1) year.

If a vendor is assessed a settlement fine, or any other monetary penalty or fee relating to a disqualification from SNAP, a WIC civil money penalty shall be assessed the vendor equal to the FNS penalty.

State agency-established sanctions do not apply to vendors that do not meet selection criteria during an authorization, re-authorization or reassessment process.

The WIC Program shall not accept voluntary withdrawal or use non-renewal of the vendor agreement as an alternative to disqualification for state-agency established sanctions.

Warnings shall remain active for three (3) years from the date of the violation for the entire term of the store's ownership.

Payments must be made with a certified bank check or money order and payable to Treasurer – State of Rhode Island, Department of Public Health. Send to:

3 Capitol Hill, Room 302, WIC Program  
Providence, Rhode Island 02908

Table 3A-1

Monitoring or Simulated Shopper Visit

<u>VIOLATION ID</u>	<u>SANCTION POINTS</u>	<u>DESCRIPTION</u>	<u>Points Retained For</u>
1	1	WIC Sign not posted	6 months
2	1	Prices not posted on shelf or foods (per item)	6 months
3	7	Minimum stock not available	1 year
4	1	Expired dates on WIC Authorized items (per item)	1 year
5	10	Evidence of discrimination	3 years
6	2	Poor sanitary conditions in store	6 months
8	2	Unauthorized brands marked as WIC approved	6 months
16	20	No Current SNAP Authorization	DQ
17	5	Violation of Sanitary Code	1 year
20	20	Violation of Civil Rights	DQ

<b><u>VIOLATION ID</u></b>	<b><u>SANCTION POINTS</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>Points Retained For</u></b>
1	1	Expired dates on WIC Authorized items (per item)	1 years
2	1	WIC Food Prices not posted (per item)	6 months
3	1	WIC Sign is not posted	6 months
4	2	Failure to cooperate with Federal, State, and Local WIC Program personnel during announced and unannounced on-site vendor monitoring	1 year
5	2	Discourteous to participants	1 year
6	2	Refuses to accept manufacturer coupons or honor promotions for WIC foods	6 months
7	2	Does not maintain a clean and sanitary store	6 months
8	2	Failure to provide a receipt at the end of the transaction	6 months
9	5	Fail to notify WIC Program within 30 days of a conviction or civil judgement related to a lack of business integrity	1 year
10	5	Issues store credit, IOU, or similar receipt to a Participant for unavailable WIC product(s)	18 months
11	5	Limiting participants in their choice of WIC products (i.e. forcing a WIC customer to purchase only least expensive or store brands or the most expensive products)	1 year
12	5	Not providing refunds or not paying fines by the due date	1 year
13	5	Fails to attend state Vendor training	1 year
14	5	Fails to maintain store business hours as specified on application	6 months
15	10	Does not allow Participant to enter their own PIN on the PIN Pad	18 months
16	10	Scans a UPC codebook or reference sheet (Scans any UPC as a substitute, replacement or otherwise not actually affixed to the actual item being purchased)	1 year
17	10	Substitute a WIC food item for another WIC food item not listed on the WIC benefit	1 year
18	10	Allows a refund or an exchange for WIC or non-WIC food items	1 year
19	10	Discriminates against WIC participants (protected classes)	2 years
20	10	Fails to maintain minimum stock. (Pharmacies fail to provide special formula within 48 hours)	1 year
21	10	Fails to provide evidence of proof of purchase (invoices) of WIC foods	2 years
22	10	Provided Disallowed Incentive Item to WIC customer	1 year
23	10	Purchase infant formula from unauthorized sources	1 year
24	10	Seeks restitution from participants for WIC transactions not paid by the State agency or subject to non-payment by the State agency	1 year



<i>COMPLIANCE VISIT VIOLATIONS (Federal) Table 3A-3</i>			
<b><i>VIOLATION ID</i></b>	<b><i>Number of Incidences, Occurrences or Pattern</i></b>	<b><i>DESCRIPTION of Violation</i></b>	<b><i>Length of Disqualification</i></b>
1	One	Judicial conviction of trafficking in WIC benefits or selling firearms, ammunition, explosives or controlled substances in exchange for WIC benefits.	Permanent
2	One	Administrative finding of buying or selling WIC benefits for cash (trafficking) or selling firearms, ammunition, explosives or controlled substances in exchange for WIC benefits.	6 Years
3	One	Sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC benefits.	3 Years
4	Shortfall of one WIC food in three consecutive months or shortfall of three or more WIC foods in one month.	Claiming reimbursement for the sale of an amount of a specific WIC food that exceeds the store's documented inventory of that WIC food for a specific period of time.	3 Years
5	Three or more	Overcharging on WIC benefits.	3 Years
6	Three or more	Receiving, transacting and/or redeeming WIC benefits outside of authorized channels, including the use of an unauthorized vendor and/or unauthorized person.	3 Years
7	Three or more	Charging for WIC food not received by the WIC participant.	3 Years
8	Three or more	Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances in exchange for WIC benefits.	3 Years
9	Three or more	Providing unauthorized food items in exchange for WIC benefits, including charging for WIC food provided in excess of those listed on the WIC benefits.	1 Year
10	One	Disqualification from the Supplemental Nutrition Assistance Program (SNAP) or a civil money penalty in lieu of a SNAP disqualification when adequate WIC participant access exists.	Same as SNAP, But does not need to be concurrent.

**Other Disqualifications**

Additional items that can lead to or extend a disqualification period are:

- (1) The State Agency may disqualify a vendor that has been assessed a civil money penalty in lieu of disqualification by the Supplemental Nutrition Assistance Program for a mandatory vendor sanction.
- (2) If vendor derives more than 50 percent of their annual food sales revenue from WIC foods (A50%V) and provides incentive items or other free merchandise, except food or merchandise of nominal value, to Program participants or customers, unless the vendor provides the State agency with proof that the vendor obtained the incentive items or merchandise at no cost, the State agency must disqualify a vendor for one year for a pattern of an A50%V providing prohibited incentive items to customers.

A state agency may terminate an A50%V if a vendor falls under A50%V category in the last two quarters of a fiscal year.

**C. Fiscal Claims Against Vendors**

The RIDOH, WIC Program may make monetary claims against vendors that have committed certain types of redemption abuse in addition to any other sanctions applied against such vendors. Those include but are not limited to:

- Inventory audits when a vendor cannot support all of its redemptions.
- Any overcharges or errors made on WIC transactions discovered during undercover compliance buys.
- Transaction audit means a review of a vendor's redemptions to determine if the vendor has overcharged the WIC Program.

Payment of vendor claims does not preclude the WIC Program from assessing sanctions associated with the violations. Payment plans may be requested for an amount of \$500 or more on a case by case basis determined by the WIC Program.

When a review is requested by the vendor with respect to the monetary claim, the time period for payment shall not begin until after the date of the decision if the WIC Program's action is upheld.

All monetary claims must be paid within 30 days of the date of the notice. All remittances must be made with a certified bank check or money order and payable to Treasurer – State of Rhode Island, Department of Health. Send to:

3 Capitol Hill, Room 302, WIC Program  
Providence, Rhode Island 02908

The WIC Program may disqualify a vendor for failure to pay a monetary claim within the required period of time.

**D. 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 RIDOH 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.

**E. Concurrent violations**

Should a site visit, a complaint, investigation and/or an analysis determine two or more concurrent Class 1, 2, 3, 4 or 5 violations of WIC Program rules, the prescribed penalties as delineated above shall be to assess the most severe violation. Class 5 (state violations) shall be determined by the accumulation of sanction points.

- F.** For all Mandatory sanctions, the RIDOH 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.

**III. GENERAL STATE CONDITIONS**

1. The RIDOH 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 be less than one year for all of the violations investigated as part of a single investigation.
3. A civil money penalty or fine shall not exceed \$11,000 for each violation, and shall not exceed \$46,000 for all of the violations investigated as part of a single investigation.
4. The RIDOH 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 RIDOH 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 RIDOH WIC Program shall not impose a civil money penalty based on an SNAP civil money penalty.

**IV. ADMINISTRATIVE ACTION****A. Evaluating the Violation and Sanction Term**

When a vendor has committed more than one Class 1 through 5 violations 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.

Penalties based on Class 6 violations are determined by the total number of sanction points accumulated.

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

1. Whether the violation was an error committed or omitted in the performance of required procedural activities.
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.
4. The extent of vendor education.
5. The extent of potential risk the practice holds for compromising the RIDOH WIC Program/nutritional effectiveness of the Program and/or its fiscal integrity.
6. Except for Class 1 through 5 violations that carry 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 section C, below).
9. Any other factors relevant to the efficient and effective administration of the Program.
10. 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.

**B. Sanction Steps**

1. Initial discovery takes place and if there is a problem, a notice of violation will be issued, sanction points will be assessed and a warning letter issued. The warning letter will include a time frame in which compliance is expected. An effort is made to provide educational assistance to the vendor to correct the problem.
2. The vendor shall develop a plan of correction acceptable to RIDOH WIC PROGRAM at this time. The vendor is made aware that a subsequent review will be made to see if the problem has been resolved.
3. The State will notify vendors of initial violations requiring a pattern of occurrences in order to impose a sanction, prior to documenting another violation. However, this notice may be

waived if it is determined it would compromise an investigation

4. Sufficient or insufficient compliance by the vendor is determined at the end of the time period stated in the final warning.
5. If the subsequent review reveals that a problem still exists, sanction points will again be assessed. Based on the number of sanction points accumulated the appropriate sanction will be applied.
6. Based on the number of sanction points, the vendor may be disqualified from participation as a vendor.
7. The disqualification is implemented by notice to the vendor, and by notifying the eWIC processor not to honor WIC transactions 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.

8. Disqualification of one year or less - At the end of the disqualification period, the vendor must notify the RIDOH WIC Program that the vendor is in compliance with all requirements. Upon verification of vendor compliance by the RIDOH 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.

9. Disqualification of more than one year - The vendor's Participation Agreement shall be terminated, and the SNAP Program Field Office notified of such. The vendor shall not be reinstated until after he reapplies and is found by the RIDOH 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 SNAP disqualification up to the same period and not subject to SNAP administrative and judicial review (Section 278.6(e)(8) of SNAP Regulations).
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 RIDOH 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 vendor under review 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 the 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 RIDOH WIC Program and nutritional benefits and the integrity of the Program itself are severely compromised.

If the RIDOH WIC Program determines that a disqualification would result in inadequate participant access, then the RIDOH 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% (0.10), 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 \$11,000 for each violation, and provided further that the civil money penalty in lieu of permanent disqualification shall be \$11,000. If multiple violations are revealed by a single investigation, the total civil money penalty shall not exceed \$46,000.

- 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 RIDOH 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 RIDOH WIC Program determines that the vendor has committed multiple violations (which may include violations subject to RIDOH WIC Program sanctions), the RIDOH WIC Program shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the RIDOH WIC Program shall include all violations in the notice of sanction. If a mandatory sanction is not upheld on appeal, then the RIDOH WIC Program may impose a RIDOH 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 RIDOH WIC Program shall double the sanction for the second violation. Civil money penalties may only be doubled up to the previously noted \$11,000 / \$46,000 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 RIDOH WIC Program shall double the sanction for the third violation. The RIDOH 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 RIDOH WIC Program shall notify the vendor of initial incidents of violation unless providing such notice will compromise an ongoing investigation.

**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 RIDOH 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 RIDOH WIC Program’s participant access determination for a mandatory or RIDOH WIC Program violation shall not be subject to administrative appeal.
- 2. Disqualification of a vendor from SNAP 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 SNAP 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 SNAP decision to impose the civil money penalty.

- 3 Disqualification from the WIC Program may result in disqualification as a retailer in the SNAP Program. Such disqualification may not be subject to administrative or judicial review under the Supplemental Nutrition Assistance 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 RIDOH WIC Program may take adverse action against the vendor 15 days after the RIDOH WIC Program provides the vendor with written notice.

When a food vendor's participation is adversely affected by any other RIDOH WIC Program action it may appeal the action under the provisions of policy A-2 Administrative Appeal to RIDOH 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 RIDOH 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 RIDOH WIC Program may at its option offer the opportunity for a vendor so affected to meet with the RIDOH 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 RIDOH WIC Program.

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

H. Administrative Review Procedure

- Vendors will be provided with written notification whenever an adverse action is taken. The notification will include the procedure to follow to obtain an administrative review, the time period in which to appeal, and the cause for and the effective date of the action. When a vendor is disqualified due in whole or in part to a Federal Mandatory Sanction violation numbered 1 through 10 in Section 3 Appendix under Vendor Policies, Table 3A-1, such notification shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in



the Special Supplemental Nutrition Assistance Program. Such reciprocal disqualification by the SNAP may not be subject to administrative or judicial review.”

- Requests for review must be received by the department within 15 days of receipt of the adverse action letter.
- A vendor that appeals an adverse action for non-selection or disqualification will not be permitted to continue Program operations while its appeal is in process.
- The vendor will be provided with adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.
- The vendor will have up to two opportunities to reschedule the administrative review date upon specific written request.
- The vendor will have the opportunity to present its case and to cross-examine adverse witnesses. When necessary to protect the identity of WIC Program investigators, such examination may be conducted behind a protective screen or other device to conceal the investigator’s face and body.
- The vendor will have the opportunity to be represented by counsel at any review proceeding.
- Prior to the review, the vendor will have an opportunity to examine the evidence upon which the WIC Program’s action is based. The review record will be sent to the vendor at least 10 days prior to the review date.
- An impartial Hearing officer will be assigned to the appeal. The Hearing officer’s determination is based solely on whether the WIC Program has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the evidence presented at the review.
- Written notification of the review decision, including the basis for the decision, will be issued within 90 days from the date of receipt of a vendor’s request for an administrative review. This timeframe is only an administrative requirement for the State agency and does not provide a basis for overturning the WIC Program’s adverse action if a decision is not made within the specified timeframe.
- If the adverse action under review has not already taken effect, the State agency shall make the action effective on the date of receipt of the final decision by the vendor.
- If the final decision upholds the adverse action against the vendor, the State agency shall inform the vendor that it may be able to pursue judicial review of the decision.

**Policy 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
  - A. The vendor monitoring staff shall regularly schedule monitoring visits each week.
    1. Primary emphasis shall be on 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.
  - C. If needed, review WIC-related inventory, pricing, redemption, transactions 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.
  - E. Any problems noted shall be discussed with the vendor at the conclusion of the visit. The Vendor and the WIC representative shall develop a plan of correction. A time frame shall be stipulated for compliance.
  - F. Any complaints about a particular vendor shall be discussed during any monitoring contact.
  - G. Any failure to comply shall be noted and brought to the attention of the Assistant RIDOH WIC Program Administrator.
  - H. Each day, the Assistant RIDOH WIC Program Administrator shall review all vendor contact record forms and discuss necessary follow-up with Monitoring Staff.
  - I. All forms shall be retained in the vendor's file.
  - J. 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.

Applicant site visits may be curtailed during August, September and October at the

discretion of the Program Chief to concentrate resources on the Agreement renewal/reapplication process.

K. Documentation

1. All visits shall be noted on the Vendor Monitoring Log 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.

2. On the first working day of each month, total that month's visits.

II. Additional Investigations

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

1. Review of WIC transactions.
2. Interviews or surveys of participants, local agency staff, other vendors, or other parties.
3. Follow-up on-site visits.
4. Compliance investigations.
5. Review of minimum stock.

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

During routine monitoring the vendor staff will review the following:

- Minimum stock requirements: Minimum required stock amounts must be available at the store at all the times.
- Non-WIC staple food stock: The vendor is required to carry Non-WIC staple food items along with WIC approved food items.
- Training issues: State staff will provide basic training at site as needed during a visit.
- Formula: State staff will make sure formula location is accessible to WIC clients and will also cross reference formula receipts with the authorized wholesaler list.
- Prices: State staff will make sure food prices are posted and will compare prices of WIC items to similar non-WIC items to see if WIC-authorized items have inflated prices.

**Policy 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 RIDOH WIC Client Services Unit. 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 Client Services Unit 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 in Vendor Record.
  - 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.

**Policy 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 non-allowable food items to purchase with WIC benefits, he should:
  1. Ask a participant to exchange non-allowable 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 non-allowable food items she/he was trying to purchase.
  3. Call the RIDOH WIC Program and relate the incident as it occurred.
- B. At this point the RIDOH WIC Program 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 RIDOH 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 appointment, 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 benefits; 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 violations will be handled in a similar manner.

**Policy 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 grocery vendors need to maintain a minimum inventory based on the WIC-39G requirements, while WIC pharmacy vendors need to maintain a minimum inventory based on the WIC –39P requirements.
- B. The minimum inventory must be comprised only of foods designated by the RIDOH WIC Program as WIC ALLOWED or Contract Brand.
- C. The RIDOH 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 RIDOH 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, they are only authorized for specialty formulas.
- 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.

**Policy V-10: PRICE STANDARDS AND PEER GROUP CLASSIFICATIONS**

Goal

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

Policy

Excessive price standards for vendors are based upon comparative prices of each vendor in relation to prices charged to WIC by other WIC vendors in the same peer group. It is the responsibility of the vendor to set prices that are not unduly higher than prices charged to WIC by other vendors in the same peer group. An evaluation of prices shows that geography does not play a significant role in price variation across the state. RI WIC excludes prices from above- 50%-vendors from the calculation of average/competitive, and maximum price calculations.

Procedure

- A. Peer Group Classification of stores - WIC vendors shall be classified according to the total value of yearly food sales for grocery vendors (WIC and non-WIC foods) and the number of stores in the chain (if a local vs. national chain). Stores will be grouped as follows:

Type of Business

Grocery Vendors

\*Total value of yearly food sales for grocery vendors (WIC and non-WIC)

Peer Group 1  
Current Above 50% Stores

Vendors whose total WIC sales comprise more than 50% of their total food sales. (RI does not approve A50V)

Peer Group 2  
Small Grocers

Less than \$500,000\*  
1-2 cash registers

Peer Group 3  
Medium Grocers

\$500,000 up to \$3,000,000\* 3-5 cash registers

Peer Group 4  
Small Local Chain or Large Independent Store

\$3,000,001 to \$20,000,000\*  
6 + cash registers

Peer Group 5  
Large National Chain / Extra Large Independent Store

Over \$20,000,001\*



Peer Group 6  
Commissary (military)

Peer Group 7  
Farmers Market

Peer Group 8 Independent  
Pharmacy

Peer Group 9  
National Chain Pharmacy

Peer Group 10  
Potential Above 50% Stores

New Stores with no data to analyze

Peer Group 11  
Large National Chain with Pharmacy

Rhode Island vendor peer groups' classifications are established based on a combination of factors such as Vendor size, total volume, food and non-food sales, WIC volume, square footage of store, number of cash registers, Type of store etc.

*B. Competitive Pricing of WIC Allowed Foods*

Prices reported, posted or charged for WIC foods shall not be excessive, as compared with those vendors within their peer group, or of other Rhode Island WIC vendors.

1. The State WIC Office collects prices through vendor redemptions. Prices charged should be fair and competitive to the store type. Prices charged by a vendor that are higher than the peer group average will be reduced to the not-to-exceed (NTE) amount during the WIC transaction.
2. Never charge the WIC Program for products not actually purchased and received by the WIC customer.
3. Never charge WIC customers more for WIC products than non-WIC customers.
4. Never collect sales tax on WIC products purchased.
5. Never charge WIC participant a surcharge or a fee for making purchases with the WIC card.
6. Never seek restitution from WIC customers for benefits not paid by the RIDOH, WIC Program.
7. All vendor prices must meet the WIC Program's price limitations.
8. Never charge a WIC participants money for approved WIC foods obtained with a WIC benefits, except when the purchase price for fruits and vegetables exceeds the maximum benefit allowed.

9. A WIC participant should be offered same courtesies offered to other customers. Vendor's must accept manufacturer's coupons from a WIC participant and allow other store promotions such as store savings cards, "buy one, get one free" offers, and any other types of sales to a WIC customer if these are being offered to other customers. Deduct the savings before completing the WIC transaction.
10. WIC transactions must be made through the store's business bank account that is reported to Conduent or the store's third-party processor. Report any change of bank or bank account in writing to Conduent or the third-party processor.

#### Not-to-exceed Prices (NTE)

1. A Not-to-exceed price (NTE) is established for each WIC Approved food item for each peer group. The NTE is based on each peer group redemption plus a factor to reflect fluctuations in the market place.
2. Periodically, vendor's redemption patterns will be analyzed for the rate of redemptions near or at the NTE. Those vendors with a pattern of inflated food prices that is higher than other retailers / peers will be given an opportunity to reduce their prices. If they choose not to reduce their prices, the store will not be authorized by WIC, and rejected because of high prices.
3. For applicants, the determination of excessive pricing may be based upon their submitted WIC Price Sheet, vendor redemptions and/or other methods of estimating or projecting the applicant's charges for WIC foods if authorized.

The federal regulations require state agencies to collect vendor applicant's current shelf price at the time of application. The intent of this provision is to ensure that all vendor applicants, whether new applicants or current vendors, submit the same type of price information so that the RIDOH WIC may objectively consider the prices a vendor applicant charges as compare to other vendor applicants. The RIDOH WIC program requires that all vendors participating in the WIC program submit a price list at the time of application and reapplication.

#### 3. Incentives

- A. WIC does not allow vendors to provide incentive items or other free merchandise (except food or merchandise of nominal value) to WIC shoppers unless the vendor can provide proof that the incentive items were obtained at no cost to the vendor.
- B. Acceptable Incentive Items would be:
  - a. Merchandise obtained at no cost to the vendor and provided to participants without charge, or sold to participants at or above cost (subject to documentation),
  - b. Food or merchandise of nominal value (i.e., having a per item cost of less than \$2.00)
  - c. Food sales and specials which:
    - i. Involve no cost, or only a nominal cost for the vendor
    - ii. Do not result in a charge to WIC program for foods in excess of the foods listed on the food benefit list.
- C. This applies to for-profit vendors for which more than 50% of their annual food sales result from WIC sales (i.e., "Above 50% Vendors") or new vendor applicants likely to be "Above 50% Vendors".

**Policy V-12: CHANGE OF VENDOR OWNERSHIP**

## 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 if 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 RIDOH WIC Program all information requested by the RIDOH WIC Program necessary for the proper review of the transaction. All information provided by the retail store at the request of the RIDOH 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 RIDOH 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 RIDOH 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 RIDOH WIC Program may review the following circumstances regarding the transaction to justify the denial:
  - (a) Under capitalization;
  - (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 pre- notification 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 to 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 RIDOH WIC Program vendor unit of reported/identified change/modification of retail store operation and/or ownership, as soon as identified.
- B. The RIDOH WIC Program will determine appropriate status of change/modification of operation/ownership based on this policy.
- C. When the RIDOH WIC Program is informed that an authorized WIC retail store plans to change operation/ownership, as described in D, above, and the RIDOH WIC Program determines Inadequate Participant Access (not inconvenience) would occur, the RIDOH 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 RIDOH WIC Program will review the prospective store's application package in an expedited manner. If the prospective store-owner's application package is approved by the RIDOH 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 RIDOH WIC Program will complete follow-up action as required.

**Policy V-13: RI WIC LICENSED / AUTHORIZED INFANT FORMULA SUPPLIERS**

Goal: To ensure that infant formula purchased by WIC participants in WIC authorized stores has been obtained from licensed / authorized sources.

- I. An annually updated listing of licensed infant formula providers will be maintained by the State WIC Office. This listing will be comprised of:
  - A. A listing of the Primary Infant Formula Suppliers:
    1. This “Primary List” is generated from the WIC Vendor Application forms. Vendors are required to list the source(s) of their infant formulas. The source is compared to the retail and wholesale food vendors currently licensed in Rhode Island by RIDOH. If the source is actively licensed in Rhode Island, they are considered a licensed / authorized infant formula supplier for WIC vendors and added to the Primary List.
      - a) The Primary List will be provided to each WIC vendor on an annual basis.
  - B. A current Comprehensive listing of RIDOH licensed retail and wholesale food vendors.
    1. The “Comprehensive List” is composed of all retail sales and wholesale distributors currently licensed by RIDOH Division of Food Protection.
      - a) The Comprehensive listing will be available upon request.
- II. All WIC Vendor Applicants must demonstrate that the infant formula sold to WIC participants has been provided by an approved infant formula supplier on the above lists.

WIC VENDOR POLICIES - APPENDIX H - GLOSSARY

**Adverse action** means a denial of authorization, termination, disqualification or imposition of a fine or civil money penalty against a vendor for any violation found during monitoring, compliance investigation, inventory audit or reassessment.

**APL** means the approved product listing that contains all WIC approved products allowed to be purchased with WIC benefits.

**Change of ownership** means a transfer of more than 50% of the interest in a vendor's business entity within a one-year period or a change in business entities except for a change from sole proprietorship to a single-member limited liability company or single-shareholder corporation where the sole proprietor is the member or shareholder and when there is a change from one entity to another, e.g., a corporation to a limited liability company when the business retains the same federal tax identification number.

**Change of location** means an authorized WIC vendor, under the same ownership and same tax ID number, relocates the business. If the distance moved is greater than one mile, the agreement will be terminated.

**Compliance buy** means a covert, on-site investigation in which a representative of the Program poses as a WIC customer and transacts one or more WIC benefits, and does not reveal during the visit that he or she is a Program representative.

**Days** mean calendar days. If a "due date" falls on a State holiday or weekend, the due date is the next business day.

**Disqualification** means the act of ending the authorization of a vendor, whether as a punitive sanction or for administrative reasons.

**EBT (Electronic Benefits Transfer) or eWIC** means a method that permits electronic access to WIC food benefits using a card.

**EBT or eWIC Capable** means the WIC vendor demonstrates their cash register system or payment equipment can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete eWIC purchase.

**Equipment**

**Multi-function equipment** (Integrated cash register systems) means Point-of Sale equipment obtained by a WIC vendor through commercial suppliers, which is capable of supporting WIC EBT and other payment tender types.

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

**Food sales** means sales of all foods, based on all payment methods that are eligible items under SNAP. These include breads and cereals, dairy products, fruits and vegetables, meat, fish, and poultry, as well as non-alcoholic beverages, snack foods, soft drinks, candy, ice, and seeds and plants intended to grow food.

**High risk vendor** means a vendor identified as having a high probability of committing a vendor violation

through application of the criteria established in federal or state regulations.

**Inventory audit** means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of WIC food items to provide participants the quantities specified on WIC benefits that have been redeemed by the vendor during a given period of time.

**Investigation** means the use of on-site monitoring, transaction audits, inventory audits, and undercover compliance buys to determine if a vendor is committing Program violations. An undercover compliance investigation is considered complete when the WIC Program determines that a sufficient number of compliance buys have been conducted to provide evidence of Program noncompliance or when two consecutive compliance buys have been conducted in which no Federal Mandatory Sanction violations are found.

**Lack of business integrity** means fraud, antitrust violation, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, receiving stolen property, making false claims, or obstruction of justice. Examples include but are not limited to liquor, cigarette or tax violations, falsifying invoices, etc.

**Maximum not to exceed (NTE) price** means the highest price at which the vendor may be paid for a food item. The maximum not to exceed prices are based on average vendor prices for WIC food items within a peer group and are used by the WIC Program to determine the reimbursement level for each food item.

**Number of incidences or occurrences** means the number of individual WIC items that result in a violation(s) during an investigation.

**On-site monitoring** means a visit from a WIC Program representative to determine compliance with program rules and procedures. Monitoring includes but is not limited to checking the types and quantities of minimum inventory items, reviewing records, observing transactions, follow up on complaints, etc.

**Peer group** means a category of vendors that are assigned based on the number of checkout lanes or cash registers, sales volume, square footage of the store. There is a total of 11 basic peer groups.

**Redemption** means the act of payment of WIC transactions according to WIC regulations and banking standards.

**Retail food delivery system** means a system in which WIC customers exchange WIC benefits for approved WIC foods at the vendor's fixed location that is covered by the WIC Vendor Agreement.

**SNAP** means The Supplemental Nutrition Assistance Program.

**Unauthorized food** means any food items or package sizes not included in the Approved Food Guide or not printed on a WIC benefit. Unauthorized food may be a WIC approved food that is substituted for a different food item that is printed on a WIC benefits list.

**Vendor** means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the WIC Program to provide authorized WIC foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity. Each store must have a single, fixed location. A vendor may be a food store, pharmacy or farmer.

**Vendor authorization** means the process by which the WIC Program assesses, selects, and enters into



agreements with stores that apply or subsequently reapply to be authorized as vendors.

**Vendor overcharge** means intentionally or unintentionally charging the WIC Program more for authorized WIC foods than is permitted under the vendor agreement.

**Vendor selection criteria** means the criteria established by the WIC Program to select individual vendors for authorization consistent with the requirements in §246.12(g)(3) and (g)(4).

**Vendor violation** means any intentional or unintentional action of a vendor's current owners, officers, managers, agent, or employees (with or without the knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the Program.

**WIC benefits for fruits and vegetables** means a WIC benefit that has a stated dollar value and is the equivalent to the cash value benefits (CVV) in the Federal Regulations that allows the purchase of all allowable fruits and vegetables.

**WIC Approved Foods** means all foods, which are approved by the WIC Program and provided to a WIC participant. Each participant's approved foods in the specific sizes allowed are listed in the CT Approved Food Guide or printed on a WIC benefit list.

**WIC participant** means anyone using an eWIC card as payment for a WIC transaction.

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- (2) fax: (202) 690-7442; or*
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).*

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