

## Violations and Sanctions

Under federal statutes and regulations and Arizona Department of Health Services policies and procedures, the Department is required to sanction contracted WIC Vendors that have violated WIC Program Federal Regulations, state statutes, the Vendor Contract, the Vendor Manual and WIC Program Policies and Procedures. The Department may sanction Vendors that have violated WIC Program requirements by imposing administrative fines, monetary claims, civil money penalties, suspensions, terminations, disqualifications, or any combination of sanctions. The Department may sanction Vendors regardless of whether the violations were intentional or unintentional. The Department may refer Vendors who commit fraud and/or abuse of the WIC Program to federal, state, or local authorities for prosecution under applicable statutes.

The Department may sanction Vendors for a combination of violations or any violations of the terms of the Vendor Contract, federal or state statutes or regulations, WIC Program Policies and Procedures, and/or other applicable statutes, rules, or regulations.

The imposition of sanctions does not exclude or replace any other applicable criminal or civil sanctions, penalties, or remedies under any federal, state, or local laws.

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

All references in this section to participants include WIC participants, parents or caretakers of infant and child participants, or proxies. All references to days or years in this document refer to calendar days or calendar years.

The Department has two levels of violations: those that result in Department sanctions and those that result in federally mandated sanctions.

**SPECIAL NOTE:** Upon the implementation of WIC Electronic Benefits Transfer (eWIC), all applicable Arizona WIC Program violations and sanctions will include purchases transacted using eWIC cards.

## Department Sanctions - Administrative and Procedural Violations

Violations 1 through 18 listed below are administrative and procedural violations. Department sanctions for administrative and procedural violations include administrative fines, termination of the Vendor Contract, and disqualification from the WIC Program or any combination of sanctions. Vendors who fail to pay a required fine will be terminated and disqualified for one (1) year.

The Department will send the Vendor a **single** warning letter after the **first** incident of an administrative or procedural violation, unless the Department, in its sole discretion, determines that a warning letter would compromise an investigation. **Subsequent incidents of an administrative or procedural violation will result in administrative fines or termination of the Vendor Contract and disqualification from the WIC Program.** The Department, in its sole discretion, may continue an investigation of a violation beyond the number of incidents necessary to impose a sanction.

An administrative or procedural violation that results in a Department sanction will remain on the Vendor's record as a violation incident for 24 calendar months from the date of that violation and may be used when determining how many incidents of that violation have occurred. If the Department is able to determine that the Vendor is no longer committing the previously sanctioned violation, then any subsequent incident of that violation will be considered an initial incident of that violation.

Except for Violation 11, if the Department determines that disqualification of the Vendor for an administrative or procedural violation would result in inadequate participant access, a civil money penalty **may** be imposed in lieu of disqualification. (See Civil Money Penalty in this section for calculation.)

<b>Violation</b>	<b>Second Incident Sanction</b>	<b>Third Incident Sanction</b>	<b>Fourth Incident Sanction and Length of Disqualification</b>
1. Accepting a food instrument that is outside valid dates, post-dated or missing a signature.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
2. Failing to verify signature on ID folder, Arizona state-issued Driver License/ID Card or Proxy form against signature on food instrument.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
3. Failing to offer program participants the same courtesies offered to other customers.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
4. Requiring identification other than the WIC ID folder, Arizona state-issued Driver License/ID Card or Proxy form to use food instruments.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
5. Failing to allow or requiring WIC participants to use coupons or other promotional specials.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
6. Failing to record the total actual price on the food instrument before obtaining the WIC participant's signature.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
7. Failing to display the current price of an authorized WIC food item on the item, shelf, or nearby sign.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.

<b>Violation</b>	<b>Second Incident Sanction</b>	<b>Third Incident Sanction</b>	<b>Fourth Incident Sanction and Length of Disqualification</b>
8. Failing to display the official Department signage for the Vendor's declared store or house brand of cow's milk, eggs, and cheese.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
9. Requiring other purchases as a condition to use WIC food instruments.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
10. Approaching, soliciting, or leaving advertisements or other promotional items for WIC applicants or participants at the WIC State agency or local agency WIC clinics.	\$100.00	\$200.00	Termination of Contract and one-year disqualification.
11. Failing to maintain required minimum stock.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
12. Collecting sales tax on a WIC food purchase.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
13. Allowing the return of food items purchased with WIC instruments or eWIC cards in exchange for food items not authorized by the WIC Program or for WIC food items not listed on the WIC participants' food instruments.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
14. Contacting WIC participants to attempt to collect funds that will not be or were not paid to the Vendor by the WIC Program.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
15. Charging WIC participants for authorized WIC foods obtained with WIC instruments.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
16. Failing to submit a WIC Food Item Declaration and Price Survey by the Department's established due dates.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
17. Allowing the purchase of less than the total amount of infant formula as specified on the instrument.	\$200.00	\$400.00	Termination of Contract and one-year disqualification.
18. Using the WIC logo or the acronym "WIC" without written approval from the Department and the USDA.	\$500.00	\$1000.00	Termination of Contract and one-year disqualification.
19. Using WIC shelf markers to identify non-WIC food items as WIC food items or having non-WIC food items identified as Point of Sale WIC food items in the store's system.	\$200	\$400	Termination of Contract and one-year disqualification

<b>Violation</b>	<b>Second Incident Sanction</b>	<b>Third Incident Sanction</b>	<b>Fourth Incident Sanction and Length of Disqualification</b>
20. Displaying for sale WIC food items, including infant formula, that are expired, spoiled or beyond their "sell by", "best if used by", or other date limiting the sale or use of food items.	\$200	\$400	Termination of Contract and one-year disqualification
21. Failing to maintain the store in a clean and sanitary manner, which includes maintaining and displaying a current health code operating permit.	\$200	\$400	Termination of Contract and one-year disqualification
22. Failing to maintain dairy cases at or below 45 F, freezer cases at or below 0 F, or meat storage cases at or below 41 F.	\$200	\$400	Termination of Contract and one-year disqualification
23. Displaying store front signage that does not match the owner name or 'doing business as' name on the Vendor's application	\$200	\$400	Termination of Contract and one-year disqualification
24. Failing to provide a receipt for each WIC purchase.	\$200	\$400	Termination of Contract and one-year disqualification

## Department Sanctions – Fraud and Abuse

Violations 1 through 12 listed below are fraud and abuse violations. The Department sanctions for fraud and abuse are termination of the Vendor Contract and disqualification from the WIC Program.

The Department will send the Vendor a **single** warning letter after the **first** incident of a fraud or abuse violation, unless the Department, in its sole discretion, determines that a warning letter would compromise an investigation.

**The Department will NOT send any additional warning letters for subsequent incidents of a fraud or abuse violation or before imposing the Department sanction.** The Department, in its sole discretion, may continue an investigation of a violation beyond the number of incidents necessary to impose a sanction.

A fraud or abuse violation that results in a Department sanction will remain on the Vendor’s record as a violation incident for 24 calendar months from the date of that violation and may be used when determining how many incidents of that violation have occurred. If the Department is able to determine that the Vendor is no longer committing the previously sanctioned violation, then any subsequent incident of that violation will be considered an initial incident of that violation.

If the Department determines that disqualification of the Vendor for fraud or abuse would result in inadequate participant access, a civil money penalty **may** be imposed in lieu of disqualification. (See Civil Money Penalty in this section for calculation.)

<b>Violation</b>	<b>Number of Incidents of the Violation that Will Result in the Indicated Sanction</b>	<b>Sanction and Length of Disqualification</b>
1. Failing to attend training as required by the Department.	Two	Termination of Contract and six-month disqualification.
2. Failing to provide access to Vendor premises and/or in any manner hindering or impeding authorized WIC personnel from conducting an on-site education, monitoring, inventory audit, or investigation visit.	Two	Termination of Contract and six-month disqualification.
3. Providing false, inconsistent, or misleading information on the WIC Food Item Declaration and Price Survey.*	Two	Termination of Contract and one-year disqualification.
4. Threatening or verbally abusing WIC participants and/or threatening or verbally abusing WIC Program personnel conducting official WIC Program business.	Two	Termination of Contract and one-year disqualification.
5. Physically abusing WIC participants and/or physically abusing WIC Program personnel conducting official WIC Program business.	Two	Termination of Contract and one-year disqualification.
6. Failing to maintain, due to suspension, revocation, or denial, a Health Code Permit or other licenses, permits, or certifications to operate a food store in the state of Arizona or the state in which the Vendor is geographically located (i.e., Utah, Nevada, or California).	Two	Termination of Contract and one-year disqualification.

<b>Violation</b>	<b>Number of Incidents of the Violation that Will Result in the Indicated Sanction</b>	<b>Sanction and Length of Disqualification</b>
7. Being assessed a civil money penalty for hardship by the SNAP.	Two	Termination of Contract and disqualification for the period of time for which the Vendor would otherwise have been disqualified by the SNAP.
8. Failing to maintain inventory records or other records required by the Department for a period of five (5) years.	Two	Termination of Contract and one-year disqualification.
9. Failing to make available to the Department, the USDA, any law enforcement agency, the Department of the Attorney General, or the Comptroller General of the United States, for inspection and audit, all food instruments or records for eWIC cards in the Vendor's possession, and all program-related records, including, but not limited to bank records, tax records and purchase and inventory records for WIC authorized foods. Records must be provided within 30 days of the written request.	Two	Termination of Contract and one-year disqualification.
10. Allowing the return of food purchased with WIC food instruments or eWIC cards in exchange for cash, credit, or non-food items.	Two	Termination of Contract and one-year disqualification.
11. Discriminating on the basis of race, color, disability (handicap), age, national origin, or gender (sex).	Two	Termination of Contract and one-year disqualification.
12. Purchasing infant formula from a source that is not listed on the Arizona WIC Program's list of infant formula manufacturers, wholesalers, or distributors.	Two	Termination of Contract and one-year disqualification.

**\*Note:** For WIC Food Item Declaration and Price Survey (Market Basket) prices, it is the sole responsibility of the Vendor to provide timely verified updates to the Department.

## Mandatory Sanctions under Federal Regulations

USDA Federal Regulations, specifically those at 7 C.F.R. § 246.12, impose mandatory sanctions for Violations 1 through 12 listed below. The mandatory sanctions for the violations listed below are termination of the Vendor Contract and disqualification from the WIC Program. For Violations 4 through 11 listed below, the Federal Regulations also require the Department to establish a pattern of violations before imposing the mandatory sanction.

For Violations 4 through 10 listed below, the Department will send the Vendor a **single** warning letter after the **first** incident of a violation, unless the Department, in its sole discretion, determines that a warning letter would compromise an investigation. **The Department will NOT send any warning letters for subsequent incidents of a violation. No warning letters will be sent for violations 1, 2, 3, 11, or 12.** The Department, in its sole discretion, may continue to investigate a violation beyond the number of incidents necessary to impose a sanction.

If the Department is able to determine that the Vendor is no longer committing the previously sanctioned violation, then any subsequent incident of that violation will be considered an initial incident of that violation.

Except for Violation 1, if the Department determines that disqualification of the Vendor would result in inadequate participant access, a civil money penalty **may** be imposed in lieu of disqualification. (See Civil Money Penalty for calculation.)

<b>Violation</b>	<b>Number of Incidents of the Violation that Will Result in the Indicated Sanction</b>	<b>Sanction and Length of Disqualification</b>
1. Receiving a <u>conviction</u> for trafficking in food instruments, cash value vouchers (or eWIC cards), or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)) in exchange for food instruments, cash value vouchers (or eWIC cards).	One	Termination of Contract and permanent disqualification.
2. a. Buying or selling food instruments, cash value vouchers (or eWIC cards) for cash (trafficking); or b. Selling firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. § 802) in exchange for food instruments, cash value vouchers (or eWIC cards).	One	Termination of Contract and six-year disqualification.
3. Selling alcohol, alcoholic beverages, or tobacco products in exchange for food instruments, cash value vouchers (or eWIC cards).	One	Termination of Contract and three-year disqualification.
4. Charging the WIC program more for supplemental food than non-WIC customers or charging the WIC Program more than the current shelf price. (Any overcharge, even \$0.01, is considered a violation.)	Three	Termination of Contract and three-year disqualification.
5. Charging the WIC Program for supplemental food not received by the participant.	Three	Termination of Contract and three-year disqualification.

Violation	Number of Incidents of the Violation that Will Result in the Indicated Sanction	Sanction and Length of Disqualification
6. Receiving, transacting, and/or redeeming food instruments, cash value vouchers (or eWIC cards) outside authorized channels, including the use of an unauthorized Vendor and/or an unauthorized person.	Three	Termination of Contract and three-year disqualification.
7. Providing credit (including rain checks) or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. § 802), in exchange for food instruments, cash value vouchers (or eWIC cards).	Three	Termination of Contract and three-year disqualification.
8. Providing unauthorized food items in exchange for food instruments, cash value vouchers (or eWIC cards), including charging for supplemental food provided in excess of those listed on the food instruments.	Three	Termination of Contract and one-year disqualification.
9. Providing incentive items* or other free merchandise to WIC Program participants. (only applicable to Above-50-Percent Vendors)**	Three	Termination of Contract and one-year disqualification.
10. Providing incentive items* or other free merchandise <u>solely</u> to WIC Program participants. (only applicable to Regular Vendors)**	Three	Termination of Contract and one-year disqualification.
11. 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. Each month that a Vendor claimed reimbursement for the sale of a specific supplemental food item that exceeded the Vendor's documented inventory of that supplemental food item shall constitute an incident of a violation. Three incidences of this violation will result in termination of the Contract and a three-year disqualification.		
12. Becoming disqualified from SNAP will result in disqualification from the WIC Program. The term of the disqualification shall be identical to, and may begin at a later date than, the SNAP disqualification. The disqualification is <u>not</u> subject to administrative or judicial review under the WIC Program.		

**\*Note:** Incentive items or other free merchandise are defined as: Free or reduced price food or other items; cash; lottery tickets; buy one, get one free; buy one get one at a reduced price; free amounts added to an item by a manufacturer; manufacturer coupons; store loyalty cards; sales and specials for supplemental food; free or reduced price services, except for the minimal customary courtesies of the retail food trade, such as bagging supplemental food for the participant and assisting the participant with loading the supplemental food into his/her vehicle.

**\*\*Note:** Above-50-Percent Vendors cannot provide any incentive items to WIC customers; however, Regular Vendors can provide incentive items to WIC customers, as long as the same incentive items are being provided to all customers.

### Multiple Violations During a Single Investigation

When, during the course of a single investigation, the Department determines that a Vendor has committed multiple violations (which may include violations subject to Department sanctions or federally mandated sanctions), the Department shall disqualify the Vendor for the period corresponding to the most serious sanction. Additionally, if a Vendor is immediately subject to disqualification after an investigation has been completed, but an additional incident of a different violation would result in a longer period of disqualification, then the Department may continue the investigation to determine whether the more serious sanction should be imposed.

## Civil Money Penalty

If the Department determines that disqualification of a Vendor (other than a disqualification for Violation 11 under Department Sanctions – Administrative and Procedural Violations) would result in inadequate participant access, a civil money penalty **may** be imposed. The Department shall use the USDA Federal Regulations at 7 C.F.R. § 246.12(l)(1)(x) to determine civil money penalty amount. The formula is as follows:

Step I: Multiply 10% (.10) times the average monthly redemptions for the previous six (6) calendar months, not including the month during which the notification of violation is dated.

Step II: Multiply the product of Step I by the number of months of the disqualification period.

The result of Step II will be the civil money penalty imposed. A civil money penalty shall not exceed \$11,000 for each violation.

When, during the course of a single investigation, the Department determines a Vendor has committed multiple violations, the Department must impose a civil money penalty for each violation.

The total amount of civil money penalties for violations investigated as part of a single investigation shall not exceed \$44,000.

A civil money penalty shall not be imposed in lieu of disqualification for third or subsequent sanctions for violations listed in Mandatory Sanctions under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

Vendors that have been convicted of trafficking (Mandatory Sanctions under Federal Regulations - Item 1) in WIC food instruments, cash value vouchers (or eWIC cards), or selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, cash value vouchers (or eWIC cards) will be permanently disqualified from the WIC Program. A civil money penalty in lieu of disqualification will not be considered, even if disqualification of the Vendor would result in inadequate participant access or the Vendor had an effective trafficking prevention policy and program in effect at the time of the violation and the Vendor's owner(s) did not know about, approve of, or participate in the conduct resulting in the violation.

If a Vendor does not pay, only partially pays, or fails to pay in a timely manner a civil money penalty assessed in lieu of disqualification, the Department must disqualify the Vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation, the length of the disqualification will correspond to the most severe violation).

## Second Mandatory Sanction

If a Vendor has been previously sanctioned for a violation under Mandatory Sanctions under Federal Regulations (**except** for Violations 1, 11, and 12) and commits a second violation of that type, the sanction amount for the second violation will be doubled.

## Third or Subsequent Mandatory Sanction

If a Vendor has been previously sanctioned two or more times for a violation under Mandatory Sanctions under Federal Regulations (**except** for Violations 1, 11, and 12) and commits additional violations of that type, the sanction amount for third and all subsequent violations will be doubled.

## No Voluntary Withdrawal or Nonrenewal of Contract

The Department shall not accept voluntary withdrawal of the Vendor from the WIC Program as an alternative to disqualification for the violations listed in Mandatory Sanctions under Federal Regulations. In addition, the Department shall not use nonrenewal of the Vendor Contract as an alternative to disqualification for the violations listed in the Mandatory Sanctions under Federal Regulations section of this Sanction Policy.

## Criminal or Civil Prosecution

A Vendor who commits fraud or abuse in the WIC Program is liable to prosecution under applicable federal, state, or local laws. Under federal law, those who have willfully misapplied, stolen, or fraudulently obtained program funds valued at \$100 or more will be subject to a fine of not more than \$25,000 or imprisonment for not more than five (5) years or both. If the value of the willfully misapplied, stolen, or fraudulently obtained program funds is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment of not more than one (1) year or both.

## Change of Business Entity

A change in ownership does not eliminate any violation or sanctions that occurred before the change in ownership. If a Vendor changes ownership at the same location (i.e., through a change in business entity or the addition or deletion of partners, associates, or principals), any violations that occurred under the previous Contract will carry over to the new Contract and may be used for determining sanctions, including termination and/or disqualification. Such changes in ownership may include, but are not limited to, a change from a sole proprietorship or partnership to a corporation where the previous individual owner(s) or one or more partner(s) remain as an officer or shareholder of the new corporation.

## Termination/Denial/Disqualification

Vendors may appeal a denial of authorization, an administrative fine, a termination, a disqualification, or a civil money penalty according to the most recent administrative hearing procedures issued by the Department. However, as stated above, termination and disqualification based on a SNAP disqualification **is not subject to administrative or judicial review.**

For those cases where a Vendor has appealed a termination or termination and disqualification action in a timely manner, and the Vendor was allowed to continue on the Program, all provisions of the WIC Vendor Contract will continue to apply, including sanctions for noncompliance, during the time period the Contract is in effect.

Vendors who are terminated and disqualified may apply for a WIC Vendor Contract after the disqualification period ends. The Vendor must meet all current requirements for a WIC Vendor Contract, including the selection plan and limitation policy requirements. The Department will not consider contracting with a Vendor during any disqualification period from the WIC Program.

## SNAP Disqualification

Disqualification from the WIC program for any of the violations listed in the Mandatory Sanctions under Federal Regulations section may result in disqualification as a retailer in the SNAP. As stated above, such disqualification is not subject to administrative or judicial review under the SNAP.