

New Jersey Department of Health
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR
WOMEN, INFANTS AND CHILDREN (WIC)
VENDOR AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____
between the New Jersey Department of Health, WIC Services, hereafter referred to as the "Agency," and

(Name)

hereafter referred to as the "Vendor" who operates a facility at the distinct location of
_____.

THIS AGREEMENT shall be binding from the _____ day of _____ through the 30th day
of September, 2018.

Disclaimer

Authorization to accept WIC food instruments is a privilege, not a right. Even if a vendor has been serving the Program for many years, they do not retain any right to be authorized.

Goal of the WIC Program

The United States Department of Agriculture (USDA), Food and Nutrition Services, Special Supplemental Nutrition Program, hereafter referred to as the WIC Program, is a federally funded special supplemental nutrition program for low income pregnant or postpartum women, infants, and children up to their fifth birthday, who are at nutritional risk. The Program provides these individuals with nutritious foods to supplement their diets during critical stages of growth and development. Foods are chosen to correct, prevent, or minimize health and nutritional problems. Foods allowed in the WIC Program are: milk, cheese, eggs, whole grain bread, brown rice or whole wheat tortillas, dry or canned beans, peas or lentils, fresh, frozen and canned fruits and vegetables, peanut butter, breakfast cereals, 100% juice, canned fish, baby food- fruits, vegetables and meat, iron-fortified formula and special formulas for certain medical conditions. The WIC foods are not intended to be a complete diet, but a supplement to the participant's diet.

In addition to providing supplemental foods, the Program also provides access to health services and offers nutrition education so that the food will be properly used and will improve the dietary and health habits of the entire family.

Role of the WIC Vendor

Retail merchants play an important part in the WIC Program by providing allowable WIC foods to Program participants in the amounts and types prescribed by a WIC Program professional.

Definitions

For the purpose of this Agreement and other documents related hereto, the terms:

Above 50-Percent Vendor means an authorized WIC vendor that receives over 50% of the vendor's annual food sales from WIC food sales. (Figure is calculated by dividing total annual WIC sales into total annual food sales.)

Agency means the New Jersey Department of Health, WIC Services.

Authorized supplemental foods means those supplemental foods authorized by the State or local agency for a particular participant.

Cash-Value Voucher (CVV) means a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which issued by a participant to obtain authorized canned, frozen, and fresh fruits and vegetables.

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Compliance Buy means a covert, on-site investigation in which a representative of the Program poses as a participant, parent, proxy or caretaker of an infant or child participant, transacts one or more Food Instruments (FIs) or Cash-Value Voucher (CVVs), without revealing during the visit that he or she is a program representative.

Confidential Vendor information is any information about a Vendor that individually identifies the Vendor, except for Vendor's name, address, telephone number, email address, store type and authorization status.

Employee Fraud and Abuse means the intentional conduct of a State, local agency or clinic employee which violates program regulations, policies, or procedures, including, but not limited to, misappropriating or altering FIs or CVVs entering false or misleading information in case records, or creating case records for fictitious participants.

Food Instrument (FI) means a check, electronic benefits transfer card (EBT), coupon or other document, which is used to obtain supplemental foods.

Food Sales means sales of all foods eligible items under the Supplemental Nutrition Assistance Program (SNAP).

Identical authorized supplemental food items means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.

Participants means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or FIs or CVVs under the Program, and the breastfed infants of participant breastfeeding women.

Pattern is more than one instance of the same violation.

Program refers to the United States Department of Agriculture (USDA) federally funded Special Supplemental Nutrition Program for Women, Infants and Children (WIC authorized by section 17 of the Child Nutrition Act of 1996, as amended).

Proxy means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact FIs or CVVs to obtain supplemental foods on behalf of a participant.

Retail Space means a minimum square footage requirement of 1000 square feet of space allocated solely for food products, including both WIC and non-WIC foods. Retail space does not include storage areas, meat cutting areas, walk-in coolers or freezers, restrooms and office space.

Service Marks are the WIC acronym and the WIC logo which are registered as service marks of the USDA for USDA's, WIC, Registration Nos. 1,630,468 and 1,641,644 respectively.

SNAP, the Supplemental Nutrition Assistance Program, is the program formerly known as food stamps. It is a federal nutrition program that helps eligible participants stretch their food budget and buy healthy food. SNAP benefits can be used to purchase food at grocery stores, convenience stores, and some farmers' markets and co-op food programs.

Standard Infant Formula means iron-fortified infant formula which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state and which contains at least 10 milligrams of iron per liter of formula at a standard dilution which supplies 67 kilo-calories per 100 milliliters, i.e., approximately 20 kilo-calories per fluid ounce of formula at standard dilution.

Universal Product Code (UPC Code) means the numeric code appearing beneath a series of black and white vertical or horizontal line that are uniquely assigned to each trade item.

Vendor means a sole proprietorship, a partnership, a cooperative association, or a corporation operating an individual retail site authorized to provide authorized supplemental foods to participants under a retail food delivery system. Each individual outlet under a business entity, which operates more than one site constitutes a separate Vendor. Each Vendor must be a single permanent fixed location.

Vendor Annual Training means the vendor receives annually materials in the form of training videos or newsletters, which include the purpose of the program, supplemental foods authorized, minimum stock requirements, transacting and redeeming FIs or CVVs, sanction system, complaints, claims procedures and any changes to program requirements.

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Vendor Interactive Training means prior to or at the time of a vendor's initial authorization, and at least once every three years thereafter. Acceptable interactive training includes on-site cashier training, off-site classroom style train-the-trainer or manager training.

Vendor Selection Criteria means the criteria in accordance with the 7CFR 246.12(g)(3), which is used to assess the adequacy of all food Vendor qualification and any additional criteria, established by the state agency to select individual Vendors for program authorization.

I. Agency's Obligations

A. Selection of Vendors and Participants

1. The Agency shall select Vendors for participation in the program. Retail grocery stores that carry authorized WIC food items, dairy, meat, produce products, and household items and do not have any unresolved WIC sanctions and meet the Vendor selection criteria shall be eligible for participation, while WIC only stores and mobile stores are specifically ineligible. Pharmacies will be selected to provide "special" formulas only.
2. The Agency shall certify WIC eligible participants in accordance with the provisions of 7CFR 246.7 of the Consolidated Regulations and shall provide such participants with tri-monthly automated food benefit packages with instructions on the proper use of FIs and CVVs. The food benefit package is issued in the form of "food instruments" such as checks, and/or electronic media, i.e. smart cards. The food instruments hereafter are referred to as "FIs." and the Cash-Value-Vouchers hereafter are referred to as "CVVs".

B. Vendor Training

1. The Agency shall prepare and make available to the Vendor a New Jersey Department of Health Policy and Procedure Manual, Section I. Vendor Agreement hereafter referred to as Policy and Procedure Manual and the State Plan, Section Vendor Management and any revisions thereto.
2. The Agency shall provide annual Vendor training sessions and shall, periodically, design and distribute to Vendors instructive materials and information in a variety of formats, including newsletters, videos and interactive training. The Agency will have sole discretion to designate the date, time, and location of all interactive training, except that the Agency will provide the Vendor with at least one alternative date on which to attend such training.
3. The Agency shall provide an interactive vendor training prior to or at the time of a vendor's initial authorization and at least once every three years. At least one representative of the Vendor must participate in the interactive vendor training. The Vendor must inform and train cashiers and other staff on program requirements which include FI and CVV transaction and redemption procedures.
4. The Agency shall respond to requests for training, training materials, and check approvals, and to requests for assistance with particular check redemption situations.
5. At least one representative of the Vendor must participate in training annually. The Vendor must inform and train cashiers and other staff on program requirements.

C. Claims and Denial of Payment

1. The Agency shall maintain an account for payment of validly redeemed FIs or CVVs and shall pay documented costs of checks. The Agency may deny payment to the Vendor for invalid FIs or CVVs.
2. The Agency assumes no liability for costs incurred by the Vendor for any banking fees.

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3. The Agency shall temporarily refuse payment of FIs or CVVs during any period that the Vendor is closed for extenuating reasons. The Vendor must provide 15 days advance written notice, when possible, to the Agency that the Vendor is closing temporarily for extenuating reasons.
4. The Agency will provide the Vendor with an opportunity to justify a vendor overcharge or correct errors.
5. The Agency shall determine the maximum benefits for each FI or CVV and establish a maximum pay amount for each FI or CVV.
 - a. Maximum pay amount is established for each FI by the Vendor's peer group.
 - b. FIs with a recorded pay amount which exceeds the maximum amount will be paid at the Vendor's peer group average price for the FI.
 - c. Participants who buy more than the value of the CVV may pay the difference with cash.
6. The Agency shall provide an authorized Vendor Code to each location, and the Code shall be memorialized as a stamp, which will also be provided by the Agency.
7. Agency may make price adjustments on the maximum pay amount to the purchase price on FIs or CVVs submitted by the Vendor for redemption to ensure compliance with the price limitations applicable to the Vendor.
8. The Agency may delay payments or establish a claim in the amount of the full purchase price of each FI or CVV that contained a Vendor overcharge or other error.

D. Monitor Compliance

1. The Agency shall monitor the Vendor's operations for compliance with program requirements and regulations as well as prices, required minimum stock, and check redemption procedures via unannounced and covert visits, automated reports, memoranda of understanding with the Supplemental Nutrition Assistance Program, follow-up to complaints, compliance buys, training buys, review of redeemed FIs, CVVs and inventory audits.
2. In the event that the Agency's efforts reveal that the Vendor's actions are or have not been in compliance with the terms of this Agreement, then the Agency shall impose sanctions in accordance with Section III and Appendix A of this Agreement.

E. High Risk

1. A high-risk Vendor is defined as a Vendor who has one of the following listed indicators:
 - a. Abuses which have not been corrected; (See Appendix A)
 - b. Disqualification from SNAP;
 - c. Civil Money Penalty from either WIC or SNAP;
 - d. Complaints registered against store; or
 - e. Appears on high-risk reports as set forth in the State Plan.

F. Confidentiality

1. The Agency shall restrict the use or disclosure of information obtained from Vendors or generated by the State Agency concerning Vendors. The Agency shall provide only the Vendor's name, address, authorization status, telephone number, web site/email address, and store type.

VENDOR AGREEMENT, Continued

2. The Agency shall restrict the use or disclosure of Supplemental Nutrition Assistance Program (SNAP) retailer information furnished to it.
3. The Agency must restrict the use or disclosure of confidential Vendor information to persons directly connected with the administration or enforcement of the WIC Program or SNAP who the Agency determines have a need to know the information for purposes of these programs.

II. Vendor's Obligations

A. Vendor's Relationship with Agency

1. The State Agency (SA) shall notify vendors of changes to Federal or State statutes, regulations, policies, or procedures governing the Program before the changes are implemented. The State Agency should give as much advance notice as possible.
2. The Vendor shall adhere to all regulations, policies, and operating procedures of the New Jersey WIC Program, as amended from time to time, and as may be subsequently enacted as a result of state or federal legislation, including but not limited to 7 CFR 246; the non-discrimination provision of the USDA regulations (7 CFR 15, 15a, and 15b), and the Civil Rights Act of 1964.
3. The Vendor or the Vendor's designee shall read, be familiar with, and understand those provisions of the Policy and Procedure Manual provided by the Agency. If the Vendor does not understand the meaning of any provision of the Policy and Procedure Manual, he or she shall have the obligation to request clarification from the Agency.
4. The Vendor or the Vendor's designee shall participate in or have Vendor personnel participate in training at least once annually or as required by the Agency. Thereafter, the Vendor shall maintain at the site WIC training materials and provide documented orientation and training of employees as needed and required by the Agency. The material shall include, but not be limited to, familiarizing Vendor personnel with the current authorized food list and making copies of it readily available (minimally at the register) to Vendor personnel for reference.
5. During the term of this Agreement, the Vendor shall accept valid FIs or CVVs from participants or their proxies who present a valid WIC ID as sole payment for items on the authorized food list. The Vendor may not collect sales tax on authorized supplemental foods obtained with food instruments.
6. The Vendor shall distribute any approved outreach materials in various forms provided by the State Agency and Local Agencies. The Vendor may distribute its own in-store-produced WIC materials only if it is first approved by the State and Local Agency. The WIC in-store materials may be produced for use in weekly circulars, grocery bags, milk cartons, television monitors, kiosks, or other forms of approved media.
7. The Vendor must provide the SA two weeks advance written notification of:
 - a. Any change in store ownership;
 - b. Any change in store location or cessation of operations.
8. The Vendor shall immediately inform the SA of:
 - a. Any conviction of a storeowner on a felony charge;
 - b. Any investigation of a storeowner by SNAP;
 - c. Any suspected or observed improper use of FIs or CVVs by a participant; and
 - d. Any other circumstance impacting service to participants or the Program.

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9. Upon request by the Agency, the Vendor shall provide the current prices of authorized WIC foods either electronically or manually by completing a commodity price list (CPL) upon request.
 - a. The Vendor shall provide to the Agency an accurate and comprehensive list of Universal Product Codes (UPC) with product descriptions for all WIC authorized foods.
 - b. The Vendor shall provide to the Agency all updates and changes to their UPC Codes for WIC authorized foods prior to implementation.
10. The Agency shall maintain full and complete records concerning the food delivery systems for three years.
11. During any on-site monitoring visit conducted by staff from the Agency or its representative, the Vendor shall provide the Agency staff access to shelf prices and invoice records up to ninety (90) days old, FIs, CVVs, inventory stock, inventory invoices, receipts and all training files as are requested during the visit. Upon request, the Comptroller General of the United States may request to review all food instruments in the Vendor's possession and all program related records.
12. The Vendor shall take any necessary remedial action immediately on any problem noted during an on-site visit.
13. In the event that the Vendor submits and receives payment for an improperly executed FI or CVV, the Vendor shall refund to the Agency the amount demanded by the Agency within twenty (20) days of the receipt of the demand, unless the Vendor has provided documentation to the satisfaction of the Agency. Acceptable documentation shall consist of automated reports and/or price books, which specify the actual shelf prices of WIC foods for the same time period of questionable check costs. Vendor may be paid after the specified period for redemption with acceptable documentation.
14. The Vendor shall be open for business at least 8 hours per day, 6 days per week.
15. Pharmacies shall provide special formula(s) within 48 hours.
16. The Vendor must comply with the Vendor selection criteria throughout the agreement period including any changes to the criteria using the current Vendor selection criteria; the Agency may reassess the Vendor any time during the agreement period. The Agency will terminate the Vendor Agreement if the Vendor fails to meet the current Vendor selection criteria.
17. The Vendor shall purchase only infant formula from the list of infant formula wholesalers, distributors and retailers licensed in the state. The Agency provides the list annually to all authorized vendors.
18. The Vendor shall maintain invoices or receipts for three (3) months showing the source of the Vendor's infant formula purchase to enable the Agency to monitor vendor compliance.
19. The Vendor shall contact the Agency for approval to provide:
 - (a) merchandise/incentive items obtained at no cost to the Vendor and provided to participants without charge, or sold to participants without charge, or sold to participants at or above cost, subject to documentation;
 - (b) food of nominal value and merchandise of nominal value; and
 - (c) food sales and specials which involve no cost or only a nominal value for the Vendor regarding the food items involved and do not result in a charge to a WIC food and logo instruments for foods in excess of the foods listed on the FIs and CVVs.
20. The WIC acronym must not be used on these incentive items.

VENDOR AGREEMENT, Continued

21. The Vendor must provide acceptable documentation of the total food sales (quarterly ST-50 or monthly EZ forms) that is submitted to the Division of Taxation.
22. The Vendor must sign a Waiver of Rights Under N.J.S.A.54:50-8 that authorizes the Division of Taxation to release tax return information to the New Jersey Department of Health (NJDOH) for the total exclusive purpose of administration of the responsibilities under Federal Public Law 108-265.
23. The Vendor must not issue cash or change to a WIC participant for purchases less than the total value of a CVV.
24. The Vendor must provide a copy of the SNAP authorization certificate prior to authorization.
25. The Vendor must provide a copy of sanitary code inspection prior to authorization.
26. All FIs and CVVs must be imprinted on the back of the deposited FIs and CVVs with the Vendor's full store trade name before depositing.
27. Vendors may not use the service marks (WIC Acronym and the WIC logo) in their names.
28. Vendors also may not use the WIC logo in advertising or promotional literature.
29. Vendors may use the WIC Acronym in advertising and other promotional material only to inform the public that the vendor is WIC-authorized.
30. Vendors may not apply stickers, tags, or labels having the service marks thereon to WIC-approved products.
31. Vendors may use channel strips or shelf talkers using the service marks to identify WIC-approved products, including channel strips or shelf talkers provided by manufactures.
32. Vendors must get approval from the Agency on the use of WIC signs that are not provided by the Agency. The SA must provide approval to the Vendor to utilize the channel strips and shelf talkers.

B. Vendor's Relationship with Participants

1. The Vendor shall inform the public of its participation in the WIC Program by displaying at least one WIC poster in a place conspicuously visible to the general public.
2. The Vendor shall not request personal addresses and telephone numbers or require special store identification cards or other forms of identification of participants for the purpose of redeeming FIs or CVVs; the WIC ID is the sole source of participant identification.
3. The Vendor shall offer participants the same courtesies as offered to other customers and shall not distinguish or identify participants from other customers and shall provide services to participants without regard to race, color, age, sex, national origin, or disability.
4. The Vendor shall provide authorized foods to participants only as authorized on the Agency's Food List and as specified on the FI or CVV and shall provide such foods to participants at the current price or at less than the current price charged other customers. The Vendor shall display the current prices of authorized foods on the foods, or on the shelves in proximity to the foods, or in the immediate area where the foods are kept in the customer area of the store. The Vendor shall maintain current prices on store computer. In event of discrepancy between shelf and store computer prices, the Vendor agrees to charge WIC participants the lower price.
5. The Vendor shall not provide substitute items, credit (including rainchecks), or cash reimbursement for authorized foods that are unavailable. The Vendor shall instruct the participant to contact the local WIC agency regarding formula changes. The Vendor shall not refund money or provide non-authorized foods to replace authorized foods that participants or

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proxies attempt to return. The Vendor may accept an exchange of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its "sell by," "best if used by" or other date limiting the sale or use of the food item.

6. The Vendor shall accept cents-off savings, i.e. coupons or store issued customer cards, from WIC participants for WIC prescribed allowable foods and shall deduct the savings from the total purchase price to be entered in the "Pay Exact Amount" area on the FIs and CVVs.
7. The Vendor shall give store coupons in accordance with store policy to WIC participants for purchases made with WIC FIs and CVVs if store coupons are given to non-WIC shoppers for equivalent purchases.
8. The Vendor shall not limit the number of valid checks that an authorized representative/proxy may redeem at one time. The Vendor shall accept a FI or CVV only within the valid dates to spend, as printed on the FI or CVV, and only if there is no visible alteration apparent on the FI or CVV regarding items such as food quantities, participant name, ID number, dates, etc.
9. The Vendor shall require store personnel to record, in ink, the actual dollar value, less any cents-off savings, of the purchase on each FI or CVV immediately after ringing up the order and prior to the authorized representative/proxy signing the FI or CVV. The purchase price must include only the authorized supplemental food items. The signature at time of transaction must match the signature on the ID. FIs and CVVs must be signed in the presence of the cashier. In the electronic benefits transfer (EBT) system and/or the electronic service delivery (ESD) system, a Personal Identification Number (PIN) may be used in lieu of a signature.
10. The Vendor shall retain all original inventory records used for Federal tax reporting purposes including purchased invoices, purchase slips and receipts of delivery for WIC food items for the most recent three-year period. All such documents must indicate the quantity, unit price, description and container size of WIC food items purchased and must be available for inspection by federal and/or state agents. Cash register receipts without specific identification of the quantity unit price, description and container size of WIC food items purchased shall not be accepted as evidence of WIC food items purchased.
11. The vendor shall never provide refunds or permit exchanges for authorized WIC foods obtained with WIC checks, except for exchanges of an identical authorized WIC food item when the original authorized WIC food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized WIC food item means the exact brand and size as the original authorized WIC food item obtained and returned by the participant.
12. The Vendor shall complete a complaint form for any participant who does not adhere to required behavior and/or does not follow correct WIC check cashing procedures. The Vendor shall follow store procedures for any participant exhibiting inappropriate behavior.
13. The Vendor shall not seek or receive payments from participants for rejected FIs or CVVs not paid or partially paid by the Agency.
14. The Vendor must not charge participants, parents/caretakers, or proxies for authorized supplemental foods obtained with FIs or CVVs.
15. The Vendor must not issue cash change to WIC participants for purchase less than the total value of CVV.
16. The Vendor must charge the fee to participants who chose to use disposable grocery bags, not the WIC Program. Under no circumstances should the fee be charged to the WIC Program. Participants have the option to use their own bags or use the vendor disposable bags and pay a fee if required.

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C. Claims

1. The Vendor shall charge the Agency for only the foods specified on the FI or CVV and in the quantities specified, as selected for purchase by the participant.
2. The Vendor shall follow specified procedures in case of alterations to the "Pay Exactly" amount on the FI and may not alter other information printed on the FI and CVV.
3. The Vendor shall not redeem any FI or CVV that has been reported to the Vendor as lost or stolen.
4. The Vendor shall not use redeemed FIs and CVVs for the purchasing of any commodity or for payment of any debt. FIs or CVVs must be deposited directly to a banking institution unless the Agency requires otherwise.
5. The Vendor shall deposit redeemed FIs and CVVs promptly, but not later than sixty (60) days after the date of issue or risk loss of reimbursement for the value of the FI and CVV.
6. The Vendor shall be liable for bank costs on any FI or CVV rejected by the bank for reasons of the store's incorrect acceptance and/or cashing of the FI and CVV.
7. The Vendor shall utilize the state issued authorized Vendor stamp only in the designated store and for checks cashed only in that store location. The Vendor shall be responsible for all checks stamped with the state issued authorized Vendor stamp. The Vendor shall not counterfeit state issued authorized Vendor stamps.

III. Vendor Sanctions

A. Employee Responsibility

1. The Vendor shall be responsible for the actions of its owners, officers, managers and employees and/or independent contractors in the handling of FIs or CVVs and the selling of authorized foods and shall be liable for any actions of his/her agents, servants or workmen that violate the terms and conditions of this Agreement or Agency rules, regulations, policies and procedures as amended.

B. Criminal Sanctions

1. A Vendor who abuses the Program is subject to prosecution under applicable Federal, State, and local laws. Those who willfully misapply, steal, or fraudulently obtain WIC funds shall be subject to fine of not more than \$25,000 or imprisonment for not more than five (5) years or both, if the value of funds is \$100 or more. If the value of funds is less than \$100 then the penalties are a fine of not more than \$1,000 or imprisonment for not more than one (1) year or both. The Agency shall refer cases of suspected program abuse to the appropriate authorities for investigation and prosecution.

C. Disqualification

1. The Agency may disqualify or sanction a Vendor for program abuse and failure to adhere to federal and state rules, regulations, policies and procedures applicable to this program. Violations with corresponding sanctions and/or disqualifications are contained in Appendix A. Federally mandated sanctions are enumerated in 7CFR Part 246, WIC/SNAP Vendor Disqualification Final Rule, Thursday, December 29, 2000, incorporated herewith by reference as may be amended and/or supplemented.
2. The Agency shall not accept voluntary withdrawal of the Vendor from the program, as an alternative to disqualification for the violations listed in Appendix A but shall enter the

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disqualification on the record. In addition the State Agency shall not use non-renewal of the Vendor Agreement as an alternative to disqualification.

3. Notice of a Vendor's disqualification from Agency will be forwarded to the USDA and may be grounds for disqualification of the Vendor from another Food and Nutrition Service Program (FNS), including SNAP. Notice of a Vendor's disqualification shall be provided to USDA FNS per the SNAP Regulation 7CFR 278.1(n)(1). Such disqualification may not be subjected to administrative or judicial review under the Supplemental Nutrition Assistance Program.
4. The Agency shall disqualify a Vendor who has been disqualified from SNAP. The disqualification shall be for the same length of time as SNAP disqualification, may begin at a later date than SNAP, and shall not be subject to administrative or judicial review under the WIC Program.
5. The Agency shall include the adverse actions a Vendor may appeal and those adverse actions that are not subject to administrative review at the time of authorization or reauthorization.
6. The Agency shall provide a copy of the Agency's administrative review procedures in the Vendor Agreement (Refer to Appendix B and Appendix C of the Vendor Agreement).
7. The effective date of any disqualification not withstanding disqualification for the violations listed in 246.18 (a) (iii) (k) (2), shall be twenty (20) days after the date of written notice of it and shall be designated in the letter of notification of disqualification. An administrative appeal of the disqualification by the Vendor shall automatically postpone the effective date of the disqualification until the Commissioner of the New Jersey Department of Health (NJDOH) renders a Final Agency Decision. Any further appeal by the Vendor shall not automatically postpone the effective date of the disqualification.
8. The Agency shall not be held responsible for losses incurred by any Vendor as a result of disqualification pending an appeal decision or a Vendor shall not be entitled to receive any compensation for revenues lost as a result of violations resulting in a permanent disqualification.
9. The Vendor may apply for participation in the program after the disqualification period. Approval for participation is not guaranteed. The Vendor will have to meet the Agency's selection criteria for store participation at the time the application is received.
10. The Agency must notify the Vendor of an initial violation in writing, for violations requiring a pattern of occurrences in order to impose a sanction, before documenting a subsequent violation, unless notification would compromise an investigation.
11. The Agency shall disqualify a new vendor that has 6 months of monitored WIC food sales that exceed 50% of the new Vendor's annual food sales.

D. Civil Monetary Penalties ("CMP")

1. The Agency may impose a Civil Money Penalty (CMP) in accordance with 7 CFR 3.91(b)(3) as an alternative to or in conjunction with a disqualification. Civil Money Penalty shall not exceed the maximum amount for each violation.
 - a. Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of \$100,000.00 for each violation.
 - b. Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of \$32,000.00 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$59,000.00.
 - c. Civil penalty for the sale of firearms, ammunition, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of \$32,000.00 for each

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violation, except that the maximum penalty for violations occurring during a single investigation is \$59,000.00.

- d. Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of the bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of \$145,200,000.00.
 - e. Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$11,000.00 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$49,000.00.
 - f. Civil penalty for a vendor convicted of selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$11,000.00 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$49,000.00.
2. Notice of the imposition of a civil money penalty imposed upon a Vendor shall be forwarded to USDA and may be grounds for disqualification of the Vendor from another FNS Program, including SNAP. Notice of a Vendor's civil money penalty shall be provided to USDA (FNS) per Supplemental Nutrition Assistance Program (SNAP) Regulation 7CFR 278.1(n)(1).
 3. The Agency shall not impose a civil money penalty in lieu of a disqualification for third or subsequent sanctions or violations.

IV. Termination of Vendor Agreement

- A. Upon termination of this Agreement, the Vendor shall cease acceptance of FIs or CVVs and return the Vendor stamp. Upon Termination of this Agreement, the Agency shall invalidate the Vendors stamp and Vendor code for payment.
- B. This Agreement shall terminate upon:
 1. Expiration of the term of the Agreement without a written renewal;
 2. Change in ownership or location or cessation of operations;
 3. Expiration or termination of the Vendor's New Jersey Department of Labor registration;
 4. Disqualification of the Vendor from the Supplemental Nutrition Assistance Program;
 5. The provision of written notice of termination provided by either party to the other at least fifteen (15) days in advance of the date of termination or fifteen (15) days advance notice of the expiration of the Agreement;
 6. Conflict of interest exists between the Vendor and the state or local agencies.
 7. Vendor fails to meet current Vendor selection criteria.
- C. The Agency shall immediately terminate the agreement if it determines that the Vendor has provided false information to the Agency.
- D. The Agency or Vendor may terminate the agreement for cause after providing a fifteen (15) days advance written notice.

VENDOR AGREEMENT, Continued

- E. The Agency shall provide fifteen (15) days advance notice of expiration of the Agreement.
- F. The Vendor shall be liable for costs incurred by the Agency when the Vendor withdraws from participation in the program without the required fifteen (15) days notification to the Agency. The sums shall be recoverable in a court of law or shall be offset via outstanding FIs or CVVs and/or both as permitted by law.
- G. The Agency shall terminate the Agreement if the Vendor does not sign a waiver form for the State to verify that the amended ST-50 forms and/or UZ forms were also submitted to the New Jersey Division of Taxation.

V. Administrative Appeals

- A. A Vendor has the right to request an administrative appeal as prescribed in 7CFR 246.18 (Refer to Appendix B of the Vendor Agreement).
- B. Expiration of a WIC Vendor Agreement is not an appealable action.
- C. Disqualification of a Vendor as a result of disqualification from the SNAP and the State Agency's determination regarding participant access are not subject to review.
- D. A request for a hearing must be made by the Vendor or his representative in writing or in person to the Agency Contract Appeal Board stating the reasons for the request within twenty (20) business days of the date of notification of adverse action. See Appendix B, Administrative Appeal of State Agency Decisions against Vendors, incorporated herewith by reference.

VI. General Provisions

- A. The parties represent that no known conflict of interest exists between the Vendor and the State or the Vendor and the local agency.
- B. Neither the Agency nor the Vendor have an obligation to renew this agreement. A Vendor must file a new application for each contract period if the Vendor wishes to be considered for a new contract in the WIC Program.
- C. The rights and obligations established by this Agreement may not be transferred, hypothecated, or assigned by the Vendor to any third party.
- D. The Vendor shall comply with all applicable federal, state and local laws and ordinances.
- E. Any and all applicable rules, regulations, policies, and procedures referenced in this Vendor Agreement shall be available for review during normal business hours at the Agency's office.
- F. Failure by either party to enforce any provision of this agreement shall not be considered a waiver of the provision or of the party's right to enforce the provision at a later time and shall not invalidate the remainder of the Agreement.
- G. If any of the provisions of this Agreement are or become invalid to any extent, the other provisions of this Agreement shall not be effected thereby. In the event of invalidity of a provision, the parties agree to accept a provision which reflects as closely as possible the intention of the invalid provision.
- H. The Vendor Agreement does not constitute a license or a property interest.
- I. In all cases, the Vendor's new application will be subject to the Agency's Vendor selection criteria and Vendor limiting criteria in effect at the time of the application.

VENDOR AGREEMENT, Continued

APPENDIX A

VENDOR SANCTIONS

MANDATORY SANCTIONS

TYPES OF ABUSE/OFFENSES	FIRST SANCTION	SECOND SANCTION	THIRD SANCTION
1. Vendor convicted in court for trafficking in FIs or CVVs or selling FIs or CVVs in exchange for firearms, ammunition, explosives, or controlled substances [as defined in Section 102 of the Controlled Substances Act (21U.S.C.802)].	Permanent		
2. Vendor has an administrative finding or trafficking in FIs and CVVs or selling FIs or CVVs in exchange for firearms, ammunition, explosives, or controlled substances in exchange for FIs or CVVs.	Six Years	Twelve Years	Twenty-Four Years
3. Vendor has one incidence of buying or selling FIs or CVVs for cash.	Six Years	Twelve Years	Twenty-Four Years
4. Vendor has one incidence of selling firearms, ammunition, explosives, or controlled substances in exchange for FIs or CVVs (21 U.S.C.802).	Six Years	Twelve Years	Twenty-Four Years
5. Vendor has one incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for FIs or CVVs.	Three Years	Six Years	Nine Years
6. Vendor has a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental FI or CVV food item for a specific period of time.	Three Years	Six Years	Nine Years
7. Vendor has a pattern of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract prices.	Three Years	Six Years	Nine Years
8. Vendor has a pattern of receiving, transacting and/or redeeming FIs and CVVs outside of authorized channels including the use of an unauthorized vendor, and/or an unauthorized person.	Three Years	Six Years	Nine Years
9. Vendor has a pattern of charging for supplemental food not received by the participant.	Three Years	Six Years	Nine Years
10. Vendor has a pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C.802, in exchange for FIs and CVVs.	Three Years	Six Years	Nine Years
11. Vendor has a pattern of providing unauthorized items in exchange for FIs and CVVs, including charging for supplemental food provided in exchange for supplemental food provided in excess of those listed on the FI or CVV.	One Year	Two Years	Three Years
12. Vendor has been disqualified from SNAP.	The disqualification shall be for the same length of time as the SNAP disqualification.		
13. Vendor has been assessed a civil money penalty for hardship in SNAP.	The disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in SNAP.		
14. Vendor that does not pay, only partially pays, or fails to timely pay a civil money penalty.	The disqualification shall correspond to the period for which the civil money penalty was assessed.		
15. Vendor that obtains formula from an unlisted source.	One Year	Two Years	Three Years
16. A new vendor that has two quarters of monitored WIC food sales that exceed 50% of the vendor's annual food sales for two quarters.	One Year	Two Years	Three Years

VENDOR AGREEMENT, Continued

APPENDIX A, Continued

VENDOR SANCTIONS, Continued

STATE SANCTIONS

TYPES OF ABUSES/OFFENSES

The following abuses/offenses will be sanctioned and may entail additional training.

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| 1. Vendor counterfeits stamp. | One Year |
| 2. Vendor discriminates against WIC participants (protected Classes). | One Year |
| 3. Vendor fails to remit payment for overcharges or provide justification for the overcharges, including scanner vs. shelf prices discrepancies. | One Year |
| 4. Vendor fails to provide evidence of proof of purchase (invoices) of WIC foods. | One Year |
| 5. Vendor fails to maintain minimum stock. | One Year |
| 6. Vendor uses the service mark, WIC Acronym, and/or WIC logo, in advertising or promotional literature except to inform the public that the Vendor is WIC authorized. | One Year |
| 7. Vendor applies stickers, tags, or labels having the service marks thereon to WIC-approved products. | One Year |
| 8. Vendor uses the WIC Acronym, or close facsimiles, in the name of the vendor. | One Year |

The following abuses/offenses will be sanctioned and may entail additional training.

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|---|------------|
| 1. Vendor provides rain checks for FIs or CVVs. | Six Months |
| 2. Vendor seeks restitution from participants for FIs or CVVs not paid by the State agency or subject to non-payment by the State agency. | Six Months |
| 3. Vendor does not maintain a clean and sanitary store. | Six Months |
| 4. WIC formula and dairy food items have stale dates. | Six Months |
| 5. Vendor labels non-authorized brands as WIC approved. | Six Months |
| 6. Vendor fails to record amount of purchase prior to obtaining signature on check. | Six Months |
| 7. Vendor redeems invalid FI or CVV. | Six Months |
| 8. Vendor fails to get Agency approval for the use of WIC signs that are not provided by the Agency. | Six Months |

VENDOR AGREEMENT, Continued

APPENDIX B

Full Administrative Appeal of State Agency Decisions against Vendors

The State Agency must provide a full administrative review to authorized vendors that appeal adverse actions on denial of authorization based on the vendor selection criteria for competitive price or for minimum stock requirements, termination of an agreement for cause, disqualification, and the imposition of a fine or a civil money penalty in lieu of a disqualification:

1. Written notification of the administrative action the procedures to file for an administrative review, if any, and the cause(s) for and the effective date of the action. Such notification shall be provided to participating vendors not less than 15 days in advance of the action. When a vendor is disqualified due in whole or in part to violations in S246.12(l)(l), such notification shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Supplemental Nutrition Assistance Program. Such disqualification may not be subject to administrative or judicial review under the Supplemental Nutrition Assistance Program."
2. The opportunity to appeal the adverse action within a time period specified by the State Agency in its notification of adverse action.
3. Adequate advance of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.
4. The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. The State Agency may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed.
5. The opportunity to cross-examine adverse witnesses. Where necessary to protect the identity of WIC Program investigators, such examination may be conducted behind a protective screen.
6. The opportunity to be represented by counsel, if desired.
7. The opportunity to examine the evidence upon which the State agency's action is based prior to the review.
8. An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied its policies and procedures, according to the evidence presented at the review and the statutory and regulatory provisions governing the Program. State agencies may appoint a reviewing official, such as a chief hearing officer or judicial officer to review appeal decisions to ensure that they conform to approved policies and procedures.
9. Written notification of the decision on the appeal including the basis for the decision within 90 days from the date of receipt of a vendor's request for an administrative review.

VENDOR AGREEMENT, Continued

APPENDIX C

Abbreviated Administrative Appeal of State Agency Decisions against Vendors

The following are State Agency procedures for an abbreviated administrative review to vendor applicants that appeal a denial of authorization based on the selection criteria:

1. Written notification of the administrative action the procedures to file for an administrative review, if any, and the cause(s) for and the effective date of the action.
2. The opportunity to examine the evidence upon which the State agency's action is based prior to the review.
3. An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied its policies and procedures, according to the evidence presented at the review and the statutory and regulatory provisions governing the Program. State agencies may appoint a reviewing official, such as a chief hearing officer or judicial officer to review appeal decisions to ensure that they conform to approved policies and procedures.
4. Written notification of the decision on the appeal including the basis for the decision within 90 days from the date of receipt of a vendor's request for an administrative review.

VENDOR AGREEMENT, Continued

APPENDIX D

Administrative Review of State Agency Actions

The State Agency must provide administrative reviews to vendors that appeal the following adverse actions:

1. Denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods, or on a determination that the vendor is attempting to circumvent a sanction.
2. Termination of an agreement for cause
3. Disqualification
4. Imposition of a fine or a civil money penalty in lieu of disqualification
5. Denial of authorization based on the State Agency's vendor limiting criteria
6. Denial of authorization because a vendor submitted its application outside the timeframes
7. Termination of an agreement because of a change in ownership or location or cessation of operations
8. Disqualification based on trafficking conviction
9. Disqualification based on the imposition of a SNAP civil money penalty for hardship
10. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State Agency.

The State Agency may not provide administrative reviews pursuant to vendors that appeal the following actions:

1. The validity of appropriateness of the State Agency's vendor limiting or selection criteria
2. The validity or appropriateness of State Agency's participant access determinations
3. The State Agency's determinations whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.
4. Denial of authorization if the State Agency's vendor authorization is subject to the procurement procedures applicable to the State Agency.
5. The expiration of a vendor's agreement.
6. Disputes regarding FI or CVV payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error.
7. Disqualification of a vendor as a result of disqualification from SNAP.
8. The SA's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to 246.12(g)(11).
9. The SA's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction pursuant to 246.12(l)(3).

VENDOR AGREEMENT, Continued

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