

Maine Center for Disease Control and Prevention

WIC Nutrition Program

Effective: October 1, 2011
Revised: October 1, 2023

Policy No. VM-4

Vendor Management Vendor Monitoring

Authority

7 CFR 246.4(a)(14)(iv) and 246.12(j);
22 MRSA §255; and
10-144 CMR Chapter 286 §IV.F

Purpose

To describe State Agency (SA) procedures for monitoring compliance of vendors with the WIC Vendor Agreement and WIC program policies. To inform WIC vendors of violations and the sanctions that will be imposed by the SA for noncompliance.

Policy

During each fiscal year, at least five (5%) of all authorized vendors as of October 1st will be monitored. The State Agency shall give priority to high-risk vendors in conducting compliance investigations (refer to VM-03, High Risk Vendor Identification Systems). If fewer than five percent (5%) of authorized vendors are high-risk, the State Agency will randomly select additional authorized vendors, up to the five percent (5%) requirement, on which to conduct compliance investigations. Vendors who fail to comply, either intentionally or unintentionally, with the Vendor Agreement and/or policies of the WIC Program will be sanctioned, which may include a Civil Money Penalty (CMP) or an Administrative Fine (AF). If a vendor's sanction results in a disqualification, the SA will terminate the Vendor Agreement. The SA and/or representatives of the SA will document the circumstances of a vendor's noncompliance. Sanctions will be imposed consistently among vendors. The vendor will have to reapply to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the SA's vendor selection criteria and any vendor limiting criteria in effect at the time of authorization.

Procedures

1. The SA and/or SA representatives routinely monitor the operations of authorized WIC vendors during the term of the WIC Vendor Agreement.
 - 1.1. Monitoring techniques include but are not limited to:
 - 1.1.1. Routine on-site store reviews by the SA and/or SA representative.
 - 1.1.2. Covert in-store compliance buys by the SA and/or SA representative.
 - 1.1.3. Invoice and WIC EBT claim audits by the SA and/or SA representative.

- 1.1.4. Periodic reviews of vendor redemption reports.
- 1.2. Criteria used by the SA and/or SA representative to initiate an invoice audit and/or compliance buy include but are not limited to:
 - 1.2.1. The State Agency will use a combination of periodic, scheduled reviews and complaints to determine whether a vendor is selected for routine monitoring
 - 1.2.2. Price differences identified as a result of an on-site store review or compliance buy.
 - 1.2.3. Apparent discrepancy in vendor's in-store stock compared to the volume of WIC redemptions.
 - 1.2.4. Indicators that the vendor is "high risk".
- 1.3. "High risk" vendors are those that the SA has determined pose the highest risk of non-compliance with the regulations, WIC Vendor Agreement, and/or policies.
- 1.4. The SA and/or SA Representative may assess any authorized vendor outlet at any time during the Vendor Agreement period using the selection criteria in effect at the time of the reassessment (See VM-1 Vendor Selection and Authorization).
2. Monitoring by routine on-site store reviews may be conducted by the SA and/or SA representative.
 - 2.1. During the on-site store review, the SA and/or SA representative will self-identify to store personnel and proceed to complete the on-site review (see Appendix VM-4-A On-Site Monitoring).
 - 2.2. . The on-site store review may include, but is not limited to, the following procedures:
 - 2.2.1. Check the vendor's inventory and/or inventory records to determine if the vendor meets the State Agency's minimum requirements for the variety and quantity of supplemental foods.
 - 2.2.2. Determine whether the vendor accepts forms of payment other than eWIC benefit cards, such as cash, personal checks, and credit cards, to provide information on whether the vendor is an above-50%-vendor (refer to policy VM-1 Vendor Selection and Authorization).
 - 2.2.3. Check vendor's receipts for purchase of infant formula to ensure that the infant formula is obtained only from the State agency's list of infant formula manufacturers registered with the Food and Drug Administration, and infant formula wholesalers, distributors, and retailers licensed under State law.
 - 2.2.4. Receive the vendor's shelf prices and/or validate the vendor's price list.
 - 2.2.5. If possible, observe eWIC benefit card transactions.
 - 2.2.6. Perform an educational buy.
 - 2.2.7. Interview the manager and/or employees.
 - 2.2.8. Review employee training procedures and training log (see [Appendix VM-2-A WIC Vendor Training Log](#)).
 - 2.2.9. Examine expiration dates on WIC food items.
 - 2.2.10. Examine WIC signage at the store.
 - 2.2.11. Examine clearly mark all items for sale in the store with prices, or clearly indicate prices with shelf labels or other signage.
 - 2.2.12. Test for other requirements as stated in policy and the WIC Vendor Agreement.

- 2.3. At the end of the on-site monitoring visit the SA and/or SA Representative will discuss findings with the vendor.
 - 2.3.1. A Deficiency & Corrective Action form will be transmitted to the vendor, if appropriate.
3. Monitoring by Inventory Audit
 - 3.1. The SA and/or SA Representative may request up to 12 months of purchase invoices or retail cash tickets from a vendor for analysis to determine that all claims submitted by the vendor are supported by invoices.
 - 3.1.1. The vendor will be given 60 days from receipt of a written request to submit purchase invoices to the SA and/or SA representative, as time is of the essence.
 - 3.1.2. The 60-day period to submit purchase invoices is considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3).
 - 3.1.3. The vendor's failure to supply purchase invoices to the SA within the 60-day period will result in disqualification from participation in the WIC Program. The disqualification date for failure to submit purchase invoices within the 60-day period will be included in the written notification.
 - 3.1.4. Additional purchase invoices/records will not be accepted by the SA and/or the SA representative after the expiration of the 60day period unless directed to do so by the WIC Program Director.
 - 3.2. Required components of an acceptable purchase invoice:
 - 3.2.1. The purchase invoice will reflect the name and address of the wholesaler, food manufacturer, or retail food store, a customer number and/or the name and address of the vendor (or any other identifier that specifically identifies the vendor to whom the items were sold), date of the purchase, list of the items purchased (that adequately describes the purchased items, such as a stock number or UPC), size, quantity, unit price, and dollar extension for the quantity purchased.
 - 3.2.2. Retail cash tickets will include the name and address of the store or a code number by which the store location can be identified, the date of purchase, description of the exact items purchased, the unit price of the items purchased, and the total amount purchased.
 - 3.2.2.1. Cash tickets, which do not completely describe the actual item, must have a computer code, which can be verified by contacting the store at which the merchandise was purchased. b. Cash tickets which do not specifically identify the product purchased may be verified by the SA and/or SA representative through communication with the vendor's corporate office.
 - 3.2.2.2. Cash tickets which do not specifically identify the product purchased may be verified by the SA and/or SA representative through communication with the vendor's corporate office.
 - 3.2.3. Affidavits, Statements of Fact, and oral statements will not be accepted from a vendor under audit as evidence of inventory. Only purchase invoices or retail cash tickets as described in items 4.2.1. and 4.2.2. of this Section will be accepted from a vendor under audit as evidence of inventory.

3.3. Inventory Audit Sanctions

- 3.3.1. Vendors must provide adequate documentation to support purchasing the inventory necessary to verify WIC claims for any specified period. If documentation is lacking, the SA will recover all monies unsubstantiated by vendor records for the period in question, and the vendor will be disqualified for three years.
- 3.3.2. A vendor's documentation will be deemed inadequate or incomplete if the discrepancy between substantiated inventory and submitted claims is material. Materiality is determined using a percentage of said claims where variance could be attributed to relevant and substantial discrepancies in delivery documentation. It is the expectation of the SA that vendors closely manage their delivery and sign off process to ensure inventory can substantiate WIC sales. Materiality is considered by each WIC food item and not the aggregate of all items.
- 3.3.3. The vendor will receive a written warning when there is an immaterial difference between documented inventory and WIC claims.
 - 3.3.3.1. The written warning will notify the vendor of a subsequent invoice audit, within three years of the dated written notification, and identify any additional unsubstantiated WIC sales paid to the vendor.
 - 3.3.3.2. Subsequently identified unsubstantiated WIC sales will constitute a pattern of claiming reimbursement for the sale of a food item that exceeds the vendor's documented inventory, and the vendor will be disqualified for three years.
- 3.3.4. If the discrepancy between a vendor's substantiated inventory and submitted claims is deemed material, then a pattern is established for claiming reimbursement for the sale of a food item that exceeds the vendor's documented inventory. On this basis, the vendor will be disqualified for three years. Prior to disqualification, the vendor will be notified in writing and given 20 days from receipt of the written notification to submit additional purchase invoices for the period in question. The 20-day period to submit additional purchase invoices is considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3). Notification will include the effective date of the three-year disqualification should the additional purchase invoices fail to substantiate the inventory.
 - 3.3.4.1. If the SA determines that disqualification of the vendor would result in inadequate participant access, the SA will impose a Civil Money Penalty (CMP) in lieu of disqualification.
 - 3.3.4.2. Under 7 CFR 246.18(a)(1)(iii)(C), the SA's participant access determination is not subject to administrative review.
- 3.3.5. In accordance with Federal Regulations 7 CFR Section 246.12(h)(3)(xvi) and the WIC Vendor Agreement, it is the vendor's responsibility to maintain for a minimum of four federal fiscal years all inventory records used for Federal and State tax reporting purposes and other records the SA may require.
- 3.3.6. The vendor claim determination by the SA and/or SA representative regarding the amount of the unsubstantiated WIC sales is not subject to administrative review.

4. Monitoring by Compliance Buys

- 4.1. Definition of a compliance buy: A covert in-store investigation by one or more SA and/or SA Representatives posing as WIC participants or the parent/guardian/proxy of WIC participants using WIC EBT food instruments or cash-value benefits (CVB) to test the vendor's compliance with the Vendor Agreement, program policies, and/or rules. The SA and/or SA Representative does not reveal to store personnel that he/she is a SA and/or SA representative during the visit.
 - 4.1.1. If no sanctionable violations are detected on the first monitoring activity, a second compliance monitoring activity is conducted. There is no minimum time interval requirement between the first non-violative compliance monitoring activity and the second compliance monitoring activity. If no sanctionable violations are detected on the second compliance monitoring activity, the vendor is notified in writing and the investigation is closed.
 - 4.1.2. If one or more sanctionable violations are detected during a compliance buy, a notice of an in-store violation will be sent to the vendor in writing within 30 business days, with the exception of notice of violations pertaining to trafficking in WIC EBT food instruments or CVBs, selling/buying firearms, ammunition, explosives, controlled substances, alcohol, alcoholic beverages or tobacco products.
 - 4.1.3. After receiving a written warning of noncompliance and when a violation requires a pattern, follow-up will be conducted until two monitoring activities are found with no sanctionable violations. Both the initial and follow-up compliance monitoring activities will be considered in determining whether sanctions are applicable. The initial and follow-up compliance monitoring activities and subsequent follow-up period constitute a single investigation.
 - 4.1.4. If a pattern or a sanctionable offense has not been established, the investigation will be closed.
- 4.2. Definition of an incident of noncompliance: A compliance buy and/or on-site review in which evidence of a sanctionable violation of the Vendor Agreement, program policies, and/or rules was found. Sanctionable violations identified during compliance monitoring activities, will be aggregated to constitute a pattern.
- 4.3. A compliance buy may test for, but not be limited to, areas of potential noncompliance as follows:
 - 4.3.1. A SA and/or SA representative may attempt to transact WIC EBT food instruments or CVBs for unauthorized package/product sizes, unauthorized food items, unauthorized brands of food items, non-food items, excess quantity of foods, credit (including rain checks which are not allowable), and/or cash.
 - 4.3.2. A SA and/or SA representative may also test for overcharging, being charged for foods not received, and/or for WIC approved foods be prominently displayed either on the food item, on the shelf where the food item is displayed, or otherwise displayed where WIC customers can easily see them.
 - 4.3.3. A SA and/or SA representative may test the WIC EBT point-of-sale (POS) system's ability to accurately sell authorized fruits and vegetables in a WIC EBT transaction.
 - 4.3.4. The SA and/or SA Representative may attempt a split tender transaction of fruits and/or vegetables.
 - 4.3.5. A SA and/or SA representative may also test for other violations of policies and the

Vendor Agreement.