

## Section III: State Agency Procedure Manual

### I. State Vendor and Farmer Management

#### H. Violations and Sanctions

##### Purpose

Violations and sanctions exist to ensure program integrity.

##### Policy

The Montana WIC Program shall determine the type and level of sanction to be applied against retailers based upon the severity, nature, and pattern of the WIC Program violation.

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#### 1. Notification of Violation

- If a retailer has committed a violation that requires a pattern of occurrences in order to impose a sanction, the Montana WIC Program will notify the retailer of the initial violation in writing prior to documentation of another violation.
- Notification is not required:
  - For WIC retailer disqualifications or civil money penalties based on Supplemental Nutrition Assistance Program (SNAP) sanctions.
  - For violations that only require one incident before a sanction is imposed, or,
  - If such notice could compromise covert investigations being conducted by the Supplemental Nutrition Assistance Program (SNAP), the USDA Office of the Inspector General, the State Police, or an ongoing WIC investigation or other authorities.
    - Reason for not informing will be documented in the retailer's chart.

#### 2. Establishing a Pattern of Violations

- Montana WIC Program sanctions require documentation of a pattern of the same type of violation. A pattern of violations can be based on at least two (2) independent documented violations during any compliance investigation, at least three (3) documented independent violations obtained through objective data or other non-compliance purchase investigations or one (1) inventory audit where discrepancies were found.
  - When more than one violation is detected during a single investigation, the disqualification period will be based on the most serious violation.
  - The Montana WIC Program may not accept voluntary withdrawal of a retailer from the WIC Program as an alternative to disqualification.
  - Any retailer who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds 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 funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one (1) year or both. (7 CFR §246.12 (h) (3) (xxi))

### 3. Retailer Noncompliance

- Montana WIC may initiate administrative action to disqualify or assess a fine against a retailer for non-compliance based on one incident of a violation or a pattern of violations. An incident is defined as one isolated event in a single point in time or any single occurrence of a violation. A pattern is defined as two or more incidences of a violation.
- Mandatory sanctions are federal penalties and shall constitute grounds for disqualification from the WIC Program for a minimum of one (1) year and up to permanent disqualification.
- State sanctions are penalties that shall constitute grounds for disqualification from the WIC Program and may include fines, mandated training, and/or the submission of a corrective action plan.
- State sanctions will not be added to a federal mandatory sanction within the same investigation unless a mandatory sanction from the same investigation is not upheld on appeal.

### 4. Mandatory Violations and Sanctions

- Class A and B violations are subject to mandatory federal sanctions and shall constitute grounds for disqualification from the WIC Program for a minimum of one (1) year and up to permanent disqualification.

- Class A Violations:

These violations require one incident and are subject to mandatory federal sanctions as defined in 7 CRF 246.12 and shall constitute grounds for disqualification from the WIC Program for a minimum of three (3) years and up to permanent disqualification. Class A violations include:

- A conviction for trafficking (buying or selling WIC food benefits), conviction of selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food benefits – Length of disqualification – Permanent.
- One incident of trafficking (buying or selling WIC food benefits), selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food benefits – Length of disqualification – Six (6) years.
- One occurrence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for WIC benefits – Length of disqualification – Three (3) years.

- Class B Violations

These violations require a pattern be documented before a sanction can be imposed. Unless otherwise noted, “pattern” is defined as two or more of the same Class B violations which occur during the retailer’s contract period. For a single Class B violation, the retailer may be given written notice of the violation. When written notice is given the retailer must establish a corrective action plan that includes the retailer’s attendance at a mandatory training to be completed within sixty (60) days of the notice.

At the end of the disqualification period a new application for authorization may be submitted. In all cases the retailer’s new application will be subject to the Montana WIC Program’s retailer selection criteria in effect at that time. Class B violations include:

- Claiming reimbursement for the sale of any WIC item that exceeds the store’s documented inventory of that food item for a specific period – Length of disqualification – 3 years.
- Charging WIC participants more for WIC approved foods than non-WIC customers or

charging more than the posted shelf price (overcharges) – Length of Disqualification – 3 years.

- Receiving, transacting, and/or redeeming WIC food benefits outside of authorized channels, including the use of an unauthorized retailer and/or an unauthorized person – Length of disqualification – 3 years.
- Charging the WIC Program for WIC foods not received by the WIC participant – Length of disqualification – 3 years.
- Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, in exchange for WIC food benefits – Length of disqualification – 3 years.
- Providing unauthorized food items in exchange for WIC food benefits, including charging for supplemental food provided more than items available on the benefit – Length of disqualification – 1 year.

○ Class C Violations

These violations require a pattern of violations be documented before a sanction can be imposed. For a single Class C violation, the retailer may be given written notice of the violation. When written notice is given the retailer must establish a corrective action plan that includes the retailer's attendance at a mandatory training to be completed within sixty (60) days of the notice. A pattern of Class C violations constitutes grounds for disqualification from the WIC Program for one (1) year.

At the end of the disqualification period a new application for authorization may be submitted.

The WIC Program may impose a Class C violation if a mandatory sanction from the same investigation is not upheld on appeal. Class C violations include:

- Failure to stock any WIC approved items in three or more of the WIC approved food categories.
- Failure to attend mandatory retailer training.
- Non-payment of a claim for documented overcharges to the WIC Program.
- Intentionally providing false information on the retailer application.

○ Class D Violations

A Class D violation will not be added to a mandatory sanction within the same investigation. The WIC Program may impose a Class D violation if a mandatory sanction from the same investigation is not upheld on appeal.

- First occurrence – The retailer will receive a written warning letter and a request to train staff if training can address the violation.
- Second occurrence – (within one year of the first violation). The retailer must attend mandatory training or be disqualified for twelve months.
- Third occurrence – (within one year of the first violation). The retailer must complete a Corrective Action Plan (CAP) within sixty (60) days of the notice.
- Fourth occurrence – (within one year of first violation) Retailer will be disqualified for twelve months.

○ Class D violations include:

- Contacting a WIC customer to recover funds for WIC benefits not reimbursed for, or for which overcharges were requested.
- Failure to allow monitoring of the store by WIC staff; failure to provide inventory records for review when requested.
- Failure to submit information requested by the State Agency within the time specified, including, but not limited to, food stocking information, sales information and corrective action plans.
- Failure to provide a WIC customer with an itemized receipt for foods purchased with a WIC benefit.
- Purchasing infant formula from a source not on the “Infant Formula Wholesalers/Distributors/Retailers/Manufacturers” list.
- Failure to maintain the minimum stock of WIC approved foods. Must also provide verification to the WIC Program that the insufficient inventory has been corrected within thirty days.
- Giving change in a WIC transaction or requiring cash to be paid in whole or in part to redeem WIC benefits.
- Discourteous treatment of WIC participants as documented by the Montana WIC Program.
- Misuse or unauthorized use of the WIC acronym or WIC logo.
- Failure to maintain competitive prices on WIC approved items.
- Failure to display “We Accept WIC Benefits” sign.

## 5. Other Disqualifications

- The Montana WIC Program shall disqualify a retailer that has been disqualified from SNAP. The WIC disqualification will be for the same length of time as the SNAP disqualification, and the WIC disqualification may begin later than the SNAP disqualification.
- The Montana WIC Program shall disqualify a retailer who has been assessed a civil money penalty for hardship in SNAP under 7 CFR 278.6. The length of disqualification will correspond to the period for which the retailer would otherwise have been disqualified in SNAP. Such disqualification may not be imposed unless the Montana WIC Program has first determined in its sole discretion that the disqualification would not result in inadequate participant access. If the Montana WIC Program determines that inadequate participant access would result from the disqualification, then neither a disqualification nor a civil money penalty in lieu of disqualification may be imposed.

## 6. Prosecution and Fines

A retailer committing fraud or abuse of the WIC Program is liable to prosecution under applicable federal, state, or local laws.

- Appeals & Notice
  - A retailer may appeal a denial of authorization. The retailer may also appeal action taken during a contract where the retailer is disqualified, or any other adverse action is taken. The exception is that the retailer cannot appeal the expiration of the contract and the Montana WIC Program’s participant access determination for a mandatory or Montana WIC Program violation.

- Civil Money Penalty In lieu of Disqualification
  - The Montana WIC Program shall consider civil money penalties in lieu of disqualification only as a last resort when there are no other means to provide adequate participant access.
  - Prior to disqualifying a retailer, the Montana WIC Program shall determine, in its sole discretion, and document in the retailer file, whether the disqualification would result in inadequate participant access.
  - The Montana WIC Program shall presume that there is adequate access for participants if there is at least one other authorized WIC retailer in the same geographic WIC service area as the violating retailer or in the abutting geographic WIC service area.
- Calculation of a Civil Money Penalty
  - The amount of the civil money penalty shall equal the average monthly WIC redemptions for the six month period ending with the month immediately preceding the month during which the notice of sanctions dated, multiplied times ten percent (.10) and then multiplied times the number of months for which the retailer would have been disqualified. The civil
  - A civil money penalty cannot exceed \$15,041 for each violation and the total penalty cannot exceed \$60,161 for each investigation.
- Failure to pay Fine/Civil Money Penalty
  - If a retailer does not pay or partially pays a fine and/or CMP within the specified time frames, the Montana WIC Program will disqualify the retailer for the length of the disqualification corresponding to the original violation.
- Federal regulations allow the use of retailer and participant collections for any allowable NSA cost. The funds must be used in the fiscal year that:
  - The initial obligation was made
  - The claim arose
  - The funds are collected, or
  - After the funds are collected.

## **7. Payment Violation**

- When a payment violation is discovered, that does not merit disqualification, a claim will be submitted by the Montana WIC Program to the EBT process to reclaim those funds within 30 days of the incident.
- An in-store training must take place for all store personnel.
- Failure to meet these requirements will result in disqualification from the WIC Program.