



# Retail Reference Manual



## **Montana WIC Program**

PO Box 202951  
Helena, MT 59620-2951

1-800-433-4298 or (406) 444-5533

Fax: (406) 444-0239

[www.wic.mt.gov](http://www.wic.mt.gov)

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## **Introduction to WIC**

**WIC** is the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) that is funded by the United States Department of Agriculture (USDA). WIC was first offered in Montana in 1974, and is administered by the Department of Public Health and Human Services through local WIC agencies.

**WIC** is a nutrition program for pregnant women, breastfeeding mothers, postpartum mothers, babies, and children up to five years old. Eligibility for the Program is based on financial and medical or nutritional need.

**WIC** provides foods that are specifically recommended to improve each participant's diet. For Montana families, the WIC food package helps them get the healthy foods they need. Participants can only buy the types and quantities of foods issued to them on their cards. It should be noted that the foods supplied through WIC are not intended to serve as a complete diet, but to supplement the foods already being consumed by the participant.

**WIC** provides nutrition education to help participants learn the importance of good nutrition for good health.

**WIC** staff assist participants in receiving regular medical care. Staff members see that pregnant women receive prenatal care, and that infants and children receive routine checkups.

**WIC** activities are carefully coordinated so appropriate action can be taken during critical stages of growth and development.

### **What is my Role as a Retailer?**

WIC retailers play an important role in the WIC Program. The eWIC card allows the purchase of food items designed to supplement the WIC participant's nutritional needs. Retailers act as the final step in the WIC process. Participants are issued eWIC cards that electronically access the participant's WIC account, which includes approved food types, quantities, and benefit expiration dates. A WIC participant uses an eWIC card at a WIC approved retailer, allowing the participant to receive their prescribed food package.

The retailer's role is vital to the success of the WIC Program because the nutritious foods received at a WIC approved retailer are designed to promote the healthiest possible birth outcomes, as well as the growth and development of children. Compliance with requirements specified in the Retailer MOU (Appendix B) and this Retailer Reference Manual is integral to the success of the program.

## Frequently Asked Questions

### Images of Montana eWIC Card

First Edition eWIC Cards Issued



Cards Issued Starting Fall 2019



***Both cards will be accepted for WIC benefits.***

### How many eWIC cards can a family have?

One per "family", however, a customer may have more than one card if they are shopping for more than one "household/family", for example, a foster parent may have several cards (one for each child). The store will need to guide the customer on how to run the transaction (separate or together). The person who is issued the card may provide the card and PIN to anyone they choose to do their shopping for them. The authorized person on the account is responsible to educate any other shoppers on what to buy and how to use the card.

### Are eWIC transactions final?

All transactions are final once they have been completed. Items cannot be put back on a eWIC card at the store. Participant eWIC cards are loaded with benefits specific to the family at the local clinic. Once loaded, participants can shop at any WIC retailer across the state. Participants may use a WIC Approved Food List or a smartphone app to determine which foods are eligible for purchase before coming up to the checkout.

***Items can only be returned in case of a product defect and may only be exchanged for the exact same item.***

### Can a participant do "mixed basket" at the counter and have the WIC items automatically deducted when the card is swiped?

Generally, the participant may run all their products through the line at the same time. Most stores can handle multiple tenders (eWIC, SNAP, credit, cash, etc.). However, to be sure, the participant should let the cashier know they will be using eWIC. If the store requires that you separate out your WIC products (if they have a "stand beside" terminal) then the cashier should help to organize the transaction. The eWIC card must be swiped FIRST, before any other tender.



### **How will the customer know what is allowed?**

There are two things to know here, what foods are WIC approved and what the person has available on their account balance. For the WIC approved foods, the best resource is the WIC Approved Food List provided by the clinic, available on the Montana WIC website, or on the Montana WIC smartphone app. Retailers should also keep a copy of the current Food List at each register for reference. WIC customers and retailers may also use the Montana WIC smartphone app to scan the barcode of food items to see if they are WIC eligible.

To see a cardholder's available balance the cashier may run a "balance inquiry" at the POS; the customer may reference their most recent store receipt; view their balance online at [www.mybnft.com](http://www.mybnft.com); or, call 844-583-3237.

### **If a food item that I think should be authorized is not scanning, what can I do?**

There are a couple of options. The Montana WIC app on a smartphone can be used to submit the product code, product information, and pictures (front and back labels) to the WIC State Office. Pictures and the product information can also be submitted via a fillable form on our website at [www.wic.mt.gov](http://www.wic.mt.gov). WIC nutritionists will review and either approve or deny the item within 3-5 business days. Contact (800) 433-4298 or email [wicupc@mt.gov](mailto:wicupc@mt.gov) with questions.

### **As a WIC Vendor, who do I contact for different types of questions?**

*Questions on eWIC Vendor policies or authorized foods*

- Call State Office at (800) 433-4298, hit 0 for live person or 1 for helpdesk

*Submit possible missing food items*

- Use the WIC UPC form (online or via WIC smartphone app)

#### *Questions on eWIC payment adjustments*

- Your Third Party Processor (TPP) or Solutran Help Desk at 866-730-7746 or email [ebtservices@solutran.com](mailto:ebtservices@solutran.com)

#### *Questions on my integrated POS*

- ECR Provider or your TPP

#### *Questions on my stand beside POS*

- Solutran Help Desk at (866) 730-7746 or email [ebtservices@solutran.com](mailto:ebtservices@solutran.com)

#### *Local Contact*

- Each local WIC clinic has an assigned LARC (Local Area Retail Coordinator) who will do store monitoring and may check in to the store with questions. Feel free to reach out to your assigned LARC (by contacting the local WIC clinic) with any questions and they can help direct you to the correct person.

#### **How do I report a complaint about a WIC participant?**

Please report any problem with a WIC customer, especially if there is any type of verbal or physical abuse involved, to the WIC Program. You may call your local WIC clinic (locate number at [www.wic.mt.gov](http://www.wic.mt.gov)) or call the State office at (800) 433-4298, press 0; you may also refer to the Montana WIC website to fill out and submit the Program Complaint Form.

#### **How long does a store's WIC application take to process?**

The application process timeline can vary depending on the unique circumstances for each store. In some cases, the application process may take as long as three months for a store to complete. Contact the State WIC Program for more information.

#### **Why don't I receive full price for some WIC foods?**

The Montana WIC Program seeks to serve the maximum number of participants through cost containment. Retailers with similar characteristics are grouped together and held to competitive prices within their assigned "Peer Group." Each WIC food item has a Maximum Allowable Reimbursement (MAR) for each peer group, also called a Not To Exceed (NTE) price. Those maximum prices are calculated on an ongoing basis by averaging the requested prices for each item and adding a peer group specific buffer to that average. If a retailer's requested price is greater than the maximum price, they will be reimbursed the maximum amount.

#### **Where do I order formula from?**

To ensure the safety of infant formula, it must be purchased from the Montana WIC Program's approved list of formula distributors. This list can be found on the Montana WIC website.

## **Retailer Authorization**

The Montana WIC Program has established criteria to evaluate and select retailers for initial and continuing participation in the WIC Program. The number of participating retailers may be limited to assure that state and local officials can effectively manage the evaluation and monitoring of authorized retailers.

Retailers who wish to accept Montana WIC benefits must complete an application process, meet the following application criteria, and be approved to take WIC benefits. A WIC Application must be submitted to the State WIC Office to begin the process. The Retailer MOU (Appendix B) indicates the selection criteria that will be used and the stocking requirements that will be reviewed prior to WIC authorization of a retailer.

### **Initial Application Criteria**

- Has a Point of Sale (POS) system that is capable of conducting eWIC transactions:
  - Capable of processing Not to Exceed (NTE) price adjustments at the time of the transaction.
  - Capable of downloading the Approved Product List (APL).
    - Capable of preventing unauthorized food item purchases.
    - Capable of preventing the purchase of approved food items not available on card balance.
  - Capable of providing all transaction receipts (beginning balance, purchased items, and remaining balance).
- Agrees to accept payment for food prices for no more than the Not-To-Exceed (NTE) price set for each food item.
- Will not charge the WIC Program any third-party processing fees, interchange fees, or ongoing maintenance and operational costs.
- Will meet minimum lane coverage requirements.
- Will maintain compliance with operating rules, standards, and technical requirements.
- Within the last six (6) years, neither the business nor any of its owners, officers or managers has been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity.
- Is SNAP authorized (Supplemental Nutrition Assistance Program, formerly known as Food Stamps.)
- Receive or be expected to receive no more than fifty percent (50%) of their store's total annual food sales from WIC transactions.
- An owner, officer, or partner of a retailer must not have bought or sold a store to avoid a WIC sanction.
- Formula must be purchased from the Montana WIC Program's approved Formula Wholesaler/Distributor/Retailer/Manufacturer list to ensure safety of the products.
- The vendor must be a primary retailer of groceries and stock a variety of foods in each of the following staple food groups on a continuous basis:



- Fresh or frozen meat, poultry and/or fish (pre-packaged luncheon meats do not apply)
- Bread and cereal
- Fresh fruit and vegetables, and frozen vegetables
- Dairy products.
- Always maintains the minimum food stock required (see Appendix A) by the Montana WIC Program.
- Provides a Business License, proof of Workers Compensation, and Liability Insurance for application purposes.
- Based on Local Agency input and regional assessment, there is a need for an authorized WIC Retailer in the requested area.
- Inform the Department of any potential or real conflict of interest between WIC staff, either state or local, and Contractor personnel. Conflicts of interest may include, but are not limited to, the following:
  - Employing a state or local WIC agency staff member or spouse, son, daughter, parent or sibling of a local or state WIC agency staff member.
  - Giving a fee or gift to a local or state WIC program staff member in exchange for being provided WIC information, for WIC staff action that would materially benefit the contractor, or for preferentially promoting the contractor. (Note: donations to a promotional event encouraging WIC participation are not considered to create a conflict of interest).
  - Accepting, either directly or through a relative, a substantial gift of financial assistance from a local or state WIC staff member.
  - Entering into a business transaction with a local or state WIC staff member or allowing such a staff member to acquire a financial interest in the contractor.
- No barrier to service exists.



## **WIC Retailer Reauthorization**

A Retailer who has been approved for authorization will enter into a Memorandum of Understanding (MOU – see Appendix B) with the Montana Department of Public Health and Human Services (DPHHS) to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

After the Retailer MOU has been reviewed, it will be signed by the owner or designate of the store and DPHHS. Any change in ownership or sale of business during the effective period of the MOU will render it null and void. The WIC Program's Retail Services staff must be informed immediately of a change in store ownership, cessation of operation, renewal of liability insurance and One Stop License, or relocation.

The Retailer MOU may be valid for one year upon initial authorization and for up to three years upon subsequent authorizations. A Retailer must meet the selection criteria at each application to be authorized as a WIC Retailer. Montana WIC will determine the end date of the contract before it is issued. Prior to reauthorization, a review of the retailer file will take place and a determination made to offer the retailer the option to apply for reauthorization. Reauthorization evaluation will include a review of the retailer's history with the WIC Program and SNAP. Expiration of the Retailer MOU is not subject to appeal.

### **Reauthorization Requirements**

In addition to maintaining the requirements of the initial application, a retailer must also meet the following requirements:

- Has attended the required WIC training.
- Has successfully resolved and responded in writing, to all problems brought to their attention by the WIC Program within a sixty (60) day period.
- Reauthorization application must be submitted within the requested timeline to avoid expiration of their current authorization.

### **Items Reviewed and Evaluated Prior to Reauthorization**

- eWIC transaction information;
- Complaints, violations and/or sanctions
- Monitoring and Compliance Reports;
- Review of any questionable SNAP information;
- Review of retailer's attendance at trainings.

### **Reauthorization Process**

Retailers whose files pass the "Reauthorization Review" will be sent a packet to apply for subsequent authorization. Retailers not passing the "Reauthorization Review" will be sent a letter explaining the concern of the WIC Program.

Upon receipt of the completed application the Retail Services staff will compare the information to that on file. Any changes will be documented and verified. If all information is deemed acceptable a DPHHS/WIC MOU will be mailed to the retailer. The MOU must be returned to the DPHHS Contract Officer. In cases where the MOU is signed

and maintained at the corporate headquarters, a copy of the signed MOU will be sent to the store's manager.

Retailers renewing their MOU have the option to electronically sign the MOU. If this option is preferred the Retailer will need to provide the State office a current email address for the person signing the MOU.

If items reported on the application are not acceptable, a letter will be sent to the retailer/farmer describing the problems and requesting a written response. The MOU will not be issued until all matters are clarified to the Retail Services staff.

***Information on the MOU expiration date, how an MOU is terminated, and what to do if a store changes locations or ownership can all be found in the MOU attached in Appendix B. Failure to notify the Montana WIC Program of a change in location will result in loss of WIC authorization.***



## **eWIC Guidelines**

The benefits of eWIC for participants and retailers include:

- Convenient and easy to use;
- Safer and more secure than paper checks;
- WIC benefits don't have to be redeemed all at once;
- Cashiers are not responsible for checking whether a food is WIC-approved, the POS system will make those determinations automatically;
- Faster payment to stores, no returned check fees.

### **Accepting eWIC cards**

The eWIC card provides access to approved food benefits and defines the recipient's balance for the benefit month. Once all the issued food benefits have been redeemed, no additional eWIC purchases may occur until the next month's food benefits are added to the eWIC cardholder's account.

eWIC cardholders may redeem food benefits over as many or as few transactions as desired until the benefit expiration date for the account. Cardholders are not required to use all of their benefits.

All eWIC transactions must be processed by either swiping the eWIC card or manually entering the card number. Vendors are not permitted to ask for or enter the eWIC cardholder's PIN. The eWIC card must be present during the transaction and may only be accepted and processed within the confines of the store.

If an authorized retailer suspects that an eWIC card is being used improperly, the store should report such activity to the State WIC Office or call (800) 424-9121 or [www.usda.gov/oig/hotline.htm](http://www.usda.gov/oig/hotline.htm).

### **Integrated vs. Stand-Beside Systems**

#### *Integrated Systems*

Integrated stores can ring up WIC and non-WIC items together. An integrated Point of Sale (POS) is all one system and can accept multiple payment types, including eWIC. Integrating eWIC into the POS and normal business processes is the preferred solution since it allows retailers to manage inventory, payment, and settlement of eWIC transactions within the same system as other transactions. The integrated system also provides a more streamlined experience for the shopper.

#### *Stand-beside Devices*

This device can support eWIC transactions. It will validate the items against the benefit balance and the Montana Approved Products List (APL). It accepts eWIC cards as payment. Retailers will need to reconcile the eWIC transactions to their POS system. Stores using stand-beside POS terminals must ring up WIC items separately from non-WIC items.

***All stores must have a lane open that can process eWIC at all times.***

## **Service Disruption Procedure**

Vendors shall inform the State WIC Office, as early as possible, of any disruption to a store's ability to fulfill the requirements of the MOU. This includes but is not limited to: equipment, technical, and electrical failures; natural disasters; public health emergencies; or any other adverse condition that significantly reduces the store's normal operating hours.

## **Transaction Receipts and Benefit Balance**

Authorized vendors are required to provide an available balance printout from the POS if requested by a cardholder. Vendors must also provide a receipt for foods purchased with an eWIC card. The receipt must, at a minimum, provide the following information:

- Store name and address
- Transaction date
- Products purchased
- Price charged for each product
- Remaining benefit balance

Vendors should encourage the eWIC cardholder to keep the receipt with the remaining benefit balance for their next shopping trip.

## **Voided Transactions**

A vendor may cancel the purchase of a single WIC food item, a method of payment, or the entire transaction at the eWIC cardholder's request. All rules of voiding transactions must be followed.

A void must be performed prior to completing the transaction and tendering WIC or prior to the next transaction. When this process is completed, the eWIC cardholder's benefits will not be removed from the card. A voided transaction cannot be used to return or provide a rain check/credit for WIC foods.

Contact your POS system provider if you have any questions regarding the voiding procedure for eWIC transactions.

***If an eWIC transaction is finalized, it cannot be undone, and benefits cannot be put back on card.***

## **Lane Operations**

During checkout, the UPC of each WIC food item being purchased with the eWIC card must be scanned, and the PLU of fresh fruits and vegetables must be entered.

Authorized vendors must allow a balance inquiry for eWIC cardholders either in-lane or at another identified location available to cardholders. The eWIC cardholder must not be required to make a purchase in exchange for requesting a balance inquiry.

W WICMART #1 10000001 MAIN STREET ANY TOWN, MT 12345	
DATE: 3/23/2017	TIME: 6:45AM
RETAILER: 100001	USER: 1000
<b>WIC PURCHASE</b>	
CARD ACCOUNT: ***** 8964	
VENDOR ID:	A02727
SETTLEMENT DATE:	3/23/2017
REFERENCE NUMBER:	23032 0170101
TOTAL REQUESTED:	3.50
<b>BENEFIT SUMMARY</b>	
3.00 CTR VITime PB Creamy 16oz	
Item #: 11225421877	
1.00@3.50	3.50
WIC SUBTOTAL	3.50
WIC TOTAL	3.50
ITEMS PURCHASED: 1	
<b>REMAINING WIC BENEFITS</b>	
16.00 oz Cheese	
16.00 CTR Peanut Butter	
2.00 GAL Skim/1% Fluid Milk	
WIC BENEFITS EXPIRE ON: 4/15/2017	
RESULT:	APPROVED
AUTH NUMBER:	158563
TRACE NUMBER:	170101
<b>Approved</b>	
<b>DISPENSE GOODS</b>	
<b>CARDHOLDER COPY</b>	

Only one eWIC card may be accepted per transaction, although one WIC customer may use multiple cards in multiple transactions during the same trip to the checkout (for example, foster parents with multiple eWIC cards).

### **Exchanges and Refunds**

Returns cannot be allowed for eWIC purchases, except to exchange a defective item for the same brand, package size, and type of food.

Acceptance of returns for an exchange of the same WIC food item may be completed at the WIC vendor's discretion except in cases in which there is a product recall and the same brand is no longer available. In these cases, vendors must allow the eWIC cardholder the option to exchange the WIC food item for another brand of the same type and size food item.

The vendor cannot request additional payment for the same WIC food item provided in exchange of the same WIC food item. The exchange should not result in an additional eWIC card transaction.

The vendor cannot provide cash or other consideration to an eWIC cardholder for a return under any circumstance.

### **eWIC Card Handling**

Vendors must provide eWIC cardholders with the opportunity to enter the eWIC card PIN in a manner that prevents viewing by anyone other than the cardholder. This number is confidential to the customer, just like the PIN for a debit/credit card.

Any eWIC card found in the store or on store property, if left unclaimed for 24 hours, should be returned to the State WIC office by mailing the card to:

Montana WIC Program  
Dept of Public Health & Human Services  
PO Box 202951  
Helena, MT 59620-2951

### **Damaged eWIC Cards**

If an authorized vendor cannot process an eWIC card due to damage, the vendor should refer the eWIC cardholder to the local WIC office for assistance. The vendor may manually key in the eWIC number if the card is damaged and will not swipe.

An eWIC card PIN is rejected after four incorrect entry attempts, and the card will be locked. The vendor must advise the eWIC cardholder to call the Solutran number on the back of their eWIC card (1-866-730-7746) or visit [www.mybnft.com](http://www.mybnft.com) to reset their PIN.

### **Confidentiality**

Vendors are not permitted to ask for personal information to transact an eWIC sale or to



capture or use the information available from the eWIC transaction for building client files without the eWIC cardholder's knowledge and permission.

However, authorized vendors may use available information contained on the eWIC card, such as the card number, to file a complaint against a cardholder who does not follow established WIC Program procedures.

Authorized vendors may not ask for an eWIC cardholder's driver's license, telephone number, address, Social Security Number, or any additional personal identifying information or information that might be requested with non-WIC transactions. The eWIC card and PIN are the only identifiers allowed to complete the eWIC transaction.

***If a cashier must call for manager assistance, the cashier must not identify "WIC" when seeking this type of assistance.***

### **Approved Product List (APL)**

The APL contains UPCs and PLUs for each WIC-approved food item. On a daily basis, a current/updated APL is available for download to integrated point-of-sale systems and stand-beside devices. Authorized retailers are responsible for ensuring that the most current version of the APL is available at all registers that process eWIC transactions.

Any item presented for purchase with an eWIC card must be scanned or entered during the transaction. Retail staff must use the POS to determine if the item presented is eligible. If an item is not approved by the system, it cannot be overridden at that time.

If a WIC-eligible food item is not listed in the APL, authorized retailers may submit a UPC update request to the State Office for consideration by emailing [wicupc@mt.gov](mailto:wicupc@mt.gov).



## **Promotions & Incentives**

The retailer cannot provide promotions, prizes, and/or incentives to WIC participants that are not provided to all customers.

### **Discounts, Coupons, Store Club Cards**

Discounts, coupons, and club cards that provide a greater quantity or lower price for food items must be applied by the vendor when available. The following rules apply to the use of these:

- The eWIC cardholder may use cents-off coupon/internet applications/loyalty reward card on all approved WIC foods.
- The dollar amount for the WIC food item must reflect all posted store specials, coupons, discounts, and other reduced prices extended to non-WIC customers.
- Store offers or coupons for free items or free ounces may result in the participant receiving more ounces than specified on the benefit balance. The vendor must apply the discounts, coupons, and/or club cards to the purchase transaction prior to requesting reimbursement through the eWIC card.

## **Use of the WIC Acronym and Logo**

1. WIC authorized retailers are not permitted to use the WIC acronym and logo, or close facsimiles, in the name of the retailer.
2. WIC authorized retailers are only allowed to use the WIC acronym and logo or close facsimiles in the signage and size approved by the Montana WIC Program. The WIC authorized retailer cannot produce their own signage (not including shelf tags).
3. WIC authorized retailers cannot use the WIC acronym or logo or close facsimiles in any store advertising, incentives, and other promotional material.
4. Use of the WIC acronym or logo or close facsimiles prior to authorization in the name of the retailer, for advertising, promotional material, or incentives will cause a non-authorization status for the next ninety (90) days from the notification of the inappropriate usage. (Federal Regulation: §246.12(g))
5. The WIC authorized retailer cannot use or apply any stickers, tags, or labels that have the WIC acronym or logo on WIC-approved products.
6. The Montana WIC Program has established Montana WIC Program violation and sanctions for service mark violations pursuant to §246.12(l)(2). See the Montana WIC Program Violation and Sanctions section.



7. WIC Retailer compliance with the policies regarding the use of the WIC acronym and logo will be evaluated at the initial on-site authorization visit, any other on-site visit regardless of the reason, during educational or compliance purchase visits, and by any other objective means.



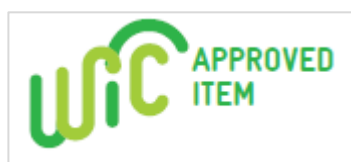
### **Ordering Additional Signage**

The Montana WIC Program provides window clings and shelf tags to all participating grocery stores. If you need a replacement window cling or a new set of shelf tags, please contact us at (406) 444-5533.

### **Shelf Tags**

Use of “WIC Approved Item” shelf tags under WIC-approved foods is optional and makes finding the right foods easier for WIC shoppers. If a retailer chooses to use shelf tags, they must use them on all WIC-authorized food items in the store. Proper placement of shelf tags helps minimize disputes at the checkout. WIC encourages each retailer to designate someone to go through your store (Authorized Food List in hand), once a month, and make sure the tags are correctly placed under *all WIC-approved foods*.

If a store chooses to use shelf tags, the State Office will provide generic shelf tags to stores upon request. Stores also have the option to develop their own shelf tags and submit the design to the State Office for approval before use.



## **Window Decals**

Window decals are a sign that helps participants identify where they can use their WIC benefits. Post the “We Accept WIC Benefits” decal in a highly visible location on or near entrances to the store. The WIC decal is the only sign that can be used to identify your store as WIC-authorized. The decal must not be shared with other vendors. It must be returned or removed if your business closes or is sold, or your WIC authorization ends for any reason.



## **Retailer Training**

Retailer education and training is directed at reducing errors, preventing abuse and improving program services. Retailer training is also designed to be consistent statewide. Retailer training may be conducted for the following reasons:

- Retailer is newly authorized;
- Retailer requests training;
- Required annual training, which must be an interactive session at least once every three years;
- Retailer is one of a pool of authorized Montana WIC authorized retailers selected for routine monitoring;
- Any non-compliance with the Montana WIC Retailer MOU Retailer and is identified as probable high-risk.

### **Training Provided at Authorization**

The State or Local Agency will provide training to all retailers at initial authorization. Training is mandatory, must be face-to-face and must be completed before the store can accept WIC benefits. Retailer training is designed to assure the most effective, efficient and courteous delivery of service to WIC participants. Retailer training will provide, at a minimum, an understanding of:

- The purpose of the WIC Program;
- The terms of the Retailer MOU;
- The sanctions that can result from incorrect administration of the program rules and regulations.

***WIC can provide training on WIC Program Policies but cannot provide training on POS systems – that is the responsibility of the store.***

### **Required Training**

At least one representative of each retailer is required to participate in interactive training at least once every three years. Training must be completed, or reauthorization will not take place.

Interactive trainings may take place as part of Routine Retailer Monitoring visits. USDA requires that at least eight specified topics be discussed in the interactive trainings. These training topics are listed under the Retailer Monitoring Section on page 19.

Failure to attend training may result in disqualification from the Program for twelve (12) months.

***It is the responsibility of those who attend training to ensure that the information is shared with the rest of their staff.***

Retailers will be held accountable for the actions of all owners, officers, managers, agents, employees and personnel, paid or unpaid, who may be involved in WIC transactions at the retailer's store.

### **Annual Training**

Annual training may or may not be conducted in-person and may be provided through memorandums or newsletters.

### **Additional Training**

Mandated training may be deemed necessary when the Montana WIC Program determines a retailer needs it. The Montana WIC Program will also provide training at the request of the retailer.



## Stocking WIC Items

Consistent availability of WIC foods is an important component of the WIC Program.

In order to assist WIC customers, stocking requirements of minimum variety and quantities are implemented. These requirements outline WIC's expectations of what should be available to the WIC customers **at all times**. They help retailers keep better track of WIC food items and provide WIC participants the assurance they will be able to shop with their eWIC card at the authorized retailer at any time.

The Retailer agrees to always stock the varieties and minimum quantities of WIC approved foods as specified on the WIC Approved Food List.

***Refer to Appendix A for details of the Minimum Stocking Requirements for WIC Authorized Retailers.***

### **Infant Formula, Infant Cereal, and Baby Food**

All infant formulas must be purchased from the Montana WIC Approved Infant Formula Wholesaler/Distributor/Retailer/Manufacturer list, available online at the Montana WIC program's website ([www.wic.mt.gov](http://www.wic.mt.gov)).

Retailers are not allowed to knowingly exchange returned infant formula for a different brand or type if it cannot be established that the formula was purchased with WIC food benefit. If the retailer can identify that the infant formula was originally purchased with WIC food benefits (receipt or other means), then the retailer should politely instruct the participant to return the unused cans of infant formula to the clinic of issuance. Clinic staff will discuss the problem with the participant.

Infant formula found to be "defective" may be exchanged for the same brand and type of formula originally purchased.

### **Stocking Exemptions for Infant Formula, Infant Cereal and Baby Food**

Retailers who do not have any infants on the WIC Program that utilize their store may contact the State WIC Office to request an exemption to the stocking requirement. Stocking exemptions are granted for infant foods at the discretion of the State office. In rare instances, the State WIC Office may consider exemption requests for non-infant foods on a case-by-case basis.

***If granted an exemption, the retailer must be able to supply the infant formula, infant cereal and/or baby food within 72 hours (3 business days) if a request for these WIC food items is received from a participant.***

If the retailer is unable to supply the infant formula, infant cereal or baby food within the 72-hour time frame, the retailer must contact the State WIC Office to request an exemption be made to extend the time frame to within five (5) days. The retailer must also post a visible sign in the infant section of the store stating the process to order infant formula, cereal, or baby food.

The State WIC Office will determine if an exemption can be granted in all cases. The retailer will then either be issued an exemption or be given notice that they must meet the stocking requirements.

### **Infant Formula Rebate**

The WIC Program participates in an infant formula rebate program as required by Federal Regulations. The Montana WIC Program contracts with an infant formula manufacturer using a competitive bid process. The Montana WIC Program agrees to purchase the manufacturer's formula and in return, the manufacturer agrees to pay a rebate for each container of their infant formula purchased through the WIC Program. The infant formula rebate program provides Montana WIC with additional food dollars, allowing the program to serve greater numbers of eligible participants.

***The formula available on the eWIC card is the ONLY brand, container size and type of formula the participant may purchase.***

If a retailer has a problem supplying an infant formula, please notify the Local Agency or State Office. In certain situations, medical formulas prescribed by a physician are provided by WIC for participants with medical conditions. These medical formulas may or may not result in a rebate to the program.

### **Peer Groups**

- Peer groups facilitate the application of competitive price criteria at authorization and during the eWIC transaction process.
- Peer groups are defined by a set of criteria-geographic location, ownership type, number of cash registers and square footage.
- Retailers are assigned to a peer group using the criteria.
- Statistical analysis on peer group prices vs individual retailer prices is used to validate the appropriateness of the peer grouping criteria.
- Competitive price criteria are determined for each peer group.
- Allowable reimbursement levels are determined for each peer group.

### **WIC Item Pricing**

Competitive pricing systems foster financial integrity and the most efficient use of WIC funds, which enable the program to serve potential WIC participants with the current food budget.

All Retailers will be held to competitive prices within their assigned peer group. Prices will be averaged per peer group per food item. If a retailer requests a price for a food item that exceeds the maximum price allowed, the settled price provided by WIC will be automatically adjusted down to the maximum price.

Approved Food List choices are made considering food item costs, availability and participant choice. Montana WIC does not authorize above 50% retailers. Above 50% retailers receive more than half of their total annual food sales from WIC transactions.

## **Retailer Monitoring**

Routine Retailer Monitoring refers to the regular review of authorized retailers to determine adherence to program policies and procedures and to identify specific areas that are deficient. Interactive training is often provided as part of Routine Retailer Monitoring.

### **Routine Monitoring**

A Local Area Retail Coordinator (LARC) of the Montana WIC Program will visit your store. He/she will introduce him/herself to a store representative, and conduct the following review:

- The “We Accept WIC” decal is posted
- The store meets the minimum stocking requirements
- Foods are current
- The store is clean
- WIC shelf tags are properly placed

During a monitoring visit the WIC representative must conduct a mandatory interactive training with store personnel. The required topics for this training include:

- Purpose of the WIC Program
- eWIC transaction procedures
- WIC Authorized Food List
- Minimum stocking requirements
- Any special circumstances the retailer is experiencing
- WIC’s violations and sanctions
- The use of incentive items
- And resources available to assist the retailer

Any violation of WIC regulations will be documented on the monitoring form. The form will be discussed with the retailer and he/she will be asked to sign the form. The form will outline steps necessary to correct deficiencies found during the visit. Some deficiencies may result in a warning letter, corrective action plan, mandatory training or disqualification.

### **Role of the LARC**

The Local Area Retail Coordinator (LARC) cooperates with the State Vendor Staff to ensure vendors (retailers and farmers) can effectively serve WIC participants. They act as a liaison between vendors, participants, local agency staff and state agency staff. LARCs communicate program procedures to vendors; they perform duties to increase vendor efficiency, and request information and services from state staff that will benefit vendors.

### **Compliance Investigations**

Investigations may be utilized to ensure retailers follow program rules and regulations. The WIC Program monitors retailer activity to assess high-risk retailers and has developed criteria to help identify high-risk retailers. Factors that may identify a probable high-risk retailer are the high-risk analysis, retail monitoring and follow-up,

alleged complaints, and any other objective means.

A **compliance purchase** is a covert on-site investigation in which a representative of the WIC Program poses as a participant and does one or more eWIC transactions. The purchase is made **without** the knowledge of the retailer's management or staff. An investigative agent (posing as a WIC participant or proxy) will attempt to obtain evidence the retailer allows WIC Program violations or fraud to be committed at that specific retailer location. The investigative agent may conduct one or more compliance purchases at a selected retailer. Retailers may be selected for cause or at random. After completion of the purchase(s) and leaving the retailers store, a Compliance Buy Report will be filed with the Montana WIC Program.

An **inventory audit** is the examination of food invoices or other proofs of purchase to determine whether a retailer has purchased enough WIC foods to provide participants the quantities specified on benefits.

### **Follow-up Procedure**

The retailer will be notified, by mail, of the investigation, violations found, and the subsequent consequences. Failure to respond to this notification may result in retailer disqualification. If such notification would compromise an investigation, the notice will not be given.

The retailer can appeal any sanction or disqualification. Retailers must request a Fair Hearing from the Montana WIC Program. Retailers have thirty (30) days from the effective date of the adverse action to appeal the Montana WIC Program's decision.

The Montana WIC Program will notify the Regional USDA Food & Nutrition Office of any WIC retailer disqualifications. If the retailer involved is part of a "chain", the chain's regional/district manager will be notified. The disqualification of a retailer due to a compliance investigation may be publicly advertised if it is determined this will be beneficial to the overall attitude toward the Montana WIC Program.

Disqualification from the Montana WIC Program may result in disqualification from SNAP.

If you wish to talk to someone from the Montana WIC Program about the compliance purchase, inventory audit or an administrative review, contact the Montana WIC Program at 1-800-433-4298. Retailers are encouraged to resolve disputes without an administrative review.

### **Warning Letters**

The purpose of warning letters is to call attention to a violation and to give the retailer a chance to properly train or retrain any employees who may be responsible for the errors. If the same errors continue after the retailer has been given a chance to correct the problem, a corrective action plan will be requested, and a sanction may be assigned which could result in mandatory retailer training or a disqualification. Contact the State WIC Office if you need any assistance with WIC training or if you need additional training materials.



### **Corrective Action Plan**

A corrective action plan is a strategy or plan for correcting or eliminating a program violation that has occurred. The plan needs to address the area of violation and it may include a training aimed at educating retail staff on WIC Program policy and procedure, customer service, or a plan to address stocking issues. A timeline in which the issue is addressed will be included in the plan, as well as follow-up to assure requirements are completed.



## **Retailer Violations & Sanctions**

The Montana WIC Program shall determine the type and level of sanctions to be applied against retailers based upon the severity, nature and *pattern* of the WIC Program violations observed, and other factors (for example: whether the offenses represented retailer policy or whether they represent the actions of an individual employee who did not understand the Program rules).

### **Definitions**

*Retailer violation* – Any intentional or unintentional action of a retailer's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the retailer MOU or Federal or State statutes, regulations, policies, or procedures governing the Program.

*Investigation* – A method used by the Montana WIC Program to determine if violations are occurring.

*Sanction* – An administrative action taken as a result of a violation.

*Pattern* – Based on the number and severity of the incidences of the violation.

The Montana WIC Program does not have to provide the retailer with warning that violations were occurring before conducting compliance investigations or imposing any Montana WIC Program sanction described.

### **Notification of Violation**

- If the Montana WIC Program finds that a retailer has committed a violation that requires a pattern of occurrences, 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 incidence before a sanction is imposed;
  - 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.

The reason for not informing will be documented in the retailer's chart.

### **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 (Public Law 105-336) 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) (xx))

### **Retailer Noncompliance**

- Montana WIC may initiate administrative action to disqualify or assess a fine against a Retailer for non-compliance based on one incidence of a violation or a pattern of violations. An incidence 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, fines, mandated training, and/or the submission of a corrective action plan.
- State sanctions will not be added to a mandatory sanction within the same investigation unless a mandatory sanction from the same investigation is not upheld on appeal.

### **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 CFR 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 in excess of 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.
- Class D Violations: These violations 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 in an attempt 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.

### **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 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.



### **Prosecution and Fines**

A retailer that has committed 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 the course of 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 violation or 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.
  - 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.

### **Payment Violation**

When a payment violation is discovered, that does not merit disqualification, a claim will be submitted by the State to the EBT Processor to reclaim those funds.

- The store has 30 days to pay the claim or arrange a payment plan.
- An in-store training must take place for all store personnel.
- Failure to meet these requirements will result in disqualification from the WIC Program.

### **Administrative Review**

A retailer may request an administrative review due to receipt of an adverse action. Requests for an administrative hearing must be made within sixty (60) days from the date of the written notice of the adverse action. At the time an adverse action is invoked, a written notice will be sent to the retailer. The notice will contain the effective date, the procedure to follow to obtain an administrative review (the notice must specify which type of review may be requested) and the timeframe of the request. If the adverse action is related to disqualification, the notice will contain the following statement: "This disqualification from Montana WIC may result in disqualification as a

retailer in SNAP (Supplemental Nutrition Assistance Program)."

Adverse actions against a retailer will be postponed until an administrative hearing decision is reached, provided the request for hearing was received by the Department within fifteen (15) days from the receipt of the letter of adverse action. Administrative hearings will be conducted in accordance with the rules contained in 7 CFR 246.18. Refer to Montana WIC State Plan Policy 9.17 for more information on administrative reviews.

A retailer or retailer applicant can request a hearing in writing or verbally by contacting:

Montana WIC Program Retail Services  
PO Box 202951  
Helena, MT 59620-2951

1-800-433-4298 or (406)444-5533





## **Complaints Against Participants**

On occasion, a Montana WIC participant may violate WIC Program requirements. If the retailer cannot resolve the conflict by informing the participant of the proper WIC procedures, then the retailer needs to report the incident to the State WIC Office. If possible provide the participant's name and card number and as many details of the incident as possible as this will aid in the discussion with the participant at the clinic.

**WIC participants are not permitted to cause a disturbance in your store, abuse your employees or violate the procedures for redeeming benefits.**

### **When should I report a complaint or violation?**

Many retailers do not like reporting WIC participants because they feel they will lose a customer. However, once the retailer allows inappropriate behavior, that behavior will likely continue at other WIC retailers as well. When in doubt about how to report or what to report, the retailer should contact their local agency retail coordinator or the State WIC Agency at 1-800-433-4298 option 2.

### **WIC Participant Violation**

Any one of the following constitutes a violation of the WIC Program. If the WIC participant:

- Intentionally attempts to redeem, received or purchased unauthorized foods or more WIC foods than authorized.
- Is verbally or physically abusive or threatens physical abuse of retailer staff.
- Intentionally making false or misleading statements; or intentionally misrepresented, concealed or withheld facts.

### **Discourteous Treatment**

If a WIC participant becomes upset or verbally abusive, the cashier should call for a manager to help de-escalate the situation and act as a witness to the situation. The WIC participant and retail staff should remain calm during the discussion. If the WIC participant becomes abusive, they need to be reported to the WIC Program.

WIC participants can also report retail staff for discourteous treatment. Problems with discourteous treatment of a WIC participant can occur in several areas. Some of these include:

- Inappropriate verbal communication regarding the correction of a wrong food item being purchased or eWIC transaction;
- Using inappropriate or foul language in front of the WIC participant;
- Belittling or intimidating the WIC participant.

In accordance with the Montana WIC Retailer MOU, the retailer must treat the WIC customer with the same respect and offer WIC participants the same courtesies offered to other (non-WIC) customers. If the WIC participant has made a mistake, be polite in your explanation of the correct food item or policy. Contact the store manager, if that is your store policy, and allow management to handle the problem.

### **Confidentiality**

Montana WIC, either the State WIC Agency or Local WIC Clinic CANNOT give out WIC participant status or identity to a retailer. Any customer identification requirements in addition to the cardholder's PIN imposed by the retailer during an eWIC transaction are a breach of confidentiality and may be either discourteous treatment or a civil rights violation of the WIC participant. The retailer CANNOT contact the WIC participant to correct a food benefit problem or require payment from the WIC participant because a WIC food item was settled at a price lower than the store's asking price.



## Appendix A

### Minimum WIC Food Stocking Requirements Peer Groups 1 and 2

Montana WIC authorized retailers must always have the following items in stock in specified quantities to meet WIC requirements. Quantities are based on the amounts needed to fill a benefit for one pregnant woman, one infant and one child.

**Refer to the Approved Food List for authorized brands/types.**

Food Item	Minimum Requirements
<b>Milk: <i>Reduced Fat Milk AND whole milk</i></b>	
Reduced fat (skim or 1%)	3 gallons
	3 half gallons
Whole milk	3 gallons
	3 half gallons
<b>Cheese: <i>16 ounce packages OR 8 ounce packages</i></b>	
16 ounce packages	3 packages (16 ounces) of 2 flavor varieties
8 ounce packages	6 packages (8 ounces) of 2 flavor varieties
<b>Eggs</b>	
Dozen only	3 dozen
<b>Breakfast Cereal: <i>One of the cold or hot cereals must be <b>WHOLE GRAIN</b></i></b>	
12 ounce or larger packages	2 boxes of three varieties
11-12 ounce hot cereal	2 boxes of one variety
<b>Whole Grains: <i>Bread AND Rice</i></b>	
16 ounce loaves whole wheat	3 loaves of bread
15-16 ounce packages brown rice <b>and/or</b> 14-16 ounce instant rice	3 packages of regular or quick/minute brown rice
<b>Juice: <i>frozen AND bottled juice</i></b>	
11.5-12 ounces frozen	3 frozen cans of 2 different flavors

64 ounce bottles	3 bottles of 2 different flavors
<b>Food Item</b>	<b>Minimum Requirements</b>
Peanut Butter	
11-18 ounce jars	3 jars
Legumes (mature beans): <i>Bags of dried beans <b>AND</b> canned beans</i>	
16 ounce bags of dried beans	3 packages of 2 different varieties
15-16 ounce canned legumes/beans	10 cans of two varieties
Canned Fish: <i>Light Tuna <b>OR</b> pink salmon</i>	
5-6 ounce cans	6 cans of light tuna
5-6 ounce cans	6 cans of pink salmon
Fresh Fruits and Vegetables	
Fruits	Two varieties
Vegetables	Two varieties
Infant Cereal: <i>Two varieties</i>	
8 ounce box	2 boxes, any variety
Infant Foods: <i>Stage 2 fruits and vegetables. Plus, meat!</i>	
Fruit: 4 ounce jars of stage 2	10 jars, including 2 flavors
Vegetables: 4 ounce jars of stage 2	10 jars, including 2 flavors
Meat: 2.5 ounce jars	5 jars
Infant Formula: <i>Powdered formula in specific sizes</i>	
Similac Advance: 12.4 ounces	6 cans of each variety
Similac Soy Isomil 12.4 ounces	4 cans of each variety

## Minimum WIC Food Stocking Requirements Peer Groups 3 and 4

Montana WIC authorized retailers must always have the following items in stock in specified quantities to meet WIC requirements. Quantities are based on the amounts needed to fill a benefit for one pregnant woman, one infant and one child.

**Refer to the Approved Food List for authorized brands/types.**

Food Item	Minimum Requirements
<b>Milk:</b> <i>Reduced Fat Milk AND whole milk</i>	
Reduced fat (skim or 1%)	3 gallons
	3 half gallons
Whole milk	3 gallons
	3 half gallons
<b>Cheese:</b> <i>16 ounce packages <b>OR</b> 8 ounce packages</i>	
16 ounce packages	3 packages (16 ounces) of 2 flavor varieties
8 ounce packages	6 packages (8 ounces) of 2 flavor varieties
<b>Eggs</b>	
Dozen only	3 dozen
<b>Breakfast Cereal:</b> <i><b>One of the cold or hot cereals must be <b>WHOLE GRAIN</b></b></i>	
12 ounce or larger packages	2 boxes of three varieties
11-12 ounce hot cereal	2 boxes of one variety
<b>Whole Grains:</b> <i><b>Bread AND Rice</b></i>	
16 ounce loaves whole wheat	3 loaves of bread
15-16 ounce packages brown rice <b>and/or</b> 14-16 ounce instant rice	3 packages of regular or quick/minute brown rice
<b>Juice:</b> <i>frozen <b>AND</b> bottled juice</i>	
11.5-12 ounces frozen	3 frozen cans of 2 different flavors

64 ounce bottles	3 bottles of 2 different flavors
<b>Food Item</b>	<b>Minimum Requirements</b>
Peanut Butter	
16-18 ounce jars	3 jars
Legumes (mature beans): <i>Bags of dried beans <b>AND</b> canned beans</i>	
16 ounce bags of dried beans	3 packages of 2 different varieties
15-16 ounce canned legumes/beans	10 cans of two varieties
Canned Fish: <i>Light Tuna <b>OR</b> pink salmon</i>	
5-6 ounce cans	6 cans of light tuna
5-6 ounce cans	6 cans of pink salmon
Fresh Fruits and Vegetables	
Fruits	Two varieties
Vegetables	Two varieties
Infant Cereal: <i>Two varieties</i>	
8 ounce box	2 boxes of 2 different varieties
Infant Foods: <i>Stage 2 fruits and vegetables. Plus, meat!</i>	
Fruit: 4 ounce jars of stage 2	20 jars, including 2 flavors
Vegetables: 4 ounce jars of stage 2	20 jars, including 2 flavors
Meat: 2.5 ounce jars	10 jars
Infant Formula: <i>Powdered formula in specific sizes</i>	
Similac Advance: 12.4 ounces	6 cans of each variety
Similac Soy Isomil 12.4 ounces	6 cans of each variety

## **Appendix B**

MEMORANDUM OF UNDERSTANDING  
FROM THE STATE OF MONTANA  
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
Public Health & Safety Division

(WIC Retailer MOU XX - XXXX)

### **SECTION 1: PARTIES**

This Memorandum of Understanding (MOU) is entered into between the Montana Department of Public Health and Human Services (hereinafter referred to as the "Department"), whose address and phone number are 1400 Broadway, P O Box 202951, Helena MT 59620-2951 and 406-444-4747 and X. (hereinafter referred to as the "Contractor"), whose federal ID number, mailing address, and phone number are X, X, X, X and X.

### **SECTION 2: PURPOSE**

The purpose of this MOU is to provide specific supplemental foods and prescription formulas to participants deemed eligible to receive food benefits under the Montana Supplemental Nutrition Program for Women, Infants and Children (WIC).

### **SECTION 3: TERM**

- A. The term of this MOU for the purpose of delivery of services is from X through X unless terminated otherwise in accordance with the provisions of this MOU. This MOU is a one-time MOU and therefore may not be extended for any period beyond that specified above.
- B. At least sixty (60) days prior to the expiration of this MOU, the Department will send to the Contractor a renewal application to enter into a subsequent MOU. The renewal application must be returned to the Department within thirty (30) days after the Contractor receives it if the Department is to reconsider whether the Contractor will be authorized to accept Electronic Benefit Transfer (EBT) payments for WIC (hereinafter referred to as "eWIC payments" and "eWIC transactions" under a subsequent MOU). [Note: A subsequent MOU must be signed by both the Department and the Contractor before the Contractor may accept eWIC payments after the expiration date of this MOU, nor is the Department under any obligation to reauthorize the Contractor for a subsequent MOU after the expiration of this one.]
- C. Neither the Contractor nor the Department has an obligation to renew the MOU. In the event of non-renewal, the Contractor is not entitled to a hearing or an appeal to contest the non-renewal. Renewal will be granted according to selection criteria.
- D. The Contractor understands and agrees that the Department, as a state agency, is dependent upon federal and state appropriations for its funding, and that actions by Congress, the U.S. Department of Agriculture, or the Montana Legislature may preclude continuing to issue and pay for eWIC payments through the completion deadline stated in Section 3 (A). Should such a contingency occur, the parties agree that the Department may set a new completion deadline, depending upon the funding remaining available for the WIC Program, and that the Contractor will be compensated for eWIC payments received by the Contractor through 5:00 p.m. of the revised termination date and presented to the Contractor's bank for payment.
- E. The Contractor understands and agrees that in order to enter into this MOU the Contractor will have a Point of Sale (POS) system capable of conducting eWIC transactions. The Contractor will need to maintain the capability to conduct eWIC transactions during the term of this MOU.

#### SECTION 4: SERVICES TO BE PROVIDED

A. The Contractor shall do the following during the period stated in Section 3 (A):

- (1) Supply all WIC foods and prescription formulas authorized by eWIC transactions to WIC participants, parents or caretakers of infant and child participants, or proxies authorized by them (hereinafter referred to as "participants"), at the current price at the time of purchase or at less than the current price charged to other customers, but in no case at prices that exceed the maximums for the foods and prescription formulas in question set by the Department for the peer group in which the Contractor is assigned.
- (2) Intentionally left blank.
- (3) Comply with the provisions of 7 CFR Section 246.12 (the Federal regulations governing WIC food delivery systems) and the WIC Retailer Manual, and continue to meet the selection criteria in the WIC Retailer Manual throughout the term of this MOU.
- (4) Ensure that WIC participants are offered the same courtesies and services as offered to other customers. The Contractor agrees to comply with the WIC Retailer Manual concerning coupons, store cards and store promotions.
- (5) Make available to WIC participants the type and brands of WIC foods and prescription formulas specified on the WIC Approved Food List (as it appears in Attachment A or as it is amended, after the Contractor receives written notice from the Department of the changes).
- (6) Maintain at all times the quantities of approved WIC foods listed in Attachment B.
- (7) Sell to WIC participants only those authorized supplemental foods and prescription formulas authorized by the eWIC transaction and in the quantities authorized by the eWIC transaction, unless the foregoing individuals choose to purchase less, or the participants are able to purchase more, at no cost to the WIC Program. If there are special manufacturer or store promotions such as "free ounces of product" or "Buy One-Get One Free" or coupons or store cards, those need to be available to WIC participants.
- (8) Refrain from doing the following:
  - (a) Providing cash, or credit in a eWIC transaction.
  - (b) Providing refunds, or permit exchanges for authorized supplemental foods authorized by the eWIC transaction, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item at the time of purchase. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.
  - (c) Intentionally left blank;
  - (d) Intentionally left blank;
  - (e) Giving rain checks or credit slips for out-of-stock items purchased with eWIC transactions;
  - (f) Collecting sales tax on authorized supplemental foods and prescription formulas obtained with eWIC transactions, should such a tax be instituted in Montana; or
  - (g) Using the WIC symbol or the WIC acronym without the written approval of the Department. This includes the use of the service mark for infant formula marketing, retailer name or advertising, or brand identification on shelf talkers and/or channel strips.
- (9) Comply with the following procedures regarding proper WIC benefit transactions:
  - (a) Ensure that no restitution is sought from WIC participants for WIC benefits not paid or partially paid by the Department.
  - (b) In cases where overcharges or improper redemptions have occurred, the Contractor will be asked to refund the amount of the full purchase price of each WIC benefit containing the error to the WIC Program unless the Contractor can prove there was no overcharge or improper redemption. The Department may delay future payment to the Contractor until such proof is given. The Department's decision concerning whether an overcharge or improper redemption has occurred is not subject to appeal. If a claim is established, the Department may offset the claim against current and subsequent amounts to be paid



to the Contractor.

- (10) Give the State of Montana, the Department, the Montana Legislative Auditor, the U.S. Department of Agriculture, and the Comptroller General of the United States, or any of their duly authorized representatives the right of access to any books, documents, papers, and records of the Contractor which are pertinent to the services provided under this MOU, for purposes of making an audit, excerpts, or transcripts.
- (11) Allow federal, state, and local WIC representatives to visit the Contractor's store to observe eWIC transactions and to conduct unannounced on-site monitoring visits to determine compliance with WIC Program regulations, policies, and procedures. Failure to allow monitoring of the store shall result in the Contractor's disqualification from the WIC Program.
- (12) During visits by the Department's WIC Program representatives, provide the Department with access to purchase invoices, and available shelf price information on WIC items at the request of the Department; failure to supply the requested records will result in the Contractor's disqualification from the WIC Program.
- (13) Upon request by the Department, provide the Department with purchase invoices and shelf price information for any period within the three years prior to the date of the request; failure to supply requested records shall result in the Contractor's disqualification from the WIC Program.
- (14) Intentionally left blank.
- (15) Notify the Montana WIC Program immediately whenever a sudden increase in price may occur as it will affect the eWIC transaction.
- (16) Accept accountability for the actions of owners, managers, agents and employees in the handling of eWIC transactions and the selling of authorized foods, and responsibility for any actions of the Contractor's owners, managers, agents and employees which are contrary to this MOU.
- (17) Assign the Contractor's store manager, or other authorized representative, to receive annual training on WIC procedures; and, after receiving training, to, in turn, inform and train retailer staff on all WIC Program requirements. Failure to attend mandatory training will result in possible disqualification from the WIC Program.
- (18) Notify the Department in the event that the Contractor ceases to operate, whether it be by sale or closure;
- (19) Comply with all portions of this MOU.
- (20) Have Point-of-Sale (POS) terminals, whether single-function (stand -beside) equipment or multi-function (integrated) equipment that shall be deployed as follows:
  - (a) For Superstores and supermarkets (Peer Group 13 and Peer Group 3) there will be at least one POS terminal for every \$11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location, whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption threshold increments as follows: one terminal for \$0 to \$11,000; two terminals for \$11,001 to \$22,000; three terminals for \$22,001 to \$33,000; and four terminals for \$33,001 and above. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption.
  - (b) For all other Contractors (Peer Group 1 and Peer Group 2) there will be at least one POS terminal for every \$8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption thresholds as follows: one terminal for \$0 to \$8,000; two terminals for \$8,001 to \$16,000; three terminals for \$16,001 to \$24,000; and four terminals for \$24,001 and above. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;
- (21) Not charge to the Department any third-party commercial processing costs and fees incurred by the Contractor from EBT multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the Contractor elects to use to connect to the EBT system of the Department shall be borne by the Contractor.
- (22) Notify the department if the Contractor has undergone any system changes.

B. The Department shall:

- (1) Notify the Contractor of any changes or amendments to the WIC Approved Food List during the MOU period.
- (2) Deny payment to the Contractor for incorrect redemption of or eWIC transactions or demand a refund for improper payment already made.
- (3) Set up a system whereby the Contractor will be reimbursed through its bank of choice for eWIC purchases the Contractor receives from a WIC participant, so long as the foregoing conditions cited in Section 4 (A) are met.
- (4) Annually, in the region where the Contractor is located, offer the Contractor training to educate and update the Contractor on WIC matters, prevent WIC Program errors, and improve WIC Program service. The Department will have sole discretion to designate the date, time, and location of all training. Contractors will be offered at least one alternative date on which to attend such training. At the Department's discretion, the quarterly Montana WIC Retailer Newsletter may be substituted for training.
- (5) Provide the Contractor with pertinent WIC Program information and guidance concerning authorized WIC foods, policies, procedures, and potential for on-site training.
- (6) Provide the Contractor with appropriate training materials to educate their staff in WIC procedures.
- (7) Monitor the Contractor to ensure compliance with program requirements. Monitoring may be in the form of educational visits, monitoring visits, compliance buys or inventory audits.
- (8) Not pay or reimburse the Contractor for interchange fees related to WIC EBT transactions.
- (9) Not pay for ongoing maintenance, processing fees or operational costs for Contractor systems and equipment used to support WIC EBT after the Department has implemented WIC EBT statewide, unless the equipment is used solely for the WIC Program or the Department determines the Contractor using multi-function equipment is necessary for participant access. Costs shared by the Department will be proportional to the usage for the WIC Program.
- (10) Pay for a stand-beside device used solely for WIC transactions, upon signature of this amendment, using the following funding formula:
  - (a) One stand-beside device will be provided for every \$11,000 in monthly WIC redemption for superstores and supermarkets. One stand-beside device will be provided for every \$8,000 in monthly WIC redemption for all other authorized Contractors.
- (11) Not charge processing fees and prohibit processing fees from being charged by the Department's eWIC Processor to Contractors. This does not include any non-WIC related processing or banking fees that may be charged to the Contractor.
- (12) Not pay any stand-beside equipment costs after the termination of a Contractor contract or termination of the stand-beside equipment.

SECTION 5: TERMINATION FOR CAUSE; RIGHT OF CONTRACTOR TO REQUEST REVIEW

- A. In addition to the provisions of Section 3 and Section 7(A), either party may terminate this MOU for cause, after giving thirty (30) days written notice to the other party. If the Department is terminating the MOU, the notice will contain the reasons for the termination and the Contractor's right to an appeal, unless the federal regulations or this MOU state otherwise.
- B. The Department may immediately terminate the MOU if it determines that the Contractor has provided false information in connection with its application for authorization, or if there is a conflict of interest between the Contractor and the Department or the local WIC agency.
- C. The Department may terminate this MOU for reason of Program abuse, fraud, and/or failure of the Contractor to perform any of the duties or conditions contained in this MOU after giving the Contractor

fifteen (15) days written notice in advance, unless the reason for termination is a Class A, type #1, violation as set out in Section 6 (G)(4). The Department may also impose sanctions for such violation, including a fine or a civil money penalty (CMP) if it is in the interest of the WIC Program or its participants.

- D. In the event that the Contractor ceases to operate, regardless if by sale or closure, this MOU will terminate on the same date. In the event that Contractor changes the physical location of Contractor's retail operations, at the discretion of the Department, this MOU may terminate on the same date.
- E. Any termination of this MOU is subject to the exception that paragraph B of Section 7, relating to retention of and access to records, will remain in effect.
- F. The Contractor's authorization to participate in the WIC Program, as well as this MOU, may be terminated by the Department if:
  - (1) the Contractor is authorized to participate in the USDA Supplemental Nutrition Assistance Program (SNAP) and:
    - (a) the Contractor is disqualified from SNAP; or
    - (b) the Contractor is assessed a CMP under that program, so long as the Department documents that any such disqualification will not create undue hardship for WIC participants.
  - (2) pursuant to a review under ARM 37.59.303, disqualification is justified and the procedure set out in that rule concerning notice of the reasons for the adverse action and an opportunity for appeal is followed. Disqualification will result in the termination of the Contractor's MOU for participating in the Montana WIC Program.
- G. The Contractor has a right to contest the Department's findings pertaining to termination of authorization to participate in the WIC Program or other adverse action which affects participation during the MOU or authorization period. Such a request for a hearing by the Contractor must be made within fifteen (15) calendar days after receipt of a notice of the reasons for the adverse action. The Department's administrative review procedures are available from the Department upon request. **THE EXPIRATION OF THIS MOU ON THE DATE CITED IN SECTION 3 IS NOT SUBJECT TO APPEAL.**
- H. The Department is not responsible for losses incurred by the Contractor as a result of disqualification from participation in the WIC Program, or termination of this MOU.
- I. Any and all communications between the parties concerning reauthorization or non-reauthorization of an MOU must be in writing, directed to the liaisons for the Department and the Contractor that are listed in Section 18 of this MOU.

#### SECTION 6: SANCTIONS FOR PROGRAM VIOLATIONS

- A. The commission of fraud against or abuse of the WIC Program by the Contractor is subject to prosecution under applicable federal, state, or local laws. A Contractor that has willfully misapplied, stolen, or fraudulently obtained WIC Program funds is subject to a fine of not more than \$25,000, imprisonment for not more than five 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, imprisonment of not more than one year, or both. [7 CFR 246.12(h)(3)(xx)].
- B. Mandatory sanctions under this MOU are as follows and are required by the federal WIC regulations [7 CFR 246.12(l)(1)]. Disqualification from the WIC Program may potentially result in disqualification from participation in SNAP [7 CFR 246.12(l)(1)(vii) and 7 CFR 278.6(e)(8)]. Such disqualification is not subject to administrative or judicial review under SNAP.
- C. The Department may sanction the Contractor for reasons of Program abuse. The Department will give

the Contractor fifteen (15) days from the date the Contractor receives notice before imposing a sanction, with the exception of the permanent disqualification required for a Class A, type #1, violation. Unless this MOU or the federal WIC regulations state otherwise, the Contractor has a right to appeal the Department's decision to sanction the Contractor. Neither expiration of this MOU nor disqualification of the Contractor as a result of a SNAP sanction is subject to administrative or judicial review [7 CFR 246.12(l)(1)(vii)].

- D. The Contractor will be disqualified by the Department from participation in the WIC Program if the Contractor is currently disqualified from participation in SNAP or has had a SNAP CMP imposed in lieu of disqualification because of the hardship to SNAP participants the SNAP disqualification would cause. If the Department determines that WIC Program disqualification of the Contractor on the foregoing grounds would result in inadequate access to WIC foods by WIC participants, or would otherwise create an emergency situation for the participants, the Department may, instead of disqualification, assess a WIC CMP. A CMP will not be issued as a sanction for a third or subsequent violation. Any CMP assessed will be based upon the formula provided in 7 CFR 246.12(l)(1)(x). The CMP may not exceed \$15,041 for a single violation or a total of \$60,161 for a single investigation. If a Contractor is disqualified from the WIC Program because of a SNAP CMP assessment, the period of WIC disqualification will correspond to the period for which the Contractor would have been disqualified from SNAP had a CMP not been imposed instead. WIC disqualification on the foregoing grounds is not subject to administrative or judicial review. If a SNAP CMP has been imposed on the Contractor in lieu of a SNAP disqualification because of the hardship to SNAP participants a SNAP disqualification would cause, the Department may not impose a WIC Program CMP in lieu of disqualification. If the Contractor fails to pay a CMP, or fails to pay the CMP in accordance with time frames mutually agreed upon by the parties to this MOU, the Contractor will be disqualified for the time period that originally could have been imposed for the violation.
- E. A violation of WIC Program rules by the Contractor is either a Class A, B, C or D violation, each class being subject to the sanctions **outlined in the most current version of the Montana WIC Program State Plan, AVAILABLE AT THE MONTANA WIC WEBSITE**. All sanction notifications will be sent via certified mail. Sanctions will be implemented immediately unless an Administrative Review is requested by the Contractor within 15 days of receipt of the notice of sanctions.
- F. Federal sanctions as defined in 7 CFR 246.12 are mandatory for Class A and B violations and constitute grounds for disqualification from the WIC Program for a minimum of one (1) year up to permanent disqualification. The fact that disqualification has occurred will be entered and remain in the record of the Contractor indefinitely. Neither voluntary withdrawal of the Contractor from the WIC Program nor non-renewal by the Department of this MOU constitutes an alternative to disqualification from WIC Program participation in the case of a Class A or Class B violation.
- G. If the Contractor fails, neglects, or refuses to perform any of the conditions herein according to the terms specified, then the Contractor shall forfeit its rights to participate in the WIC Program and may be required to pay to the Department as liquidated damages:
- (1) the full amount of the Contractor's reimbursement from the Department for cash, credit, unauthorized foods, or other items of value provided to WIC participants in lieu of, or in addition to, authorized supplemental foods;
  - (2) the full amount of the difference between the value of the eWIC transaction and the cost of the food provided when the Contractor provides less food than called for on the eWIC transaction;
  - (3) the full amount of the difference between the Contractor's customary price and the cost charged to the Department when the Contractor charges the WIC Program more for supplemental foods than charged other customers for the same food items; and
  - (4) the Department's reasonable administrative costs to respond to the Contractor's lack of performance, such as staff time spent collecting data related to the lack of performance.
  - (5) The Department reserves the right to take the Contractor's history and all circumstances into consideration before applying sanctions or disqualification of the Contractor due to a Class C or

D violation or violations.

## SECTION 7: ACCOUNTING, AUDITING, RECORD RETENTION, COST PRINCIPLES, AND ACCESS TO RECORDS

- A. The Contractor agrees to maintain inventory records used for federal tax reporting purposes and other records of the activities covered by this MOU and to allow access to them by the Department, the U.S. Department of Agriculture, the Comptroller General of the United States and, in addition, the legislative auditor as may be necessary for legislative audit and analysis purposes in determining compliance with the terms of this MOU, as required by Section 5-13-304, Montana Code Annotated. In addition to the provisions of Section 5, this MOU may be terminated upon any refusal of the Contractor to allow the access to records referred to above.
- B. Purchase invoices, shelf price information, and all other records documenting the services provided by the Contractor under this MOU must be retained for a period of three years. The Contractor agrees to make the records described herein available at all reasonable times at its general offices. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. All program-related records must be made accessible for inspection and audit purposes, upon request by the Department, the Department of Agriculture, the Comptroller General, or the legislative auditor.

## SECTION 8: VENUE; DISPUTES

- A. The parties agree that, in the event of litigation concerning this MOU, the venue shall be in the First Judicial District of the State of Montana, in and for the County of Lewis and Clark. Any question regarding the terms and conditions of this MOU shall be construed under the laws of the State of Montana.
- B. This MOU is not subject to arbitration.

## SECTION 9: CIVIL RIGHTS; EQUAL OPPORTUNITY

- A. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated, the Contractor agrees to perform no part of this MOU in a manner which discriminates against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental disability, national origin or ancestry. Any hiring must be on the basis of merit and qualifications directly related to the requirements of the particular position being filled.
- B. In addition, the Contractor must be in compliance with provisions of federal regulations 7 CFR 15, 15a, and 15b and 7 CFR Section 246.8 and must refrain from discriminating against any individual because they are a participant in the WIC Program.
- C. The Contractor agrees to comply with the Federal Civil Rights Act of 1964, the Federal Rehabilitation Act of 1973, and all other laws of the United States and the State of Montana which prohibit discrimination.

## SECTION 10: COMPLIANCE WITH STATE AND FEDERAL LAWS

- A. The Contractor shall at all times throughout the term of the MOU be in full compliance with state and federal statutes, regulations, policies, and procedures governing the Program, including any changes made during the term of this MOU. The enactment, after execution of any MOU, of any state or federal statute or promulgation of implementing regulations therein shall be reviewed by the Department and the Contractor to determine whether the provisions therein require an amendment to the MOU.

- B. The Contractor must not, at any time during this MOU, permit any individual employed by the state to gain a share of this MOU or to benefit therefrom because of a financial interest in the MOU, the Contractor, any affiliate of the Contractor, or any subcontractor.

#### SECTION 11: HOLD HARMLESS; INDEMNIFICATION

- A. The Contractor shall hold harmless and indemnify the Department and its agents, principals, and employees from and against all claims, damages, losses, demands, judgments, and costs of suit, defense expenses, and attorney's fees to the extent arising out of or resulting from the Contractor's wrongful acts, errors, omissions, or negligence, or from the Contractor's failure to comply with the requirements of this MOU or with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this MOU.
- B. The Department shall hold harmless and indemnify the Contractor and its agents, principals, and employees from and against all claims, damages, losses, demands, judgments, and costs of suit, defense expenses, and attorney's fees to the extent arising out of or resulting from the Department's wrongful acts, errors, omissions, or negligence, or from the Department's failure to comply with the requirements of this MOU or with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this MOU.

#### SECTION 12: MODIFICATIONS AND PREVIOUS MOU'S

This instrument contains the entire MOU between the parties, and no statements, promises, or inducements made by either party or agent of either party which are not contained in this written MOU are valid or binding. This MOU may not be enlarged, modified, or altered except in writing, signed by both of the parties, with the exception of the unilateral amendments allowed by Section 15 (C). No change, addition, or erasure of any printed portion of this MOU is valid or binding upon either party.

#### SECTION 13: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this MOU is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular term or provision held to be invalid.

#### SECTION 14: ASSIGNMENT; SUBCONTRACTING; CESSATION OF BUSINESS; CHANGE OF BUSINESS LOCATION

- A. The parties agree there will be no assignment or transfer of this MOU, or of any interest in this MOU. The parties agree that no services required under this MOU may be performed under subcontract unless both parties agree in writing.
- B. The Contractor agrees not to sell, assign, or transfer in any manner this MOU, WIC authorization, or WIC Retailer Number. It is further agreed that any actual or attempted sale, assignment, or transfer of the above shall be considered a breach of this MOU. The death of the Contractor (if an individual) or the voluntary or involuntary dissolution of the Contractor shall cause the Contractor's authorization and this MOU to be terminated.
- C. The Contractor further agrees to notify the Department, in writing, sixty (60) calendar days in advance of any scheduled sale, lease, bankruptcy, or cessation of the Contractor's business entity or the sale of any majority interest of any corporation or partnership. The MOU shall terminate upon change of ownership or cessation of business.

- D. Contractor shall give the Department written notice at least sixty (60) calendar days in advance of changing the physical location of Contractor's retail operations. In general, a change of location of Contractor's retail operations will result in termination of this MOU on the date of the change of location. However, the Department, in its sole discretion, may allow Contractor to move its retail operations a short distance without termination of the MOU. The Department's determination regarding whether a change in location qualifies as a short distance shall not be subject to administrative review.

## SECTION 15: GENERAL CONDITIONS

- A. The Contractor shall inform the Department of any potential or real conflict of interest between WIC staff, either state or local, and Contractor personnel. Conflicts of interest may include, but are not limited to, the following:
- (1) Employing a state or local WIC agency staff member or spouse, son, daughter, parent or sibling of a state or local WIC agency staff member.
  - (2) Giving a fee or gift to a state or local WIC program staff member in exchange for being provided WIC information, for WIC staff action that would materially benefit the Contractor, or for preferentially promoting the Contractor. [Note: Donations to a promotional event encouraging WIC participation are not considered to create a conflict of interest.]
  - (3) Accepting, either directly or through a relative, a substantial gift of financial assistance from a state or local WIC staff member.
  - (4) Entering into a business transaction with a state or local WIC staff member or allowing such a staff member to acquire a pecuniary interest in the Contractor.
- B. The Department will terminate the MOU if it identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the Contractor and either state or local WIC agencies.
- C. The Department may unilaterally amend this MOU, in writing, to include or incorporate additional provisions that are required as a result of a change in federal or state statutes or rules or that are required by the Department for the administration, operation, or evaluation of the WIC Program. The Contractor shall receive thirty (30) calendar days advance notice of the effective date of such amendments. Should any such amendment be determined to be unacceptable by the Contractor, the Contractor may voluntarily withdraw from participation.
- D. The Department's obligations under this MOU shall cease immediately without penalty if the Montana legislature or the source of federal funding for the eWIC transactions fails to appropriate or otherwise make available sufficient funds to continue the WIC Program.
- E. The Contractor holds the Department harmless for any liability for any compensation, award, or damage in connection with the Contractor's performance as a WIC Contractor for any injury which might occur to any of the Contractor's employees, WIC participants, or others as the result of any act, omission, or negligence of the Contractor.

## SECTION 16: COMPLIANCE WITH LABOR LAWS

- A. The Contractor assures the Department that the Contractor is an independent contractor providing services for the Department and that neither the Contractor nor any of the Contractor's employees are employees of the Department under this MOU or any subsequent amendment.
- B. The Contractor, at all times during the term of this MOU, must maintain coverage for the Contractor and the Contractor's employees through workers' compensation, occupational disease, and any similar or related statutorily required insurance program. The Contractor must provide the Department with proof of necessary insurance coverage.
- C. If the Contractor has received, for workers' compensation purposes, an independent contractor exemption as to the Contractor, the Contractor must provide the Department with a copy of the

exemption.

- D. The Contractor is solely responsible for and must meet all labor, health, safety, and other legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts, which may be legally required with respect to the Contractor and any persons providing services on behalf of the Contractor under this MOU.
- E. The provision of this contract regarding indemnification applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits accruing or resulting from the Contractor's failure to comply with this section, or from any finding by any legal authority that any person providing services on behalf of the Contractor under this contract is an employee of the Department.

#### SECTION 17: NO CREATION OF LICENSE OR PROPERTY INTEREST

This MOU does not constitute a license or property interest on the part of Contractor. If the Contractor wishes to continue to be authorized beyond the period of its current MOU, the Contractor must reapply for authorization. If the Contractor is disqualified, the Department will terminate the Contractor's MOU, and the Contractor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the Contractor's new application will be subject to the Department's selection criteria and any vendor limiting criteria in effect at the time of the reapplication.

#### SECTION 18: LIAISONS

The Contractor's liaison to the Department for purposes of this MOU is X, or his/her successor at phone number X or at the address noted below.

X  
X  
X

The Department's liaison to the Contractor for purposes of this MOU is Kate Girard, or her successor at the Department's WIC Program, P.O. Box 202951, Helena, Montana 59620-2951 [phone: 406-444-4747].

#### SECTION 19: SCOPE, AMENDMENT AND INTERPRETATION OF MOU

This MOU consists of 14 numbered pages and Attachments A and B. This is the entire MOU between the parties.

The parties through their authorized agents have executed this MOU on the dates set out below.

#### MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: \_\_\_\_\_ Date \_\_\_\_\_  
Todd Harwell, Administrator  
Department of Public Health & Human Services  
Public Health & Safety Division  
1400 Broadway B201  
Helena MT 59620-2951  
(406) 444-4141

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By: \_\_\_\_\_ Date \_\_\_\_\_  
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Federal ID X