

Agreement # _____

Vendor Type: _____

Vendor Region: _____

WIC-13b
Rev. 6/10

KENTUCKY WIC PROGRAM
DRUG STORE VENDOR AGREEMENT

THIS AGREEMENT made and entered into this date _____, by and between the Kentucky WIC Program and:

(Health Department Label Here)

hereinafter referred to as the First Party, and

(Store Name and Address Label Here)

hereinafter referred to as the Second Party;

WHEREAS, the First Party, in the exercise of its lawful duties, has determined upon the necessity of the performance of the following described service, to wit: In relation to the First Party's WIC Program (Special Supplemental Nutrition Program for Women, Infants and Children) to provide food to pregnant, breastfeeding and postpartum women, and infants and children (1-5 years of age) as authorized on food instruments issued by the First Party; and

WHEREAS, the Second Party is available and would be qualified to perform such function;

NOW, THEREFORE, it is hereby and herewith mutually agreed by and between the parties hereto as follows:

1. The Second Party agrees:

- (a) To comply with applicable Federal and State policies, procedures and regulations relating to the WIC Program;
- (b) To supply only exempt formula or medical foods requested by the First Party within forty-eight (48) hours of the verbal request as listed on Attachment A. Drug Stores are authorized for the purpose of providing special formulas that are not available to retail grocers;
- (c) To verify with the First Party any food instrument, which appears to have been altered, defaced or mutilated before dispensing the food items;
- (d) To dispense only approved food items in the quantities and sizes which have been specified on the food instrument to authorized participants, parents or caretakers of infant or child participants or proxies upon presentation of an authorized food instrument;
- (e) To honor food instruments only within the valid period specified on the food instrument (the period beginning with the "first day to use" and ending with the "last day to use" dates);
- (f) To accept WIC food instruments issued by any authorized Kentucky WIC Agency;
- (g) To dispense WIC food items to participants, parents or caretakers of an infant or child participant or proxies without requiring other purchases and accord such persons the same services given to other store customers.



- (h) To not redeem food instruments in whole or in part for cash, unauthorized foods, other items of value, as a credit for past accounts, or otherwise violate the WIC Program policies, procedures and regulations;
- (i) To accept and redeem food instruments only within the confines of the store and to not make home deliveries;
- (j) To not issue “due bills,” “IOU’s,” “rain checks”, “cash” or similar types of instruments in lieu of WIC food items;
- (k) To not charge participants, parents or caretakers of an infant or child participant or proxies for WIC food items dispensed in accordance with the terms of this Agreement;
- (l) To not seek restitution from participants, parents, caretakers of an infant or child participant or proxies for food instruments which are rejected for payment;
- (m) To submit to the First Party, within the time frame requested, a current price list;
- (n) To not charge for food not authorized on the food instrument;
- (o) To record, in ink, the actual purchase price (Pay Exactly) only of approved food items received by the participant, parents or caretakers of infant or child participant or proxies, and the Date Redeemed on the face of the food instrument prior to obtaining the signature of the person redeeming the food instrument;
- (p) To display the prices of WIC foods on each item, or on the display case or shelf where those items are located;
- (q) To charge the First Party the current retail market price or less. In no event shall food costs charged exceed the shelf price of the food provided. The shelf price is considered the current retail market price;
- (r) To submit to the First Party the completed food instrument within thirty (30) days of the last valid date (“last day to use”) on the food instrument;
- (s) To repay to the First Party any documented overcharges and to refund the First Party any payment previously made on improper or invalid food instruments;
- (t) To send appropriate employees (such as the manager, pharmacist or head cashier) to training provided by the First Party and to keep appropriate employees informed of current policies, procedures and regulations pertaining to the WIC Program;
- (u) To be accountable for actions of employees in the utilization of food instruments or provision of supplemental foods;
- (v) To maintain inventory records and proof of purchase of WIC items (including infant formula) for a period of at least six (6) months and to permit monitoring and inspection of store premises and all documents necessary to ensure compliance with this Agreement and State and Federal WIC Program rules, regulations and policies, as well as to respond to requests for corrective action;
- (w) To provide access to food instruments negotiated the day of the monitoring visit, if requested, and to maintain and provide access to shelf price records and adequate inventory records to verify billings made for all WIC food items purchased at any time for a period of at least six months;
- (x) To make available all appropriate documents and records pertaining to the WIC Program upon request by the First Party;
- (y) To not collect sales tax on WIC food purchases; and
- (z) To not physically or verbally threaten or abuse agents of the First Party.

- (aa) To purchase infant formula only from wholesalers, distributors and retailers licensed in Kentucky or infant formula manufacturers registered with the Food and Drug Administration. An approved list is available from the State WIC Office or online at <http://chfs.ky.gov/dph/mch/ns/wic.htm>.

2. The Second Party also agrees:

- (a) To comply with all policies and procedures developed for the operation of the automated food delivery system;
- (b) To be responsible for assuring the vendor stamp, which will be issued by the First Party, is used in accordance with governing policies and procedures;
- (c) To be responsible for any misuse of the vendor stamp (until the First Party has been properly notified) which results in a loss to the First Party;
- (d) To not replicate the vendor stamp;
- (e) To return the vendor stamp immediately upon termination of this agreement or upon application of a sanction;
- (f) To be responsible for obtaining and maintaining a Vendor Manual;
- (g) To prohibit the use of self-scanning devices in the redemption of WIC food instruments; and
- (h) To be responsible for safeguarding protected health, confidential and sensitive information of the WIC participants who redeem food instruments at the vendor's location in accordance with the Health Insurance Portability and Accountability Act of 1996. (HIPAA)

3. For the services as hereinafter set forth, the First Party agrees:

- (a) To authorize reimbursement through a centralized WIC bank account system established by the Cabinet for Health and Family Services, to the Second Party at the Second Party's current retail market price;
 - (b) To authorize reimbursement through a centralized WIC bank account system established by the Cabinet for Health and Family Services, to the Second Party within 60 days of receipt of a properly completed food instrument for the approved foods as listed in Attachment A to this Agreement and shall not authorize reimbursement for foods for which written notice of deletion has been received;
 - (c) To monitor the Second Party's performance under this Agreement and to inform the Second Party of the results thereof; and
 - (d) To provide the Second Party with training and written instructions on the Program's operations.
4. The First Party reserves the right to deny payment for any altered, defaced or mutilated food instruments or food instruments submitted for payment outside the allowable time frames.
 5. In the event a claim is assessed against the Second Party after the food instrument has been paid, then the First Party may offset future payments to the Second Party for the amount of the claim in addition to applying the sanction as indicated in Administrative Regulation 902 KAR 4:040.
 6. The period within the current State Fiscal Year during which this Agreement is in effect is from October 1, 2010 through June 30, 2011, provided, however, that this Agreement shall be automatically extended for the period July 1, 2011 through September 30, 2011 unless the First Party notifies the Second Party, in writing, to the contrary thirty (30) days prior to July 1, 2011.
 7. The parties hereby agree to comply with all appropriate Federal and State Civil Rights Laws and Regulations and state that they do not discriminate against any participant, parent or caretaker of an infant or child participant or proxy for reasons of race, color, national origin, age, sex or disability, Nondiscrimination Regulations of the United States Department of Agriculture (7 C.F.R., Part 15), and Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

8. The Second Party states that he is knowledgeable and aware that a vendor who commits fraud or abuse of the program is liable for prosecution under the applicable State, Federal, or local laws. The Second Party agrees and understands that, under 7 CFR 246.23, those who have willfully misapplied, stolen or fraudulently obtained Program funds shall be subject to a fine of not more than \$25,000 or 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 or imprisonment for not more than one year, or both.
9. The Second Party agrees and understands that it is not the intent of either this Agreement or Administrative Regulation 902 KAR 4:040 to differentiate between intentional and unintentional overcharging or other Program violations and that, in addition to any sanctions imposed by the Cabinet under Administrative Regulation 902 KAR 4:040, the Second Party will repay to the First Party any documented overcharges and to refund the First Party any payment previously made on improper or invalid food instruments; whether overcharging is intentional or unintentional. The First Party does not have to provide the vendor with prior warning that violations were occurring before imposing sanctions.
10. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days advance written notice served upon the other party by registered or certified mail; provided, however, that the First Party may terminate this Agreement immediately for cause upon fifteen (15) days written notice served upon the Second Party by registered or certified mail with return receipt requested. The first party may disqualify a vendor, or impose a civil money penalty in lieu of disqualification, for reasons of Program abuse. Civil money penalties will only be imposed for reasons of inadequate participant access. The First Party may use installment plans for collection of civil money penalties. If a vendor does not pay or only partially pays or fails to timely pay a civil money penalty assessed in lieu of disqualification, the First Party shall disqualify the vendor for the length of disqualification corresponding to the violation for which the civil money penalty was assessed.
11. The Second Party has a right to appeal a decision pertaining to denial of application to participate, vendor disqualification or other adverse action which affects participation during the agreement performance period in accordance with Administrative Regulation 902 KAR 4:040. Expiration or nonrenewal of an agreement with a vendor, disqualification of a vendor as a result of disqualification from the Food Stamp Program, and the First Party's determination regarding participant access is not subject to review. If the disqualification of the Second Party is reversed through administrative or judicial review, the First Party shall not be liable for the value of sales lost during the disqualification period.
12. In the event of a disqualification, withdrawal or an assessment of a civil money penalty of a vendor by the Food Stamp Program or any other United States Department of Agriculture (U.S.D.A.) Food and Nutrition Service (FNS) Program, the Second Party shall be disqualified from the WIC Program upon written notice by registered or certified mail with return receipt requested. The Second Party states that he is knowledgeable that disqualification from the WIC Program may lead to Food Stamp Program disqualification or Medicaid penalties. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program, however, a WIC Program disqualification as a result of a Food Stamp Program civil money penalty for hardship is subject to administrative review.
13. In the event the Second Party is obligating more than one outlet, then all outlets shall be specified in Attachment B of the Kentucky WIC Program Drug Store Vendor Agreement.

14. In the event the Second Party fails to continue to meet the criteria for the selection of vendors as specified in Administrative Regulation 902 KAR 4:040, Section 10 (Attachment D), during the term of the Agreement or fails to meet any of the terms under items 1 and 2 of this Agreement, the First Party will upon notice to the Second Party terminate or not renew this Agreement. Notwithstanding other applicable sanctions, a termination or non-renewal for failure to meet these criteria has specific disqualification periods. The first termination or non-renewal will be for a period of sixty (60) days. If at any time a second termination or nonrenewal is received for the same violation, the period of disqualification will be for a period of one hundred and twenty (120) days; for the third occurrence, one (1) year.
15. The First Party reserves the right to modify this Agreement at any time upon written notice to the Second Party.
16. This agreement is non-transferable and shall become void upon change of ownership. The vendor shall notify the state agency when the store ceases operations or the ownership changes.
17. This agreement does not constitute a license or property interest.
18. Neither the first party nor the second party has an obligation to renew this vendor agreement. Expiration or nonrenewal of an agreement is not subject to appeal.
19. The State Agency will terminate this agreement if the State Agency identifies a conflict of interest as defined by applicable State laws, regulations and policies, between the vendor and the State Agency or its local agencies.
20. Renewal of this Agreement does not relieve the Second Party of any previous violations from any prior Agreements with the First Party or the Department for Public Health, which were in effect on or after October 1, 1999.
21. The State Agency will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization.
22. This agreement shall not become effective until approved by the Department for Public Health.

ATTACHMENT A

KENTUCKY WIC PROGRAM DRUG STORE VENDOR AGREEMENT

The following food items are approved for the WIC Program in Kentucky:

FORMULAS

A drug store must be able to supply within 48 hours of verbal request by agency staff any of, but not limited to, the following products:

Boost	Similac Neosure/Similac Expert Care™ Neosure
Boost Glucose Control	Similac PM 60/40
Boost High Protein	Similac Special Care 24 with Iron
Boost Kid Essentials Immunity Protection	Tolerex
Boost Kid Essentials 1.0 CAL	Vital HN
Boost Kid Essentials 1.5 CAL	Vital Junior
Boost Kid Essentials w/ Fiber 1.5 CAL	Vivonex Pediatric
Boost Plus	Vivonex Plus
Bright Beginnings Soy Pediatric Drink	Vivonex T.E.N.
EleCare	
EleCare DHA & ARA	
EleCare Vanilla (for children)	
Enfamil EnfaCare	
Enfamil Premature 20	
Enfamil Premature 24	
Ensure	
Ensure High Calcium	
Ensure High Protein	
Ensure Plus	
Good Start Premature 24	
Necoate Infant	
Neocate Infant with DHA & ARA	
Neocate Junior	
Neocate One +	
Nutren Junior	
Nutren Junior with Fiber	
Osmolite 1 cal	
PediaSure	
PediaSure with Fiber	
Peptamen	
Peptamen Junior	
Peptamen Junior with Fiber	
Peptamen Junior with Prebio	

*NOTE: This list of approved food items is subject to change.

The First Party shall forward notification of such changes in writing to the Second Party.

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ATTACHMENT B

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When the vendor is obligating more than one outlet, then all outlets shall be specified in the Agreement.

When more than one outlet is specified in the Agreement, an individual outlet may be added or deleted without affecting the remainder of outlets.

VENDOR NAME	ADDRESS	MANAGER	NUMBER
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ATTACHMENT D

902 KAR 4:040. Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

RELATES TO: KRS Chapter 13B, 194A.050, 194A.505, 194A.990, 7 CFR Part 246, 7 CFR Part 278.6, 21 USC 802 sec. 102 STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 CFR Part 246, 42 USC 1786. **NECESSITY, FUNCTION, AND CONFORMITY:** 42 USC 1786 and 7 CFR Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for women, infants, children, and vendors, including the sanction and hearing processes.

Section 1. Definitions.

- (1) "Alcohol" is defined in KRS 241.010(1).
- (2) "Alcoholic beverage" is defined in KRS 241.010(2).
- (3) "Authorized supplemental food," means a supplemental food authorized by the state or a local agency for issuance to a particular participant.
- (4) "Certifying professional authority" means a person authorized to determine eligibility and certify persons for the WIC Program, and is limited to the following:
 - (a) A physician;
 - (b) A nutritionist with a bachelor's degree;
 - (c) A certified nutritionist;
 - (d) A licensed dietitian;
 - (e) A registered nurse;
 - (f) A licensed practical nurse;
 - (g) An advanced registered nurse practitioner; and
 - (h) A physician's assistant certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority.
- (5) "Compliance buy" means a covert, on-site investigation in which a representative of the WIC Program:
 - a: poses as a participant;
 - b: engages in a transaction involving one (1) or more food instruments; and
 - c: does not reveal before, during, or after the visit, that he or she is a program representative.
- (6) "Contract price" means the price for a WIC food item negotiated between the state agency and the vendor.
- (7) "Dual participation" means simultaneous participation in the WIC Program and in:
 - (a) one or more WIC clinics; or
 - (b) the Commodity Supplemental Food Program.
- (8) "Food package" means, for the purpose of participant access determination, three (3) food instruments issued to a participant, valid for the same time period.
- (9) "High risk vendor" means a vendor having a high probability of violating a WIC Program requirement, as identified by use of the following criteria:
 - (a) High mean (high average cost per food instrument);
 - (b) Low variance;
 - (c) Percentage of WIC sales to food sales;
 - (d) Food instruments redeemed outside of contract;
 - (e) Pay exactly discrepancies; or
 - (f) Food instruments redeemed outside the valid dates.

- (10) "Inventory audit" means an examination of food invoices or other proofs of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to participants the quantities specified on food instruments redeemed by the vendor during a given period of time.
- (11) "Investigation" means a method used by the state agency to detect a WIC Program violation.
- (12) "Local agency" means an applying or participating WIC agency.
- (13) "Low variance" means the redemption of the same type of food instruments at the same price, or within a narrow price range.
- (14) "Merchandise" means goods or products.
- (15) "Participant" means:
 - (a) A pregnant, breastfeeding, or postpartum woman, or an infant or child, who is receiving supplemental food or food instruments;
 - (b) The breastfed infant of a breastfeeding woman who is receiving WIC Program benefits;
 - (c) The parent or caretaker of an infant or child receiving a WIC benefit; and
 - (d) The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection.
- (16) "Participant violation" means an intentional knowing act of a participant, as defined in this administrative regulation that violates Federal or State law governing the WIC Program.
- (17) "Positive compliance buy" means a compliance buy in which a violation of the WIC Program has occurred.
- (18) "Proxy" means a person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact a food instrument or instruments to obtain a supplemental food or foods on behalf of a participant.
- (19) "Routine monitoring," means overt, on-site monitoring during which representatives of the WIC Program identify themselves to vendor personnel.
- (20) "Shelf price" means the price displayed on the vendor's display case, on the shelf, or on the food item.
- (21) "Staple food items" means meat, poultry, fish, bread, bread items, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products excluding items such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.
- (22) "State agency" means the Cabinet for Health and Family Services or its designated representative.
- (23) "Trafficking" means the redemption of a food instrument or food instruments for cash.
- (24) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized through an agreement or contract with the State agency to participate by providing authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor.
- (25) "Vendor authorization" means the process by which the State agency assesses, selects, and enters into an agreement or contract with a store that applies or subsequently reapplies to be authorized as a vendor.
- (26) "Vendor violation" means an intentional or unintentional act of a vendor's current owner, officer, manager, agent, or employee with or without management knowledge, that violates the vendor agreement or federal or state law governing the WIC Program.
- (27) "WIC Program or WIC " means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by Section 17 of the Child Nutrition Act of 1966, 42 USC 1786 and administered pursuant to 42 USC 1786 and 7 CFR Part 246. 2.

Section 10. Vendor Authorization Criteria.

- (1) Only a vendor authorized by the cabinet shall redeem a food instrument.
 - (a) Each store operated by a business entity shall be authorized separately from other stores operated by the business entity.
 - (b) Each store shall have a single, fixed location.
- (2) Food vendors shall be authorized in sufficient numbers and with distribution adequate to assure:
 - (a) Participant convenience and access; and
 - (b) Effective management of vendor review by the cabinet and the local agency.
- (3) In order to be an authorized WIC vendor, a vendor shall:
 - (a) Provide information, including sales volume, requested by the state agency;
 - (b) Stock, at all times, minimum inventory in accordance with the "Quantified Minimum Inventory Requirements" outlined in the WIC Information Manual for Vendor Applicants:
 1. The stock shall be in the store or in the store's stockroom.
 2. Expired foods do not count towards meeting the minimum inventory requirement.
 3. A pharmacy shall supply formula within forty-eight (48) hours of the WIC agency request.
 - (c) As appropriate, be in compliance with the Kentucky Retail Market Sanitation Regulations, 902 KAR 45:005, and have a valid Retail Food Establishment or Retail Food Store Permit in the current owner's name;
 - (d) Have prices commensurate with the area's authorized WIC vendors, compared according to 1 policy, outlined in the WIC Information Manual for Vendor Applicants and the WIC Vendor Manual;
 - (e) Be in compliance with other Food and Nutrition Programs, as follows:
 1. Not be disqualified or withdrawn by the United States Department of Agriculture from participation in another Food and Nutrition Service Program;
 2. Not be denied application to participate in the Food Stamp Program;
 3. Not be currently paying a civil money penalty to the Food Stamp Program; or
 4. Been assessed a civil money penalty for participant hardship by the Food Stamp Program and the disqualification period that would otherwise have been imposed has not expired.
 - (f) Request authorization for a business whose primary purpose is to be a retail grocery.
 1. A direct distribution outlet or wholesale food establishment is not eligible.
 2. A vendor who derives more than fifty (50) percent of annual food sales revenue from the sale of food items on WIC food instruments is not eligible.
 3. A retail grocery shall:
 - a. Have a separate and distinct grocery department in a stationary location which stocks staple food items in addition to WIC approved foods; and
 - b. Have fifteen (15) percent of gross sales in nontaxable food sales, excluding specialty items such as bakery goods for a bakery, or produce for a fruit and vegetable stand.
 4. A dairy or home delivery grocery shall not be approved if it operates solely as a mobile operation.
 - (g) Be open for business year round on a full-time basis at least eight (8) hours per day, six (6) days per week; *(Be open for business year round, forty (40) hours per week; proposed language change)*
 - (h) Be accessible to monitoring by state and federal officials without prior notice; and
 - (i) Not be indebted to the WIC Program for an unpaid claim or a civil money penalty against a store owned or previously owned by the applying owner.

- (4) The WIC Program shall not authorize a vendor applicant if, during the last six (6) years, an applicant's current owner, officer or manager has been convicted of or had a civil judgment for:
 - (a) Fraud;
 - (b) Antitrust violation;
 - (c) Embezzlement, theft, or forgery;
 - (d) Bribery;
 - (e) Falsification or destruction of records;
 - (f) Making false statements or claims;
 - (g) Receiving stolen property;
 - (h) Obstruction of justice;
 - (i) Another act reflecting on the business integrity and reputation of the applicant; such as removal from other federal, or state programs.
- (5) The WIC Program shall not authorize a store that has attempted to circumvent a period of disqualification from the program. This includes a store that has undergone a sale or change of operation if the transaction involves the following parties:
 - (a) The seller or transferor is an owner, operator, or manager currently suspended, sanctioned, or disqualified from the WIC or Food Stamp Program; and
 - (b) The buyer or transferee is related to the seller by marriage or consanguinity within the fourth degree, or was a manager or employee of the seller at the time the sanction, suspension or disqualification was issued or the violation occurred.
- (6) A contract shall not be entered into with a vendor if the contract would cause a conflict of interest, real or apparent.
- (7) The WIC Program shall terminate a vendor contract if it determines the vendor or vendor's employee provided false information in connection with the vendor application.

Section 11. Vendor Right to a Hearing.

- (1) A vendor shall be informed in writing of the right to a hearing and the method by which a hearing may be requested, for the following adverse actions:
 - (a) Denial of application to participate in the program;
 - (b) Disqualification; or
 - (c) Other adverse action, which affects participation during the agreement performance period.
- (2) In accordance with 7 CFR Part 246.18 the following actions are not subject to appeal:
 - (a) Expiration of an agreement with a vendor;
 - (b) The WIC Program's determination of participant access; or
 - (c) Disqualification from the WIC Program as a result of disqualification from the Food Stamp Program.
- (3) A vendor aggrieved by a qualifying adverse action shall request a hearing in accordance with Section 15 of this administrative regulation.

Section 12. Vendor Violations and Sanctions.

- (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for designated violations committed by a vendor, his employee or agent:
 - (a) 1. Vendor violation: failure to record actual purchase price on a WIC food instrument at the time of purchase.
 2. Pattern of incidence and length of disqualification:
 - a. First investigation. Two (2) positive compliance buys out of three (3) shall result in a written warning.
 - b. Second investigation. Two (2) positive compliance buys out of three (3) shall result in a three (3) month disqualification.
 - c. Third investigation. Two (2) positive compliance buys out of three (3) shall result in a six (6) month disqualification.
 - (b) 1. Vendor violation: failure to pay a claim made by the state agency. The state agency shall request payment as follows:
 - a. Mail a letter to the vendor requesting payment by a specified date;
 - b. If payment is not received, contact vendor by telephone requesting payment; and
 - c. If payment is not received, mail a second letter by certified mail, return receipt requested.
 2. Pattern of incidence and length of disqualification:
 - a. First instance shall result in a three (3) month disqualification.
 - b. Second instance shall result in a six (6) month disqualification.
 - c. Third instance shall result in a one (1) year disqualification.
 - (c) 1. Vendor violation: failure to return the WIC vendor authorization stamp upon request. Before issuance of a sanction, the state agency shall contact the vendor by telephone to request the return of the stamp.
 2. Pattern of incidence and length of disqualification: three (3) months shall be added to the previously established disqualification period.
 - (d) 1. Vendor violation: providing free merchandise to participants as an incentive to redeem food instruments at a particular vendor.
 2. Pattern of incidence and length of disqualification:
 - a. First investigation: Two (2) positive compliance buys out of three (3) shall result in a three (3) month disqualification.
 - b. Second investigation: Two (2) positive compliance buys out of three (3) shall result in a six (6) month disqualification.
 - c. Third investigation: Two (2) positive compliance buys out of three (3) shall result in a one (1) year disqualification.
 - (e) A first offense shall be removed from a vendor's record if three (3) federal fiscal years elapse without recurrence of a violation described in paragraph (a), (b), or (c) of this subsection.
 - (f) 1. Vendor violation: convicted of trafficking in a food instrument or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 USC 802 section 102, in exchange for a food instrument.
 2. Pattern of incidence and length of disqualification: one (1) occurrence (one (1) time) of this violation shall result in a permanent disqualification

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- (g) 1. Vendor violation: trafficking in a food instrument or instruments or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 USC 802 section 102, in exchange for a food instrument.
2. Pattern of incidence and length of disqualification: one (1) positive compliance buy shall result in a six (6) year disqualification.
- (h) 1. Vendor violation: sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument or instruments.
2. Pattern of incidence and length of disqualification: one (1) positive compliance buy shall result in a three (3) year disqualification.
- (i) 1. Vendor violation: claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental food item for a specific period of time.
2. Pattern of incidence and length of disqualification:
 - a. An inventory audit for a thirty (30) day period which results in twenty-five (25) percent or more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or
 - b. An inventory audit for a ninety (90) day period, which results in ten (10) percent or more WIC sales than the documented inventory, shall result in a three (3) year disqualification.
- (j) 1. Vendor violation: charging a participant more for supplemental food than:
 - a. A non-WIC customer is charged;
 - b. The current shelf price; or
 - c. The contract price.2. Pattern of incidence and length of disqualification:
 - a. Two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification if:
 - (i) The vendor has exhibited a prior pattern of overcharging based upon routine monitoring visits which have resulted in two (2) letters for price discrepancies; or
 - (ii) The vendor has exhibited a pattern of two (2) out of four (4) quarters of low variance in the prior federal fiscal year.
 - b. The state agency shall:
 - (i) Require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state agency.
 - (ii) Notify a vendor who exhibits a pattern of low variance for two (2) or more quarters during the federal fiscal year.
 - c. Three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in clause a. of this subparagraph.
- (k) 1. Vendor violation: receiving, transacting or redeeming a food instrument by an unauthorized vendor through an authorized store.
2. Pattern of incidence and length of disqualification: two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification.

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- (l) 1. Vendor violation: receiving, transacting or redeeming a food instrument by an unauthorized person, not a participant, proxy, or undercover investigator, as determined by an investigation by the Office of the Attorney General.
2. Pattern of incidence and length of disqualification: two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification.
- (m) 1. Vendor violation: charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the food instrument but not purchased by the WIC participant.
2. Pattern of incidence and length of disqualification: three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification.
- (n) 1. Vendor violation:
 - a. Providing credit, an IOU, a rain check, a due bill, or a store credit; or
 - b. Providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives or controlled substances, as defined in 21 USC 802 section 102, in exchange for food instruments.
2. Pattern of incidence and length of disqualification: two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification.
- (o) 1. Vendor violation: providing an unauthorized food item or items in exchange for a food instrument.
2. Pattern of incidence and length of disqualification: five (5) positive compliance buys out of five (5) shall result in a one (1) year disqualification.
- (p) 1. Vendor violation: charging for supplemental food provided in excess of those listed on the food instrument.
2. Pattern of incidence and length of disqualification: five (5) positive compliance buys out of five (5) shall result in a one (1) year disqualification.
- (q) A vendor who has been disqualified from the Food Stamp Program shall be disqualified from the WIC Program for the same length of time as the Food Stamp Program disqualification.
- (r) A vendor who has been assessed a civil money penalty by the Food Stamp Program, as provided under 7 CFR 278.6, shall be disqualified from the WIC Program for the same length of time for which the vendor would have been disqualified from the Food Stamp Program unless the WIC Program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.
- (2) (a) Except for violations identified in subsections 1(b), (c), (f) through (i), (q) and (r) of this Section, the state agency shall notify a vendor in writing if an investigation reveals an initial violation. The vendor shall be notified before another violation is documented unless the state agency determines that notifying the vendor would compromise an investigation.
- (b) The notification determination shall be made on a case by case basis.
- (c) A notification of a potential initial violation shall not be issued if:
 1. The investigation is covert;
 2. The investigator reports a potential initial violation during the course of the investigation; and
 3. The vendor is identified to be a high risk vendor.
- (3) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

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- (4) If a vendor who has previously received two (2) or more of the mandatory sanctions designated in subsection (1)(f) through (p) of this section receives another sanction for a violation designated in subsection (1)(f) through (p) of this section, the third and all subsequent sanctions shall be doubled. A civil money penalty shall not be assessed for a third or subsequent sanction.

Section 13. Participant Access Determination and Civil Money Penalty.

- (1) Except for a violation specified in Section 12(1)(g) of this administrative regulation, prior to disqualifying a vendor for a violation specified in Section 12 of this administrative regulation, the WIC Program vendor manager shall determine if disqualification of the vendor will result in inadequate participant access.
- (2) The determination and documentation of adequate participant access shall be made using the criteria provided in subsections (4) and (5) of this section.
- (3) Mileage shall be measured by automobile odometer.
- (4) There is adequate participant access, if:
- (a) There is another vendor within seven (7) miles of the vendor; or
 - (b) There is another vendor between the subject vendor and a health department service site, and the other vendor is within seven (7) miles of the health department service site;
 - (c) There is no geographic barrier, such as an impassable mountain or river, between the subject vendor and the next accessible vendor; or
 - (d) The subject vendor is redeeming food instruments for formulas classified as special formulas and there is another vendor within seven (7) miles that can obtain the formula.
- (5) If five (5) or more total food packages are redeemed by the subject vendor in the calendar month period immediately preceding the issuance of a sanction letter, the WIC coordinator shall be consulted to determine if a special circumstance exists which will result in inadequate participant access.
- (6) If inadequate participant access is determined, a civil money penalty shall be assessed for a violation listed in Section 12 of this administrative regulation. The civil money penalty shall be calculated in accordance with the procedures outlined in the Vendor Manual.
- (7) The WIC Program shall negotiate an installment plan for the collection of a civil money penalty.
- (8) A vendor that fails to pay, partially pays, or fails to timely pay a civil money penalty, shall be disqualified for the length of time corresponding to the most serious violation.

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Section 14. Local Agency Right to a Hearing.

A local agency aggrieved by an adverse action affecting participation may appeal the action in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Appeal.

- (1) A person appealing a local agency hearing officer's decision, or a vendor or a local agency aggrieved by a decision of the cabinet to impose a sanction authorized by law, may file a written request for a hearing with the cabinet within (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) Within fifteen (15) days of a request for a hearing, the cabinet shall issue a notice of hearing.
- (3) A decision assessing the validity of the violation and sanction imposed shall be based upon the record of the hearing and the relevant statutory and regulatory provisions governing the WIC Program.
- (4) The final order of the cabinet shall be forwarded to the appellant within ninety (90) days from the date of receipt of the written request for hearing, unless the appellant waives this date in writing.

Section 16. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "WIC Information Manual for Vendor Applicants" May, 2005 edition; and
 - (b) "WIC Vendor Manual" May, 2005 edition.
- (2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, HS2W-D, Monday through Friday, 8:00 a.m. to 4:30 p.m.

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FIRST PARTY:

Agency Name (print legibly)

Authorized Officer

SECOND PARTY:

Corporate or Business Name (print legibly)

Vendor Number

Owner or Corporate Representative (print legibly)

Owner or Corporate Representative's Signature

APPROVED BY:

DATE:

Authorized Official
Department for Public Health
Cabinet for Health and Family Services
Kentucky WIC Program