

2009 WIC PROGRAM VENDOR VIOLATION NOTIFICATIONS & SANCTIONS

(Oregon Administrative Rule 333-054-0050)

(1) Prior Warning:

- (a) DHS must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless DHS determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.
- (b) Prior to imposing a sanction for a pattern of violative incidences, DHS must either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such a notice would compromise an investigation.
- (c) If notification is provided, DHS may continue its investigation after the notice of violation is received by the vendor, or presumed to be received by the vendor consistent with DHS' procedures for providing such notice.
- (d) All incidences of a violation occurring during the first compliance buy visit must constitute only one incidence of that violation for the purpose of establishing a pattern of incidences.
- (e) A single violative incidence may only be used to establish the violations as written in 333-054-0050(3)(c) and 333-054-0050(3)(d).

(2) Vendors shall receive a written "Notice of Non-compliance" for a single instance of:

- (a) Failing to comply with Part 3 of the vendor's current vendor agreement;
- (b) Failing to complete and return the Vendor Price List by the deadline set by DHS;
- (c) Failing to complete and return the Shelf Price Survey (SPS) by the deadline set by DHS;
- (d) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument or CVV;
- (e) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement;
- (f) Influencing an authorized shopper's selection of authorized foods;
- (g) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;
- (h) Selling expired authorized foods or infant formula to authorized shoppers;
- (i) Failing to respond to a request issued by DHS;
- (j) Failing to accept training when required by DHS;
- (k) Using the "WIC" acronym or logos in an unauthorized manner;
- (l) Failing to maintain or provide, to DHS upon request, invoices or receipts to show source(s) of formula purchase;
- (m) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;
- (n) Failing to comply with the terms in a final order issued by DHS;
- (o) Failing to comply with an investigation by federal or state officials;
- (p) Refusing DHS or a federal official access to food instruments or CVVs negotiated on the day of review;
- (q) Failing to provide, within two business days of DHS' request, purchasing/receiving records to substantiate the volume and prices charged to DHS;
- (r) Violating the nondiscrimination clause listed in the vendor agreement; and
- (s) A50s only: Failing to maintain or provide, to DHS upon request, documentation for each incentive item.

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(3) Sanctions:

- (a) For the following violations, DHS shall disqualify a vendor for one year:
- (A) A pattern of providing unauthorized food items in exchange for food instruments or CVVs, including charging for authorized food provided in excess of those listed on the food instrument;
 - (B) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;
 - (C) A pattern of providing change when redeeming a food instrument or CVV;
 - (D) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments or CVVs, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;
 - (E) A50s only: A pattern of providing WIC shoppers with incentive items or other merchandise and/or services not approved by DHS.
- (b) For the following violations, DHS shall disqualify the vendor for three years:
- (A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument or CVV;
 - (B) Failing a DHS inventory audit;
 - (C) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item, which exceeds the store's documented inventory of that authorized food item for a specific period of time;
 - (D) A pattern of vendor overcharges;
 - (E) A pattern of receiving, transacting and/or redeeming food instruments or CVVs outside of authorized channels or locations. This includes, but is not limited to use of an unauthorized vendor and/or unauthorized person, and/or redemption of food instruments or CVVs outside of an authorized store location;
 - (F) A pattern of charging for foods not received by the authorized shopper; and
 - (G) A pattern of providing credit or non-food items in exchange for food instruments or CVVs, other than those items listed in OAR 333-054-0050(3)(c) and 333-054-0050(d).
- (c) For the following violations, DHS shall disqualify the vendor for six years:
- (A) One incident of buying or selling a food instrument or CVV for cash (trafficking); or
 - (B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument or CVV.
- (d) DHS shall permanently disqualify a vendor convicted of trafficking in food instruments or CVVs or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument or CVV.

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57-1012-ENGL (06/2009)