

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 54

**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR
WOMEN, INFANTS AND CHILDREN
(WIC)**

333-054-0000

Description of WIC Program

(1) The WIC Program is a federally funded program established in 1972 by an amendment to the Child Nutrition Act of 1966. The purpose of the WIC Program is to serve as an adjunct to health care by providing: nutrition education and counseling; nutritious supplemental foods; and health screening and referral services to pregnant and breast-feeding women, infants, and children in certain high-risk categories.

(2) Federal regulations governing the WIC Program, 7 CFR § Part 246, require adoption and implementation of standards and procedures to guide the state's administration of the WIC Program. These regulations also define the rights and responsibilities of vendors.

(3) The WIC Program in the State of Oregon is administered by the Department of Human Services (DHS).

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

333-054-0010

Definitions

(1) "A50" means an authorized vendor or applicant that derives, or is expected to derive, more than 50 percent of its total annual food sales from WIC food sales. The total food sales do not include alcohol, tobacco, lottery or any other non-food item.

(2) "Abbreviated administrative review" means a hearing that is held at the request of a vendor that has been issued an application denial, civil money penalty, fine, or sanction by DHS.

Abbreviated Reviews are facilitated by DHS staff other than the staff person that imposed the sanction. A facilitated discussion is held in order to resolve the imposition of a sanction.

(3) "Adequate participant access" means there are authorized vendors sufficient for participant need.

(4) "Annual Food Sales" means sales of all Food Stamp/Supplemental Nutrition Assistance Program (FSP/SNAP) eligible foods intended for home preparation and consumption including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and non-carbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with food stamp benefits, such as hot foods or food that will be eaten in the store.

(5) "Applicant" means any person, or person with an interest in the business, making a written

request for authorization to participate in the WIC Program, including vendors and farmers that reapply for authorization.

(6) “Authorization” means the process by which DHS assesses, selects, and enters into agreements with stores and farmers that apply or subsequently reapply to be vendors or authorized farmers allowed to transact CVVs.

(7) “Authorized food” means any supplemental foods listed on the WIC Authorized Food List, food instrument or CVV.

(8) “Authorized shopper” means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant’s behalf and, in the case of an infant or child, the caretaker or the caretaker’s designee. This includes any representative posing as a participant or participant designee as authorized by DHS.

(9) “CFR” means Code of Federal Regulations.

(10) “Change of Ownership” means a change in the ownership or control of ten percent or more of any class of stock in a corporation; a change in, addition of or removal of a partner of any partnership; a change in ownership or control of ten percent or more of the total investment commitment in partnership; or a change in the owner of a sole proprietorship.

(11) “CMP” means civil money penalty.

(12) “Cash Value Voucher” or “CVV” means a fixed-dollar check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain WIC authorized fruits and vegetables.

(13) “Compliance buy” means a single covert, on-site visit in which a DHS authorized representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments or CVVs.

(14) “DHS” means the Department of Human Services.

(15) “Disqualification” means cancelling the WIC program participation of a vendor or farmer, as a punitive action.

(16) “Farmer” means an individual who owns, leases, rents or sharecrops land to grow, cultivate or harvest crops on that land.

(17) “Farmer agreement” means a standard written legal contract between the farmer and DHS that sets forth responsibilities of the parties.

(18) “FNS” means the Food and Nutrition Service of the U. S. Department of Agriculture.

(19) “FSP” means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(20) “Food instrument” means a WIC Program voucher, check, coupon or other WIC approved document, which is used to obtain authorized foods.

(21) “Full administrative review” means a formal hearing that is held before an assigned administrative law judge from the state Office of Administrative Hearings. Attorneys may be present to represent both parties. Formal procedures are followed as to the presentation of evidence, examination of documentation and cross-examination of witnesses in accordance with 7 CFR § 246.18 and ORS Chapter 183.

(22) “Incentive item” means a food or non-food item offered free of charge to WIC shoppers to motivate them to shop at a particular store. Examples of incentive items include, but are not limited to, cash prizes, lottery tickets, transportation, sales/specials such as a buy-one-get one free or free additional ounces offer, and other free food or merchandise.

- (23) “Inventory audit” means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor’s claim for reimbursement for such foods from DHS during a specific period of time.
- (24) “Investigation” means a period of review, beginning with the start of an inventory audit or the first compliance buy and closing when the audit has been completed or a sufficient number of compliance buys have been completed to provide evidence of compliance or non-compliance, not to exceed 24 months, to determine a vendor or farmer’s compliance with program rules and procedures.
- (25) “Local agency” means:
- (a) A public or private non-profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;
 - (b) An Indian Health Service unit;
 - (c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or
 - (d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.
- (26) “Mid-Contract Assessment” means a procedure used by DHS to evaluate whether WIC authorized vendors/farmers continue to meet selection criteria throughout their agreement term.
- (27) “Overcharge” means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price charged to other shoppers.
- (28) “Participant” means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments or CVVs under the WIC Program, and the breastfed infant of any participating breastfeeding woman.
- (29) “Pattern” means three or more of the same rule violation that occurs within a single investigation.
- (30) “Peer group” means a group of vendors considered to be in the same category by DHS based on factors such as store type, store size and geography.
- (31) “Person” means a human being, a public or private corporation, an unincorporated association, a partnership, a Limited Liability Corporation, a sole proprietor, a government or a governmental instrumentality.
- (32) “Person with an interest in the business” means an officer, director, partner, or manager of the business or a shareholder with 10 percent interest or more in the business.
- (33) “Price adjustment” means an adjustment made by DHS, in accordance with the vendor/farmer agreement, to the purchase price on a food instrument or CVV, after it has been submitted by a vendor/farmer for redemption to ensure that the payment to the vendor/farmer for the food instrument or CVV complies with DHS price limitations.
- (34) “Prominently displayed” means immediately noticeable by persons entering the vendor location.
- (35) “Routine monitoring” means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor or farm personnel.
- (36) “Shelf Price Survey” or “SPS” means a tool used by DHS to collect a sample of a WIC authorized vendor’s current shelf prices.

- (37) “Stand Alone Pharmacy” means a pharmacy that is operated independently from or is not located in a WIC authorized grocery store. These stores are exempt from the minimum stock requirements set forth for grocery vendors.
- (38) “Store Run Pharmacy” means a pharmacy that is located within a WIC authorized grocery store and is affiliated with that business entity.
- (39) “Termination” means the cancellation of a vendor or farmer agreement which may or may not be linked to a disqualification.
- (40) “Trafficking” means buying or selling food instruments or CVVs for cash.
- (41) “U.S.C.” means United States Code.
- (42) “Unauthorized food item” means foods and/or brands, and/or size not allowed on the WIC Authorized Food List. It also means foods not specified on a food instrument or CVV as eligible for purchase for that participant, with WIC benefits.
- (43) “Vendor” means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program. Vendor may also refer to the authorized store location.
- (44) “Vendor agreement” means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.
- (45) “Vendor Price List” means a comprehensive list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.
- (46) “Violation” means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050 and OAR 333-054-0055.
- (47) “WIC Authorized Food List” means the supplemental foods approved by the State of Oregon.
- (48) “WIC Program” means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.
Stat. Auth.: ORS 409.600
Stat. Implemented: ORS 409.600

333-054-0020

How a Vendor Becomes WIC Authorized

- (1) Only vendors authorized by DHS may accept Oregon food instruments or CVVs in exchange for authorized foods.
- (2) Application:
- (a) An applicant shall submit a completed application to DHS, which includes:
- (A) An application form;
- (B) A Vendor Price List;
- (C) A current Food Stamp Authorization number; and
- (D) Any other documents or information required by DHS.
- (b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, if it determines the applicant’s store is necessary to ensure adequate participant access in a specific geographic location.
- (3) Selection Criteria: In order for DHS to consider authorizing an applicant, the applicant shall:

- (a) Demonstrate and maintain competitive pricing as determined by DHS based on the applicant's shelf prices and as compared to data from the peer group appropriate to the applicant's characteristics. Such data may include redemption prices and/or shelf prices. If an applicant's store is necessary to ensure adequate participant access, it may be exempt from this requirement;
- (b) Possess a current bank account number;
- (c) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;
- (d) Possess a current FSP authorization number. Pharmacies, military commissaries, and stores that are determined by DHS as necessary to provide adequate participant access shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;
- (e) Not have a history of serious violations with either the WIC Program or Food Stamp Program;
- (f) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;
- (g) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired unless this store has been determined necessary for participant access;
- (h) Have a fixed location for each store;
- (i) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant:
 - (A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;
 - (B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;
 - (C) Pharmacies are exempt from this requirement; however, they shall obtain infant formula, including formula that requires a prescription, within 72 hours of a DHS or participant request.
- (j) An applicant must purchase infant formula, which is to be sold to WIC shoppers, only from manufacturers, wholesalers, distributors, and retailers authorized by the Oregon WIC Program.
- (k) Vendor must maintain and provide documentation of FSP/SNAP-eligible food sales throughout the contract period. According to USDA, §CFR 245.2, "Food sales" means sales of all foods that are eligible items under the FSP/SNAP. These foods are intended for home preparation and consumption and include:

- (A) Meat, fish, and poultry;
- (B) Bread and cereal products;
- (C) Dairy products; and
- (D) Fruits and vegetables.

(l) Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated beverages may be included in food sales when offered for sale along with foods in the four primary categories. Food sales do not include sales of any items that are not approved for purchase with Food Stamp benefits, such as alcoholic beverages, hot foods, or foods that will be eaten on the store premises.

(m) Vendor must maintain and provide documentation and receipts showing source(s) of infant formula purchases.

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials: DHS shall give the applicant written notification of denial, in conformance with ORS chapter 183, as otherwise provided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(a) The applicant's failure to meet the selection criteria;

(b) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(c) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(d) The applicant's history of complaints, violations and/or sanctions;

(e) The applicant's refusal to accept training from the WIC program; or

(f) The applicant's misrepresentation of information on the application.

(6) Subsequent to authorization, an agreement may be terminated if it is found that the vendor provided false or omitted pertinent information during the authorization process.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

333-054-0025

Above 50% Vendors (A50)

(1) An applicant that is likely to derive more than 50 percent of the store's annual food sales from WIC transactions will not be authorized except for cases of participant access hardship as

determined solely by DHS.

(2) An existing A50 will be allowed to close a current location and open at a new location as long as there is no break in service to WIC participants.

(3) Provision of incentive items. DHS may not authorize or continue the authorization of an A50 vendor, or make payments to an A50 vendor which provides or indicates an intention to provide prohibited incentive items to customers. Evidence of such intent includes, but is not necessarily limited to, advertising the availability of prohibited incentive items.

(a) DHS may approve any of the following incentive items to be provided by A50 vendors to customers, at the discretion of DHS:

(A) Food, merchandise, or services obtained at no cost to the vendor, subject to documentation;

(B) Food, merchandise, or services of nominal value, i.e., having a per item cost of less than two dollars (\$2), subject to documentation;

(C) Food sales and specials which involve no cost or less than two dollars (\$2) in cost to the vendor for the food items involved, subject to documentation, and do not result in a charge to a WIC food instrument for foods in excess of the foods listed on the food instrument; and

(D) Minimal customary courtesies of the retail food trade, such as helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting the customer with loading the food into a vehicle.

(b) The following incentive items are prohibited for A50 vendors to provide to customers:

(A) Services which result in a conflict of interest or the appearance of such conflict for the A50 vendor, such as assistance with applying for WIC benefits;

(B) Lottery tickets provided to customers at no charge or below face value;

(C) Cash gifts in any amount for any reason;

(D) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

(E) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during on shopping visit would not exceed the less than two dollar (\$2) nominal value limit;

(F) Food, merchandise, or services of greater than nominal value provided to the customer;

(G) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

(H) Any kind of incentive item which incurs a liability for the WIC Program; and

(I) Any kind of incentive item which violates any Federal, State, or local law or regulations.

(c) For-profit goods or services offered by the A50 vendor to WIC participants at fair market value based on comparable for-profit goods or services of other businesses are not incentive items subject to approval or prohibition, except that such goods or services must not constitute a conflict of interest or result in a liability for the WIC Program.

(4) If a currently authorized vendor is found to derive more than 50 percent of the store's annual food sales from WIC transactions DHS will terminate the vendor agreement unless the vendor is necessary for participant access.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

333-054-0027

How a Farmer Becomes WIC Authorized

- (1) Only authorized farmers may accept CVVs from participants in exchange for eligible foods. Authorized farmers may not accept CVVs from unauthorized farmers.
- (2) In order to be eligible for participation in the WIC program, a farmer applicant must:
 - (a) Grow, cultivate, or harvest fresh fruits, vegetables and cut herbs in Oregon or a bordering county in a contiguous state to sell to participants;
 - (b) Complete the farmer application and return it to the appropriate state office to verify eligibility; and
 - (c) Agree to follow the terms and conditions of the farmer agreement.
- (3) Applications will be used to determine authorization for the WIC program.
- (4) DHS and the WIC program are not required to authorize all applicants.
- (5) Any individual who purchases all the produce they plan to sell is considered a distributor and is not allowed to participate in the WIC program as a farmer.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

333-054-0030

Vendor Agreements

- (1) Each applicant who has been approved for authorization shall sign a vendor agreement.
 - (a) The term of a vendor agreement shall not exceed three years.
 - (b) The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement.
 - (c) Failure to adhere to the vendor agreement is a violation and may result in a sanction.
- (2) DHS shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.
- (3) In the event of any change in store facilities that adversely impacts participants' ability to transact food instruments or CVVs (including, but not limited to store remodel, building damage, and equipment failure), DHS may terminate the vendor agreement.
- (4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.
- (5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party. If DHS initiates the termination, it must offer the opportunity for appeal.
- (6) DHS shall terminate a vendor agreement when DHS determines that there is a relationship, real or apparent, which jeopardizes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.
- (7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.
- (8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

- (9) The vendor agreement does not constitute a license or property interest.
 - (10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six-month period prior to the agency's review.
 - (11) The vendor agreement must include a requirement that the vendor comply with OAR 333-054-0000 to 333-054-0070 as applicable to vendors.
 - (12) The vendor agrees not to influence an authorized shopper's selection of authorized foods.
 - (13) The vendor agrees not to retain WIC identification or any information that identifies a shopper as a WIC participant or disclose information regarding a client of the WIC program to any person other than DHS, its representatives or a federal official.
 - (14) The vendor agrees to comply with terms in a final order issued by DHS or an investigation by federal or state officials.
 - (15) A vendor will not require authorized shoppers to pay for authorized foods during a WIC transaction other than with a food instrument or CVV. However, it is permissible for a vendor to request payment over the dollar amount listed on a CVV if the cost of the authorized purchase exceeds the CVV amount.
 - (16) A vendor shall provide DHS or a federal official access to food instruments or CVVs negotiated on requested dates.
- Stat. Auth.: ORS 409.600
Stat. Implemented: ORS 409.600

333-054-0035

Farmer Agreements

- (1) A farmer application/agreement must be signed by a representative who has legal authority to obligate the farmer.
 - (2) The farmer application/agreement must include a requirement that the farmer comply with OAR 333-054-0000 through 333-054-0070, as applicable to farmers.
 - (3) The farmer application/agreement will be valid for three years.
 - (4) Neither DHS nor the farmer is obligated to renew the agreement.
 - (5) An authorized farmer must comply with requirements contained in 7 CFR 246 and the terms and conditions of the farmer application/agreement.
- Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600

333-054-0040

Vendor and Farmer Monitoring

DHS shall monitor vendors and farmers for compliance with applicable laws and rules, which may include on-site investigation of selected vendors.

- (1) DHS or its authorized representative must conduct compliance buys or inventory audits to collect evidence of improper vendor practices.
 - (2) DHS or its authorized representative shall conduct routine monitorings of selected vendors.
 - (3) DHS shall conduct covert compliance buys and/or routine monitorings of authorized farmers for compliance with DHS rules and regulations.
- Stat. Auth.: ORS 409.600
Stat. Implemented: ORS 409.600

333-054-0050

Vendor Violation Notifications and Sanctions

(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.

(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(3)(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.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

333-054-0055

Farmer Violations and Sanctions

- (1) A farmer is in violation if a farmer fails to comply with WIC program rules and the terms and conditions of the farmer application/agreement or fails to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS.
- (2) Farmer Sanctions:
- (a) CVVs that are not stamped with the farmer's DHS-assigned identification number will be returned to the farmer without payment;
- (b) CVVs redeemed with the following violations will not be reimbursed:
- (A) Accepting a CVV before the "First Day To Use" or after the "Last Day To Use;"
- (B) Failing to enter the actual purchase price in the designated box;
- (C) Failing to obtain the authorized shoppers signature at the time of the transaction, in the designated box, on the front of the CVV accepted for payment.
- (c) DHS may issue a written notification of non-compliance to an authorized farmer for an initial incident of:
- (A) Accepting CVVs for ineligible foods;
- (B) Failing to prominently display the official sign provided by DHS, each market day when at authorized farmers' markets or authorized farm stands;
- (C) Failing to provide WIC shoppers with the full amount of product for the value of each CVV;
- (D) Failing to ensure that WIC shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;
- (E) Failing to reimburse DHS for CVVs that are improperly transacted;
- (F) Charging sales tax on CVV purchases;
- (G) Seeking restitution from WIC participants for CVVs not paid by DHS;
- (H) Giving cash back for purchases less than the value of the CVV (providing change);
- (I) Accepting CVVs from an unauthorized farmer;
- (J) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS;
- (K) Using CVVs for any purpose other than to deposit or cash them at the authorized farmer's financial institution; and
- (L) Failing to cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and failing to provide information that DHS or the Oregon Department of Agriculture may require.
- (d) DHS may disqualify a farmer for six months for an initial incident of providing credit in exchange for CVVs.
- (e) DHS may disqualify a farmer for six months, for second or subsequent incidents of:
- (A) Accepting CVVs for ineligible foods;
- (B) Failing to prominently display the official sign provided by DHS, each market day when at authorized farmers' markets or authorized farm stands;
- (C) Failing to provide WIC shoppers with the full amount of product for the value of each CVV;
- (D) Failing to ensure that WIC shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;
- (E) Charging sales tax on CVV purchases;
- (F) Seeking restitution from WIC participants for CVVs not paid by DHS;
- (G) Using CVVs for any purpose other than deposit or cash at the authorized farmer's financial institution;

- (H) Charging WIC participants higher prices than other customers;
 - (I) Giving cash back for purchases less than the value of the CVV (providing change);
 - (J) Accepting CVVs from an unauthorized farmer; and
 - (K) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS.
- (f) DHS may disqualify a farmer for one year following second or subsequent incidents of:
- (A) Failing to reimburse DHS for CVVs that are improperly transacted; or
 - (B) Failing to cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and failing to provide information required to be submitted by DHS or the Oregon Department of Agriculture.
- (g) DHS may immediately disqualify a farmer for three years for an incident of:
- (A) Trafficking in CVVs (exchanging checks for cash, controlled substances, tobacco products, firearms, or alcohol) in any amount; or
 - (B) A USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.
- Stat. Auth.: ORS 409.600
Stat. Implemented: ORS 409.600

333-054-0060

Vendor Disqualifications

- (1) A vendor may not apply for authorization during a period of disqualification from the WIC Program.
- (2) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.
- (3) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed.
- (4) In order to participate in the WIC program after a vendor is disqualified, it must apply for authorization after the disqualification period has passed.
- (5) DHS shall disqualify a vendor for a period corresponding to the most serious sanction during the course of a single investigation when DHS determines the vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after the hearing or appeal, DHS may impose a sanction for any remaining violations.
- (7) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(3)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.
- (8) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.
 - (a) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the

other WIC state agency.

(b) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(9) DHS shall disqualify a vendor who has been disqualified from the FSP/SNAP. The disqualification shall be for the same length of time as the FSP/SNAP disqualification, although it may begin at a later date than the FSP/SNAP disqualification. Such disqualification by the WIC program shall not be subject to administrative or judicial review under the WIC program.

(a) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the FSP/SNAP. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP/SNAP disqualification pursuant to paragraph (9) of this rule or for any of the violations listed in this rule. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files.

(b) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a FSP/SNAP CMP was assessed.

(10) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP/SNAP. Such disqualification may not be subject to administrative or judicial review under the FSP/SNAP.

(11) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access.

(a) If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification.

(b) DHS shall include documentation of its participant access determination and any supporting documentation in the vendor's file.

(c) DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access.

(d) DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(12) Pursuant to 7 CFR 246.12 (l)(1), DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification:

(a) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(b) Multiply the average monthly redemptions figure by 10 percent (.10); and

(c) Multiply the product from paragraph (10)(b) of this rule by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$11,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be \$11,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has

committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed \$44,000.

(13) DHS shall use the formula in section (10)(a) through (c) of this rule to calculate a CMP in lieu of disqualification for any violation under 333-054-0050(3)(a). DHS has the discretion to reduce the amount of this CMP in quarterly increments, after reviewing the following criteria:

- (a) Whether the vendor had other WIC violations or complaints within the 12 months immediately preceding the month the notice of administrative action is dated;
- (b) The degree of severity of the violations and/or complaints in (11)(a);
- (c) If the vendor being sanctioned is part of a multi-store chain, whether there is a pattern within the corporation of violations and the seriousness of those violations; and
- (d) The degree of cooperation shown by the vendor, demonstrated by the vendor's willingness to schedule staff training and to make changes in store operations based on DHS recommendations.

(14) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(15) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property 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.

(16) A vendor may be subject to actions in addition to the sanctions in this rule, such as claims by DHS of reimbursement for improperly redeemed food instruments or CVVs and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(17) DHS shall use the following criteria to determine inadequate participant access:

- (a) The availability of other authorized vendors within a 15-mile radius;
- (b) Accessibility to public transportation;
- (c) Physical geographic barriers;
- (d) Catering to a specific minority population;
- (e) Local agency recommendations based upon identified participants' needs;
- (f) Unavailability of public transportations and roads; and
- (g) Number of WIC participants living near the vendor.

(18) Any time DHS uses criteria in (17) of this rule, DHS shall include participant access documentation in vendor file.

(19) DHS shall not reimburse for food instruments or CVVs submitted by a vendor for payment during a period of disqualification.

(20) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

333-054-0065

Farmer Disqualifications

(1) Farmers who do not comply with WIC program requirements are subject to sanctions, including fines, in addition to, or in lieu of, disqualification.

- (a) Prior to disqualifying a farmer, DHS may determine if disqualification of the farmer would result in inadequate participant access. If DHS determines that disqualification of the farmer would result in inadequate participant access, DHS may impose a CMP in lieu of disqualification in the amount of 5 percent of the farmer's CVVs sales over the last twelve months or \$250.00, whichever is greater.
- (b) DHS must give written notice to a farmer of an action proposed to be taken against a farmer, not less than fifteen days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing.
- (c) A farmer that has been disqualified from the WIC program may reapply at the end of the disqualification period.
- (d) DHS may accept a farmer's voluntary withdrawal from the program as an alternative to disqualification. If a farmer chooses to withdraw in lieu of disqualification, the farmer may not apply for participation until the following year.
- (e) DHS will not reimburse farmers who have been disqualified or have withdrawn in lieu of disqualification.
- (f) Fines must be paid to DHS within the time period specified in the Notice.
- (2) A farmer who commits fraud or abuse of the WIC program is subject to prosecution under applicable federal, state or local laws.
Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600

333-054-0070

Administrative Review

- (1) DHS shall provide a full administrative review in accordance with the provisions of ORS chapter 183 for the following, as applicable:
 - (a) Denial of authorization based on a determination that the vendor or farmer is attempting to circumvent a sanction;
 - (b) Termination of an agreement for cause;
 - (c) Disqualification;
 - (d) Imposition of a fine or a CMP in lieu of disqualification; and
 - (e) Denial of authorization based on the vendor selection criteria for competitive price or minimum variety and quantity of authorized WIC foods.
- (2) DHS may provide a vendor with an abbreviated or full administrative review in accordance with the provisions of ORS chapter 183 for the following, as applicable:
 - (a) Denial of authorization based on selection criteria for business integrity or for a current FSP disqualification or CMP penalty for hardship;
 - (b) Denial of authorization based on a DHS selection criteria for previous history of WIC sanctions or FSP withdrawal of authorization or disqualification;
 - (c) Denial of authorization based on DHS' limiting criteria;
 - (d) Termination of an agreement because of a change in ownership or location or cessation of operations;
 - (e) Disqualification based on a trafficking conviction;
 - (f) Disqualification based on the imposition of an FSP CMP for hardship;
 - (g) Disqualification or CMP based on a USDA mandatory sanction from another state WIC

agency; and

(h) Application of criteria used to determine whether a store is an A50.

(3) The vendor or farmer shall not be entitled to an administrative review for the following actions, as applicable:

(a) The validity or appropriateness of DHS' limiting or selection criteria;

(b) The validity or appropriateness of DHS' participant access criteria and DHS' participant access determinations;

(c) DHS' determination regarding whether an effective policy and program in effect to prevent trafficking regardless of the vendor or farmer's awareness, approval, and/or involvement in the violation activity;

(d) Denial of authorization if DHS vendor authorization is subject to the procurement procedures applicable to DHS;

(e) The expiration of the agreement;

(f) Disputes regarding food instrument or CVV payments and claims;

(g) Disqualification of a vendor as a result of disqualification from FSP/SNAP;

(h) DHS' determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

(i) DHS' determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required;

(j) The validity or appropriateness of DHS' criteria used to determine whether or not a vendor is an A50 store; and

(k) The validity or appropriateness of DHS' prohibition of incentive items and DHS' denial of an A50 vendor's request to provide an incentive item to customers.

(4) A request for a hearing must be in writing and must be received within thirty (30) days from the date of the notice describing the proposed action.

(5) DHS may, at its discretion, permit the market or farmer to continue participating in the program pending the outcome of an administrative hearing. The farmer may be required to repay funds for CVVs redeemed during the pendency of the hearing, depending on the hearing outcome.

(6) If an agreement expires during the appeal period, DHS will accept application for renewal and delay determination until all appeals have been exhausted.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600