

3701-42-08 Abuse of the WIC program; sanctions.

- (A) The director shall sanction vendors that abuse the WIC program. The vendor violations referenced in paragraphs (B) to (E) of this rule constitute abuse of the WIC program. The director may sanction a vendor for any violation of this chapter of the Administrative Code that does not constitute abuse. The director will provide the vendor with a notice that violations are occurring that may lead to mandatory sanctions under paragraph (C)(4) or (D) of this rule prior to taking action, unless providing such notice compromises an investigation.
- (B) The director shall terminate a contract and disqualify a vendor for a period of six years if the director finds that the vendor has exchanged WIC nutrition cards or the benefits contained on the card for cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802 (in effect on January 3, 2012).
- (C) The director shall terminate a contract and disqualify a vendor for a period of three years if the director finds that the vendor has:
 - (1) Exchanged WIC nutrition cards or the benefits contained on the card for alcohol or alcoholic beverages or tobacco products;
 - (2) Transacted WIC nutrition card benefits for a specific authorized food, which exceeds the vendor's documented inventory of that authorized food for a specific period of time;
 - (3) Failed to respond and provide the requested original documents for verification of authorized food purchases and sales as set forth in paragraph (H) of rule 3701-42-06 of the Administrative Code; or
 - (4) Engaged in a pattern of any of the following:
 - (a) Exchanging WIC nutrition cards or the benefits contained on the card for credit, including rain checks, or non-food items;
 - (b) Redeeming WIC nutrition card benefits for authorized foods not received by the participants;
 - (c) Redeeming WIC nutrition card benefits for which the reported amount of sale is more than the marked or posted prices charged to other customers regardless of the not to exceed amount for the item(s) purchased;
 - (d) Seeking reimbursement from the department for WIC nutrition card benefits submitted through an authorized vendor while not authorized as a vendor under rule 3701-42-03 of the Administrative Code.
- (D) The director shall terminate a contract and disqualify a vendor for a period of one year if the director finds that the vendor has engaged in a pattern of providing unauthorized food items in exchange for benefits on the WIC nutrition card, including charging for authorized foods provided in excess of those on the WIC nutrition card.
- (E) The director shall terminate a contract and disqualify from the WIC program a vendor who has been disqualified from the food assistance program. The

disqualification from the WIC program shall be for the same length of time as the disqualification from the food assistance program. The disqualification from the WIC program may begin at a later date than the food assistance program disqualification and shall take effect on the date the vendor receives notice of WIC disqualification. Termination and disqualification from the WIC program under this paragraph is not subject to an administrative or abbreviated review as set forth in rule 3701-42-09 of the Administrative Code.

- (F) The director shall terminate a contract of a vendor who has been suspended, disqualified, withdrawn or otherwise no longer authorized by the food assistance program. Contract termination pursuant to this paragraph is not subject to an administrative or abbreviated review as set forth in rule 3701-42-09 of the Administrative Code.
- (G) Prior to terminating a contract and imposing disqualification of a vendor pursuant to paragraphs (B) to (D) of this rule, the director shall consider whether the disqualification of the vendor would result in inadequate participant access. If the director determines that the disqualification would result in inadequate participant access, the director shall assess a civil money penalty in lieu of the disqualification. The amount of the civil money penalty shall be determined in accordance with paragraph (O) of this rule.
- (H) The director shall double the civil money penalty for a second sanction when a vendor, that has been previously disqualified or assessed a civil money penalty pursuant to paragraphs (B) to (D) of this rule, receives another sanction pursuant to paragraphs (B) to (D) of this rule. A civil money penalty may only be doubled up to the limits allowed under paragraph (O) of this rule.
- (I) The director shall double the civil money penalty for the third and subsequent sanctions when a vendor that has been previously assessed two or more sanctions pursuant to paragraphs (B) to (D) of this rule and receives another sanction pursuant to paragraphs (B) to (D) of this rule. The director shall not assess a civil money penalty in lieu of disqualification for third and subsequent sanctions pursuant to paragraphs (B) to (D) of this rule.
- (J) Notwithstanding paragraph (B) of this rule, the director shall terminate a vendor contract and permanently disqualify from the WIC program a vendor that has been convicted in a court of law for trafficking in WIC nutrition cards or benefits on the cards or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802 (in effect on January 3, 2012), in exchange for WIC nutrition cards or benefits on the cards.
- (K) The director may terminate a contract and disqualify from the WIC program a vendor whose WIC sales exceed fifty per cent of its gross food sales.
- (L) The director may sanction a vendor that has committed one or more vendor violations of this chapter that do not constitute abuse by doing either of the following:
 - (1) Terminating a vendor contract and disqualifying the vendor from the WIC program for a period of not more than one year for one or more violations resulting from a single investigation; or
 - (2) Assessing a civil money penalty of not more than ten thousand dollars against

the vendor for each violation, not to exceed forty thousand dollars for multiple violations during an investigation.

- (M) The director may terminate a contract and disqualify from the WIC program a vendor that has been assessed a civil money penalty in the food assistance program, as provided under 7 C.F.R. 278.6 (in effect on January 1, 2012). The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified from the food assistance program. If the director determines that disqualification of the vendor would result in inadequate participant access, the director shall not disqualify the vendor nor impose a civil money penalty in lieu of disqualification.
- (N) The director may choose to impose a civil money penalty in lieu of termination and disqualification from the WIC program if the director determines that it is in the best interest of the WIC program.
- (O) The director shall use the following formula to calculate a civil money penalty imposed in lieu of disqualification pursuant to paragraph (G) or (N) of this rule:
 - (1) Determine the vendor's average monthly redemptions for at least the six month period ending with the month immediately preceding the month during which the notice of administrative action is dated;
 - (2) Multiply the average monthly redemptions figure by ten percent; and
 - (3) Multiply the product from paragraph (O)(2) of this rule by the number of months for which the location would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed ten thousand dollars for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be ten thousand dollars, except for those violations listed in paragraph (J) of this rule, where the civil money penalty shall be eleven thousand dollars for selling fire arms, ammunition, explosives, or controlled substances in exchange for benefits on the WIC nutrition card. When during the course of a single investigation the director determines a vendor has committed multiple violations, the director shall impose a civil money penalty for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed forty thousand dollars, except for those violations listed in paragraph (J) of this rule, where the total amount of civil money penalties may not exceed forty-four thousand dollars for violations occurring during a single investigation for trafficking violations or for selling firearms, ammunition, explosives, or controlled substances in exchange for benefits on the WIC nutrition card .
- (P) In determining the period of disqualification to impose or amount of civil money penalty to assess a vendor pursuant to paragraph (O) of this rule, the director shall consider at least the following factors:
 - (1) The vendor's compliance history;
 - (2) The severity or nature of the violation;
 - (3) The potential monetary loss to the state WIC program; and
 - (4) The vendor's volume of WIC business.

- (Q) If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the director shall terminate the contract and disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed. The director may withhold any current or future payments due to the vendor to offset any payment owed by the vendor to the department.
- (R) The director shall refer a vendor that is disqualified from participating in the WIC program or assessed a civil money penalty in lieu of disqualification from the WIC program to FNS for possible disqualification from participation in the food assistance program. The director shall refer a vendor that abuses the WIC program to federal, state, or local authorities for criminal prosecution under applicable statutes, where appropriate.
- (S) The director shall not accept a vendor's voluntary withdrawal or non-renewal of the contract as an alternative to disqualification when the director is required or has started the process to disqualify the vendor pursuant to this rule. Even if the vendor attempts to voluntarily withdraw or does not renew the contract in lieu of disqualification the director shall enter the disqualification on the record.
- (T) Except for permanent disqualification pursuant to paragraph (J) of this rule, a vendor that has been disqualified from the WIC program may apply for a new vendor contract in accordance with rule 3701-42-03 of the Administrative Code after the period of disqualification has expired.
- (U) A vendor who commits fraud or engages in other illegal activity is subject to prosecution under applicable federal, state, or local laws.

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