



DEPARTMENT OF HEALTH

**VERMONT WIC PROGRAM
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR
WOMEN, INFANTS AND CHILDREN (WIC)
RETAIL VENDOR AGREEMENT**

This agreement is made by and between _____ D/B/A _____ (hereinafter referred to as "Vendor") and the Vermont WIC Program (hereinafter referred to as "State Agency") that administers the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) of the United States Department of Agriculture, Food and Nutrition Service, and concerns the store's or entity's authorization to operate as a WIC Vendor. By signature below, the Vendor and the State Agency agree to the general conditions and terms contained in this Agreement, and in accordance with Federal regulations (hereinafter referred to as "7 CFR Part 246") that govern the WIC Program. Vendor must adhere to all provisions of this agreement throughout the agreement period. This agreement is in effect for the period stated below only, and an application must be submitted for consideration upon expiration.

Appendix A herein attached lists all violations and sanctions and contains the policies for notices and appeals.

Appendix B herein attached lists vendor selection criteria.

Appendix C herein attached lists any and all store locations authorized by this agreement.

Agreement period is _____ to _____.

Signature of State Agency Representative

Date

Signature of Owner or Manager Authorized to Execute Agreement

Date

Print Name of Owner or Manager Authorized to Execute Agreement

Street Address of Vendor Corporate Headquarters

Mailing Address (if different than above)

Town/City, State, Zip Code

The Vendor and the State Agency mutually agree to the following provisions:

1. GENERAL CONDITIONS

1. Neither the Vendor nor the State Agency has an obligation to renew the Vendor Agreement.
2. The State Agency retains the right to disqualify a Vendor for WIC Program abuse, or terminate the agreement if the State Agency determines that the Vendor provided false information in connection with the Vendor application or authorization agreement.
3. Either the Vendor or the State Agency may terminate the Vendor Agreement for cause after providing a 15-day written notice.
4. This Agreement is non-transferable.
5. This Agreement does not constitute a license or a property interest.
6. This agreement is governed by Vermont law.
7. Both parties shall adhere to all applicable Federal, State, and local requirements, including those that may be imposed subsequent to this Agreement.
8. The Vendor is liable to prosecution under applicable Federal, State, and local laws, if fraud or abuse is committed against the WIC Program. Those who have willfully misapplied, stolen, or fraudulently obtained program funds will 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 vendor is accountable for its owners, officers, managers, agents, and employees who commit vendor violations.
10. The State Agency will terminate the Vendor Agreement if the State Agency determines a conflict of interest exists between the Vendor and the State Agency or its local agencies.
11. The State Agency may reassess the Vendor at any time during the Agreement period using the current selection criteria. The vendor must comply with the vendor selection criteria throughout the agreement period. The State Agency will terminate the Agreement if the Vendor fails to meet the current section criteria.
12. The Vendor shall be disqualified from participation in the WIC Program if the Vendor is disqualified from the 3SquaresVT/Supplemental Nutrition Assistance Program (SNAP). The WIC Program disqualification shall be for the same length of time as the 3SquaresVT/ SNAP disqualification and shall not be subject to administrative or judicial review under the WIC Program.
13. The Vendor shall be disqualified from participation in the WIC Program if the Vendor has been assessed a civil money penalty in lieu of disqualification from the 3SquaresVT/SNAP for a length of time equal to the period which the Vendor would otherwise have been disqualified from the 3SquaresVT/SNAP unless the store is needed to ensure adequate store access for WIC families.
14. If disqualified from participation in another program administered by the U.S. Department of Agriculture Food and Nutrition Service or the State of Vermont, the Vendor shall be disqualified from participation in the WIC Program for the same length of time as the other program disqualification.
15. The Vendor may be disqualified from participation in the 3SquaresVT/SNAP if disqualified from the WIC Program for specific program violations as cited in Federal regulations governing the 3SquaresVT/SNAP (7CFR Part 278). The length of 3SquaresVT/SNAP disqualification will be for

the same length of time as the WIC Program disqualification and will not be subject to administrative or judicial review under the 3SquaresVT/SNAP.

16. The State Agency may disqualify a Vendor that has been issued a civil money penalty under the 3SquaresVT/SNAP, pursuant to 7 CFR § 246.12 of the WIC program regulations.
17. A previously disqualified vendor must reapply under selection criteria in effect at reauthorization.
18. The State retains the right to deny or adjust payment to the Vendor for improperly redeemed benefits or to demand refunds for payments already made on improperly redeemed benefits.
19. If a claim is assessed against the Vendor for previously paid benefits, the State Agency retains the right to deduct this amount from subsequent payment.
20. The Vendor has the right to appeal a State Agency decision pertaining to denial of application to participate, vendor disqualification, or any other adverse action that affects participation during the Agreement performance period.
21. The following State Agency decisions are not subject to appeal.
 - a. The State Agency's determination of whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware, did not approve of, and was not involved in the violation;
 - b. The validity or appropriateness of the State Agency's vendor selection criteria ;
 - c. The validity or appropriateness of the State Agency's participant access criteria and the State Agency's participant access determinations;
 - d. WIC disqualification based on a 3SquaresVT/Supplemental Nutrition Assistance Program disqualification;
 - e. Expiration of the vendor agreement;
 - f. Disputes regarding food instrument payments and claims;
 - g. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to § 246.12(g)(11);
 - h. The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to § 246.12(h)(8); and
 - i. The State agency's 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, pursuant to § 246.12(l)(3).

2. THE VENDOR AGREES TO:

Business operations

1. Maintain adequate stock of WIC approved foods to meet the guidelines described in Vendor Handbook. The vendor shall have in stock at all times all minimum stock. (Note: The Department may issue revisions to the mandatory Minimum Stock Requirements as determined necessary.)

2. Purchase infant formula by selecting from a list of wholesalers, distributors, and retailers provided by the State Agency and formula manufacturers registered with the Food and Drug Administration (FDA), as stated in the WIC Vendor Handbook. The vendor may only purchase formula from names on this list.
3. Redeem WIC food benefits in accordance with the procedures as set forth in the most recent publication of the WIC Program Vendor Handbook and the WIC eWIC Manual including any revisions or supplements issued by the State Agency, and as set forth below:
 - a) Vendor must accept eWIC only from participants, parents, caregivers, or proxies ;
 - b) Vendor may redeem eWIC benefits only during the specified time period;
 - c) Vendor must not give nonfoods, unauthorized foods, cash, or credit for eWIC;
 - d) Participant must enter PIN in presence of cashier;
 - e) Allow only those food items specifically listed on the participant's eWIC shopping list;
 - a. Never substitute one WIC approved food for another (for example, evaporated milk for infant formula);
 - b. Never substitute a non-WIC food item for a WIC approved food item;
 - f) WIC participants must receive the food item that corresponds specifically to the UPC code scanned by the vendor during the transaction;
 - g) Vendor must scan (or manually enter) the actual UPC code that is affixed to the item actually being purchased by the WIC participant;
 - h) Vendor is prohibited from scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant, or any UPC code as a substitute, replacement or otherwise not actually affixed to the actual item being purchased by the WIC participant;
 - i) Vendor must assure that the price affixed to the scanned UPC code in the point of sale device is not greater than the price displayed on the package, container, shelf or other signage in the store for the purchased item. This may be verified by a Department representative scanning the actual UPC code affixed to a WIC approved item and comparing that price to the price marked on the package, container, shelf or other signage of that same item;
 - j) Vendor is responsible for updating price changes in the point of sale device including, but not limited to, changes due to sales or other promotions, to ensure compliance with item "e)" above;
 - k) The vendor shall never demand that WIC participants purchase the full amount of WIC foods authorized on the eWIC shopping list;
 - l) The vendor shall allow WIC participants to purchase up to the full amount of WIC authorized foods specified on the eWIC shopping list;
 - m) The vendor shall never limit WIC participants in their choices of WIC approved foods (e.g., never require purchase of a particular store brand);
 - n) The vendor shall never provide credit, rain checks, due bills or other similar receipts for WIC approved foods not obtained at the time of the transaction.
 - o) The vendor shall never allow the return of food purchased with an eWIC card in exchange for cash or credit, or "rain check."
 - p) The vendor shall not provide refunds or exchanges for approved WIC foods obtained with WIC benefits, except for exchanges of an identical approved food item (defined as the exact same brand and size supplemental food item originally obtained and returned by the participant) when the original approved food item is defective, spoiled, or exceeded its sell/use date. An identical WIC approved food item is defined as the exact brand, type and size and UPC code (if available) of the original WIC approved supplemental food item

obtained and returned by the participant (e.g., a one gallon container of X brand of whole milk that was spoiled at time of purchase for an identical one gallon container of X brand of whole milk).

4. Ensure that WIC approved foods are not spoiled, expired or outdated and are sold to WIC participants before the expiration date for those foods.
5. Offer WIC participants the same courtesies offered other customers, including allowing the use of store bonus or savings cards, manufacturer and store savings coupons, and in store promotions such as “buy one, get one free”
6. Ensure that all incentives (such as free merchandise) offered to WIC participants to redeem their WIC benefits at a specific store are also offered to all other customers.
 - a) Vendors are not allowed to offer ANY incentives for the purpose of attracting WIC participants only. Incentives offered to WIC participants must be the same as offered to all customers.
 - b) Vendors are strictly prohibited from offering cash, alcohol, tobacco or lottery tickets to WIC participants as an incentive, even if these items are being offered to non-WIC customers.
7. Provide approved WIC foods at the current shelf price or at less than the current shelf price charged to other customers;
8. Deduct the value of manufacturer or store coupons presented by participants, parents or caretakers of infant and child participants, or proxies, from the purchase amount charged to the WIC Program;
9. Not charge participants, parents or caretakers of infant and child participants, or proxies, for approved WIC foods obtained with WIC benefits nor for foods not received by a WIC participant, nor charge sales tax on WIC purchases;
10. Not seek restitution from participants, parents or caretakers of infant and child participants, or proxies for charges not paid or partially paid by the State Agency;
11. The vendor shall not discriminate against program participants, parents or caretakers of infant or child participants, and proxies, based on age, race, color, national origin, age, sex, or disability;
12. Not breach WIC Program participant confidentiality;
13. Comply with Payment Card Industry (PCI) standards for confidentiality and security;
14. Notify the State Agency in writing at least 3 weeks before a change of location, name, address, management, corporate officers and majority stockholders;
15. Notify the State Agency in writing immediately of any change of ownership or store closure.

Prohibited practices

13. Never buy or sell WIC food benefits or eWIC cards for cash (trafficking);
14. Never allow the sale of non-food items, alcohol, alcoholic beverages or tobacco products in exchange for WIC food benefits;
15. Never allow the sale of firearms, ammunition, explosives or controlled substances as defined in 21 U.S.C. 802 in exchange for WIC food benefits;

Files, signs and recordkeeping

16. Clearly indicate the retail price of all WIC-approved food items, either individually on each item or at the shelf or point of display;

17. Display a sign, sticker, or other evidence of authorization as a WIC vendor, furnished by the WIC program, in an area visible to WIC participants;
18. Not use shelf tags or other promotional material with the WIC acronym or logo without prior written approval of the State Agency except for those supplied by the State Agency;
19. Make the current list of approved WIC foods readily accessible to all cashiers;
20. Maintain for a period of three years and provided access to paper or electronic records used for state or federal tax reporting purposes and other Program records including: inventory records showing all purchases, wholesale and retail, in the form of invoices that identify the quantity and prices of approved WIC foods, books of account, and shelf price records;
21. Allow authorized personnel to audit the vendor's inventory, and accept on-site monitoring including providing WIC representatives access to all program-related records ;
22. Accept training on WIC program procedures at least annually. Annual vendor training may be provided by the State Agency in a variety of formats, including newsletters, videos, and interactive training. Chain store vendors may send a headquarters representative to training and provide required training to each authorized outlet in lieu of requiring representatives of each outlet to participate in State Agency training sessions;
23. Vendors will inform, train and update cashiers and other staff on WIC Program requirements and ensure that all cashiers and other staff are knowledgeable regarding procedures set forth in the most recent publication of the WIC Program Vendor Handbook and WIC eWIC Manual.

3. THE STATE AGENCY AGREES TO:

1. Provide the vendor with the most recent WIC Vendor Handbook and WIC eWIC Manual.
2. Ensure that WIC participants are informed of the proper redemption procedures for WIC food benefits.
3. Advise participants of the location or locations of the store or stores that the Vendor has been authorized to operate under this Agreement;
4. Provide the Vendor with notice of changes to federal, state statutes, regulations, and policies and procedures governing the WIC Program at the time they are implemented by the State Agency;
5. Use current selection criteria to determine authorization of Vendors and to determine the type of Vendor Agreement to be issued for the next agreement period;
6. Provide the Vendor with an opportunity to justify or correct a redemption error;
7. Disqualify a Vendor for violations in accordance with federal, state statutes, regulations, and policies and procedures governing the WIC Program;
8. Provide the applicable administrative review procedures along with an adverse action subject to administrative review;
9. Provide, upon a Vendor's request, federal, state statutes, regulations, and policies and procedures governing the WIC Program, and the State Agency's administrative review procedures;
10. Provide annual training to at least one representative of each vendor as well as training upon a Vendor's request and, at least once every three years, interactive WIC Program training. The State agency will have sole discretion to designate the date, time, and location of all interactive training, except that the State agency will provide the vendor with at least one alternative date on which to attend such training.

11. Monitor the vendor for possible violations of Federal and State laws and WIC program rules, regulations and procedures. Monitoring includes, but is not limited to, routine monitoring visits, undercover compliance buys and inventory audits.
12. 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 the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.
13. Make payments to the vendor as expeditiously as possible.
14. Establish and apply limits on the amount of reimbursement allowed for foods based on a vendor's peer group and competitive price criteria. The State agency may make price adjustments to the purchase price on eWIC redemptions submitted by the vendor for redemption to ensure compliance with the allowable reimbursement level applicable to the vendor

See Appendix A for the WIC Program Sanction Policy that lists all violations and sanctions and contains the policies for notices and appeals.

See Appendix B for the WIC Program Selection Policy that lists vendor selection criteria. Vendors must adhere to all selection criteria throughout their agreement period.

See Appendix C for the locations of stores authorized by this agreement. Only stores specifically listed in Appendix C are authorized to process eWIC benefits.

Appendix A

Violations and Sanctions

Appendix B

Selection Criteria for WIC Retail Vendors

Appendix C

Store Locations Authorized by This Agreement

Vermont WIC Retail Vendor Agreement

Appendix A – Violations and Sanctions

[Note: Violations and Sanctions are presented in table form starting on p. 12.]

1. VIOLATIONS AND SANCTIONS

A. Policy on Vendor Sanctions

1. Violations alleged and sanction points issued by the State Agency shall be subject to appeal by the vendor in accordance with 7 CFR 246.18, and procedures described in the VT WIC Retail Vendor Handbook.
2. The State Agency shall provide written notice of warning of initial violation for violations requiring a pattern of occurrences in order to impose a sanction prior to documenting another violation unless the State Agency determines that notifying the vendor will compromise an investigation;
3. Except for those violations committed in accordance with Section H below, the State Agency shall:
 - a. Issue sanction points in accordance with violations listed Sections B through F below; and
 - b. Notify the vendor in writing of the imposition of sanctions or the assignment of sanction points and the specific violation(s) for which they were assigned;
4. Except for violations as listed in Sections F, G, and H, the State Agency shall apply the period of vendor disqualification in accordance with Section A5 below using violation category description in Sections B through J to apply sanction points and retention of these points;
5. When a vendor has been assigned sanction points, the following shall apply:
 - a. When a vendor has accumulated fewer than 6 sanction points, the State Agency shall not disqualify that vendor from participation as a WIC vendor;
 - b. Except as allowed by A5a. above, the State Agency shall disqualify a vendor from participation as a WIC vendor for a period of one calendar month for each sanction point; and
 - c. The sanction points shall be retained on the vendor's record in accordance with Sections B through J;
6. Except for violations listed in E through H, the State Agency shall:
 - a. Waive sanction points based on evidence of one-time error and the absence of current sanction points for a specific violation; and
 - b. Notify the vendor in writing of waived sanction points;
7. Notwithstanding the above, a second occurrence subsequent to vendor receipt of the warning within a 12-month period shall result in restoration of waived sanction points as originally accrued;
8. Accordance with 7 CFR 246.12(l)(1)(xii), if the State Agency is investigating an allegation that a vendor has committed at least one violation as described Section F, and if during that investigation the State Agency verifies that the vendor has committed a less serious violation or violations set forth in B through E, the State Agency shall:
 - a. Not impose sanction points for the less serious violation prior to the completion of the single investigation;
 - b. Include in the notice of proposed disqualification all violations found in the course of the single investigation and the vendor's opportunity to request an administrative hearing; and

- c. Include in the notice of proposed disqualification that the vendor shall be disqualified for the most serious federally mandated violation if at the conclusion of the single investigation the State Agency determines that the vendor has committed a violation set forth in the VT WIC Vendor Handbook;
9. Vendors may appeal or request an administrative hearing in accordance with the VT WIC Vendor Handbook and 7 CFR 246.18;
10. In accordance with 7 CFR 246.12(l)(1)(viii), the State Agency shall not accept voluntary withdrawal or use non-renewal of the vendor agreement instead of disqualification, but shall enter the disqualification on the record;
11. Disqualification shall include rendering any current vendor agreement inactive;
12. Vendors who are disqualified for any reason shall be required to reapply in writing;
13. Previously disqualified vendor who is reauthorized within one year of the end of the period of disqualification shall be assigned 3 sanction points to be retained for a period of 12 months following the date of reauthorization;
14. Prior to imposing a disqualification, the State Agency shall determine whether the disqualification would result in inadequate participant access;
15. With the exception of A16 below, when the State Agency determines, in accordance with A14 above, that a disqualification of a vendor would result in inadequate participant access, the State Agency shall impose a civil money penalty in lieu of disqualification as allowed by 7 CFR 246.12(l)(1)-(2);
16. A civil money penalty shall not be imposed by the State Agency in lieu of disqualification when the vendor has violated Section F1, or violated Section F2 through F4 three (3) or more times even if inadequate participant access would result;
17. In accordance with 7 CFR 246.12(l)(1)(x), the amount of a civil money penalty shall equal 10% of the average monthly WIC redemptions for the most recent 6 month period multiplied by the number of months for which the vendor would have been disqualified;
18. The civil money penalty issued in accordance with Section A17 above shall not exceed \$11,000 for each violation;
19. In accordance with 7 CFR 246.12(l)(1)(x)(C), if multiple violations are revealed by a single investigation, the State Agency shall impose a civil money penalty, not to exceed \$49,000, if disqualification would result in inadequate participant access;
20. If a vendor does not fully pay a civil money penalty within 30 days of the notice of sanction, the vendor shall be disqualified:
 - a. For the length of the disqualification corresponding to the violation for which the civil money penalty was assessed; or
 - b. For a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation;
21. When a vendor who had previously been assessed a sanction based on a violation as listed in F2 through F4 receives another sanction based on having committed the same or other violation as listed in the same section, the State Agency shall double the sanction for the second violation;
22. Civil money penalties shall only be doubled up to \$11,000 and \$49,000 as limited by A17 through A20 above;
23. When a vendor, who had previously been assessed 2 sanctions based on violations F2 through F4, receives another sanction based on having committed the same or other violations as listed in F2 through F4, the State Agency shall double the sanction for the third and all subsequent violations;

24. The State Agency shall treat a fourth or subsequent violation in the same manner as the third except that the sanction shall be doubled; and
25. Money received by the State Agency as a result of civil money penalties assessed against a vendor shall be considered program income in accordance with 7 CFR 246.15(b).

B. Category I Violations

Category I violations shall be considered vendor errors when uncovered by the State Agency during the payment reconciliation processing of food instruments and shall be taken into consideration at the time of authorization and reauthorization.

1. Category I violations shall accrue no sanction points but shall result in non-payment of the eWIC transaction during which the violation occurred.
2. Category I violations shall consist of the following: [RESERVED]

C. Category II

3. Category II violations shall accrue 2 points per violation to be retained for 12 months.
4. Category II violations shall consist of the following:
 - a. Failure to provide promotional specials or accept manufacturer or store coupons for WIC purchases, except that cash-only promotions may be denied to participants if denied to other customers using EBT, gift, credit or debit cards or personal checks for payment;
 - b. Failure to provide security during the redemption process preventing the unauthorized disclosure of participant PIN numbers
 - c. Failure to make staff available for training in program rules and procedures;
 - d. Allowing untrained personnel to accept and process eWIC redemptions
 - e. Failure to clearly indicate the retail price of all WIC approved items, either individually on each item or at the shelf or point of display.

D. Category III

5. Category III violations shall accrue 3 points per violation to be retained for 18 months.
6. Category III violations shall consist of the following:
 - a. Contacting participants in an attempt to have them return to the store to fix a vendor error or to seek reimbursement for food costs not paid by the State Agency;
 - b. Accepting the return of items purchased with an eWIC card for cash or credit towards other purchases;
 - c. Requiring cash purchases in order to redeem WIC benefits;
 - d. Requiring participants to use special checkout lanes, except that participants may be limited from cash-only or maximum item lanes if other customers using EBT, gift, credit or debit cards for payment are also so limited.

E. Category IV violations

7. Category IV violations shall accrue 12 points per violation and result in a 1 year disqualification.
8. Category IV violations shall consist of the following:

- a. Failure to allow State Agency or local agency representatives to complete on-site monitoring;
- b. Failure to pay claims for unauthorized costs assessed by the State Agency;
- c. Providing false information on the WIC vendor application or agreement;
- d. Providing false information regarding ownership or eligibility under the selection criteria.

F. Federally mandated sanctions

1. A vendor convicted in court for the crime of trafficking in food instruments or cash-value vouchers, or for selling firearms, ammunition, explosives, or controlled substances, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers shall be permanently disqualified from program participation, effective on the date of receipt of the notice of disqualification;
2. A vendor shall be disqualified from program participation for 6 years for a single incidence of buying or selling eWIC benefit cards for cash trafficking or a single incidence of selling firearms, ammunition, explosives, or controlled substances as defined in section 102 of the Controlled Substances Act, 21 U.S.C 802, in exchange for food instruments;
3. A vendor shall be disqualified for 3 years for:
 - a. A single incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for eWIC benefit; or
 - b. A pattern of 3 or more incidences within a 12-month period of:
 - i) Charging the State Agency more for an approved supplemental food than non-WIC customers or charging the State Agency more than the current shelf price permitted under the vendor agreement; OR
 - ii) Receiving, transacting or redeeming eWIC benefits outside authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - iii) Charging the State Agency for supplemental food not received by the participant; or
 - iv) Providing credit or non-food items in exchange for food instruments;
 - v) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of the food item for a specific period of time
4. A vendor shall be disqualified for one year for a pattern of 3 or more incidences within a 12 month period of providing unapproved food items in exchange for eWIC benefits, including charging for supplemental food provided in excess of those listed on the food instrument;
5. In accordance with 7 CFR 246.12(l)(1)(vii) a vendor who has been disqualified from the 3SquaresVT/Supplemental Nutrition Assistance Program shall:
 - a. Be disqualified from WIC program participation for the same length of time as the 3SquaresVT/Supplemental Nutrition Assistance Program disqualification which may begin at a later date than SNAP disqualification; and
 - b. Not appeal the WIC program disqualification to federal administrative or judicial tribunals;
6. A vendor who has been assessed a 3SquaresVT/Supplemental Nutrition Assistance Program civil money penalty for hardship in lieu of disqualification from the 3SquaresVT/Supplemental Nutrition Assistance Program shall be disqualified from WIC program participation, the length of which shall correspond to the period for which the vendor would otherwise have been disqualified in the 3SquaresVT/Supplemental Nutrition Assistance Program ; and
7. In accordance with 7 CFR 246.12(l)(2)(ii)B., if the State Agency determines that disqualification of the vendor for (6) above would result in inadequate participant access, the vendor may not be disqualified

and a civil money penalty may not be imposed. To determine inadequate participant access, the State Agency will consider several factors that include, but are not limited to:

- a. A participant would be required to drive 45 minutes or more (one way) from the disqualified vendor to the nearest authorized vendor.
- b. There are physical barriers, such as poor road conditions, that would make normal travel to another authorized vendor difficult or impossible.

A participant access determination is not subject to appeal.

G. Failure to meet rules or standards of another state agency or local health agency

Failure to meet rules or standards of another state agency or local health agency which results in suspension of license shall result in a disqualification period not to exceed the federal limit as cited in 7 CFR 246.12(l)(2)(i) of one year in length and remain in effect until such rules or standards are met and license reinstated.

H. Disqualification from another program administered by the state

A vendor who is disqualified from participation in another program administered by the state shall be disqualified for a period not exceeding one year from program participation for an equal number of months as the other program disqualification.

2. NOTICES AND APPEAL

- A. Fair hearing procedures shall comply with the administrative review process as described in 7 CFR 246.18 and the appeals process described in the VT WIC Vendor Handbook.
- B. In accordance with 7 CFR 246.18(a) (2), except for disqualifications based on violations described in F1 above, which shall become effective on the date of receipt of the notice of adverse action, the vendor shall be provided 15 days to request an administrative hearing after the notice has been received by the vendor.
- C. Except for violations described in F1, sanctions shall not be imposed pending an administrative hearing decision.
- D. Disqualification from the WIC program, in accordance with Section F5 above, shall not be subject to federal administrative or judicial appeal under WIC program rules in accordance with 7 CFR 246.12(l) (1) (vii).
- E. Disqualification from the WIC program shall result in disqualification from the 3SquaresVT/Supplemental Nutrition Assistance Program in accordance with 7 CFR 278.6(e) (8).
- F. In accordance with 7 CFR 246.18(b) (4), vendors shall have at least one opportunity to reschedule a previously scheduled hearing.
- G. Within 90 days of receiving the vendor request for an administrative review, the State Agency shall provide the vendor with a written notification of the Agency's review decision, including the basis for the decision, within 90 days of receiving the vendor's request for an administrative review.
- H. In accordance with 7 CFR 246.18(a) (2) and (e), the sanctions shall be effective on the date the vendor receives written notification of the review decision if the adverse action has not previously taken effect.
- I. The State Agency shall not be responsible for losses incurred by the vendor as a result of adverse action taken by the State Agency.
- J. A full administrative review shall be provided for:

1. Denial of authorization or reauthorization based on failure to meet federal or State Agency established vendor selection criteria
 2. Denial of authorization or reauthorization based on a determination that the vendor is attempting to circumvent a sanction
 3. Termination of an agreement for cause;
 4. Disqualification; and
 5. Imposition of a civil money penalty in lieu of disqualification by the State Agency.
- K. In accordance with 7 CFR 246.18 (a)(1)(ii) the following shall be subject to abbreviated administrative review
1. Denial based on the vendor selection criteria for business integrity or for a current SNAP disqualification or civil money penalty for hardship;
 2. Denial based on the vendor selection criteria for competitive price;
 3. Denial based on vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
 4. Denial of authorization based on a State agency-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;
 5. Denial based on the State agency's vendor limiting criteria;
 6. Denial because vendor submitted its application outside the timeframes during which the applications are being accepted and processed as established by the State agency under 246.12(g)(8) Termination of an agreement because of a change in ownership or location or cessation of operations;
 7. Disqualification based on a trafficking conviction;
 8. Disqualification based on the imposition of a 3SquaresVT/SNAP civil money penalty for hardship;
 9. Disqualification or civil money penalty based on a mandatory sanction imposed by another WIC state agency.
- L. In accordance with 7 CFR 246.18(a)(1)(iii), the following shall not be subject to administrative reviews:
1. The State Agency's determination of whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware, did not approve of, and was not involved in the violation;
 2. The validity or appropriateness of the State Agency's vendor selection or limiting criteria ;
 3. The validity or appropriateness of the State Agency's participant access criteria and the State Agency's participant access determinations;
 4. WIC disqualification based on a 3SquaresVT/Supplemental Nutrition Assistance Program disqualification;
 5. Expiration of the vendor agreement;
 6. Disputes regarding food instrument payments and claims.
 7. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to § 246.12(g)(11);
 8. The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to § 246.12(h)(8); and
 9. The State agency's 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, pursuant to § 246.12(l)(3);

Table A1 – Summary of Violations and Sanctions

[See [Section 1A](#) for guidance on accumulation of and disqualification for sanction points.]

Category	Brief Description	Penalty	Time Period
I	Errors uncovered by VDH during reconciliation, settlement	TBA	TBA
II	<p>Failure to provide promotional specials or accept manufacturer or store coupons if allowed for other customers using cash/checks</p> <ul style="list-style-type: none"> ▪ Failure to make staff available for training in program rules and procedures ▪ Failure to clearly indicate the retail price of all WIC approved items, either on each item or at shelf or point of display 	2 points per violation	Points retained for 12 months
III	<p>Contacting participants in an attempt to have them return to the store to fix a vendor error or to seek reimbursement for food costs not paid by the State Agency;</p> <ul style="list-style-type: none"> ▪ Accepting the return of items purchased with eWIC for cash or credit towards other purchases; ▪ Requiring cash purchases in order to redeem WIC benefits; ▪ Requiring participants to use special checkout lanes, except that participants may be limited from cash-only or maximum item lanes if other customers using EBT, gift, credit or debit cards for payment are also so limited. 	3 points per violation	Points retained for 18 months
IV	<p>Failure to allow State Agency or local agency representatives to complete on-site monitoring;</p> <ul style="list-style-type: none"> ▪ Failure to pay claims for unauthorized costs assessed by the State Agency; ▪ Providing false information on the WIC vendor application or agreement; ▪ Providing false information regarding ownership or eligibility under the selection criteria. 	12 points per violation	Disqualification for one year.
Federally Mandated Sanctions	A vendor convicted in court for the crime of trafficking in food instruments or for selling firearms, ammunition, explosives, or controlled substances, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802, in exchange for food instruments	Disqualification	Permanent
	A single incidence of buying or selling eWIC benefit cards for cash trafficking or a single	Disqualification	Six years

Category	Brief Description	Penalty	Time Period
	incidence of selling firearms, ammunition, explosives, or controlled substances as defined in section 102 of the Controlled Substances Act, 21 U.S.C 802, in exchange for food instruments;		
	A single incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for eWIC benefit; or	Disqualification	Three years
	<p>A pattern of 3 or more incidences within a 12-month period of:</p> <ul style="list-style-type: none"> • Charging the State Agency more for an approved supplemental food than non-WIC customers or charging the State Agency more than the current shelf price permitted under the vendor agreement; • Receiving, transacting or redeeming eWIC benefits outside authorized channels, including the use of an unauthorized vendor or an unauthorized person; • Charging the State Agency for supplemental food not received by the participant; or • Providing credit or non-food items in exchange for food instruments; • Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of the food item for a specific period of time 	Disqualification	Three years
	A pattern of 3 or more incidences within a 12 month period of providing unapproved food items in exchange for eWIC benefits	Disqualification	One year
	Disqualification of the vendor from the 3SquaresVT/Supplemental Nutrition Assistance Program (3Sq/SNAP) results in disqualification from WIC program participation in accordance with 7 CFR 276.12(l)(1)(vii).	Disqualification	The same length of time as the disqualification from 3SVT/SNAP
	Assessment of civil money penalty against the vendor for hardship in lieu of disqualification the vendor by 3SquaresVT /SNAP	Disqualification	Shall correspond to the period for which vendor would have been disqualified from 3Sq/SNAP

Vermont WIC Retail Vendor Agreement

Appendix B – Selection Criteria

1. Vendor Selection Criteria

In order to be authorized as a WIC retail vendor in Vermont, retailers must satisfy these selection criteria:

- The retailer has the ability to maintain adequate stock of WIC approved food items year around. Specifically, the retailer must stock at least the minimum variety and quantity of foods included in Appendix A. (Free-standing retail pharmacies are exempt from this criterion.)
- The retailer currently participates in, and is not disqualified from or has not been assessed a civil money penalty by, 3SquaresVT/SNAP.
- The retailer meets competitive price requirements described in Section 3.4 throughout the authorization period.
- A need exists for a WIC authorized retailer in the area where the store is located to assure participant access to the WIC food benefit.
- There is no conflict of interest between store ownership and management, and WIC state or local agency staff.
- The store must be in a permanent location, and be open a minimum of 8 hours per day, 6 days per week.
- The retailer carries a full line or “market basket” of standard grocery items such as: dairy, dry staples (dry cereal, bread, brown rice, beans) and at least two varieties of fresh, frozen, or canned meat and/or fish. (Smaller “convenience” stores, with limited variety and inventory, and free-standing retail pharmacies, may be authorized only if they meet all other criteria and State determines authorization is necessary to ensure participant access in the specific geographic area in which the store is located.)
- Retailer has no serious SNAP violations.
- Retailer has no serious WIC vendor violations in Vermont or any other state.
- None of the current owners, officers, or managers has been convicted of or has had a civil judgment during the last 6 years for the following:
 - fraud, antitrust violations, embezzlement, or theft
 - forgery, bribery, falsification, or destruction of records
 - making false statements, receiving stolen property
 - making false claims, or obstruction of justice
- The retailer successfully completes on-site inspection requirements, including a review of the sanitary conditions of the store.

* Vermont WIC will require the FS/SNAP authorization number on the WIC application form to ensure the vendor is SNAP eligible, and will use the FNS “STARS” database to verify participation.

2. Vendor Limiting Criteria

- VT will not authorize any “Over 50% store,” defined as a store where over 50% of food sales are/would be WIC-reimbursed purchases.
- VT will limit authorization of “free standing” pharmacies to those areas of the state where a need exists in geographic area where pharmacy is located, in order to provide access for WIC participants.
- VT will authorize enough vendors to provide participant access and that WIC staff can effectively manage. If access is already achieved, a specific need for a particular store must be established in order to authorize that additional store.

3. Vendor Selection Criteria - Competitive Price

3.1 Peer Group Methodology

Vermont methodology for establishment of peer groups includes:

- Ownership type
- Number of stores in Vermont
- Annual revenues

Vermont received a waiver from FNS (August 2014) from the requirement for geographical variation as a criterion for peer grouping.

3.2 Peer Groups

Vermont WIC uses the following peer group assignments to establish allowable reimbursement levels (“Not to Exceed” limits) for WIC eligible foods:

- Small Independent = <\$7 million sales/annually
- Large Independent = >\$7million sales/annually
- Small Chain = <5 stores in Vermont
- Large Chain = >5 stores in Vermont
- Superstore
- Farmers’ Market
- Pharmacy (free standing)

3.3 Vendors that meet the above-50-percent criterion

Vermont will not authorize “Over 50% WIC” stores.

3.4 Implementation of Effective Peer Groups

- Vermont will conduct a price survey as part of the site visit performed for authorization. Stores exceeding 125% of the peer group average for pricing will be denied authorization.
- Once a store is authorized, the limitation on reimbursement is automatically enforced by the Not-to-Exceed pricing established by peer group within the WIC MIS (Ceres), and which is based upon historical prices charged by authorized stores through the eWIC system.
- Vermont’s MIS/eWIC system automatically and continually gathers pricing information to monitor subsequent prices charged by the vendor. Shelf prices are monitored during site visits.

- Effectiveness of the peer groupings and competitive price criteria will be assessed at least every three years. If changes are warranted, the State Plan amendment process will be used to propose revisions to the peer group definitions. Any change would take effect with the next cycle of Retailer agreements.
- Vermont WIC may change a vendor's peer group whenever the state determines that placement in an alternative peer group is warranted.

3.5 Possible exceptions to competitive price criteria

In-store (chain) pharmacies will be subject to NTE limits for exempt formula and medical foods within the Large Chain peer group. Free standing pharmacies will be subject to NTE limits on those products within their peer group, unless it is necessary to exempt a pharmacy in order to maintain participant access to those products within the region where the pharmacy is located.