

**RULES  
OF  
TENNESSEE DEPARTMENT OF HEALTH  
BUREAU OF HEALTH SERVICES ADMINISTRATION  
NUTRITION SERVICES SECTION**

**CHAPTER 1200-15-2  
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM  
FOR WOMEN, INFANTS AND CHILDREN**

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**1200-15-2-.01 DEFINITIONS.**

- (1) The following definitions shall apply to this part and all contracts, guidelines, instructions, forms and other documents related hereto.
  - (a) “7 CFR Part 246” means the section of the Code of Federal Regulations (CFR) which governs the operation of the WIC Program.
  - (b) “Administrative review” means the process by which a vendor or participant may appeal adverse actions taken against them by the Department. All formal hearings will be held in accordance with the Uniform Administrative Procedures Act, T.C.A. §4-5-101, et seq, and administrative reviews will be held in accordance with 7 CFR 246.18 and as provided in these rules.
  - (c) “Adjunctive eligibility” means automatic income eligibility for WIC, based on eligibility for another federal Program, as defined in 7 CFR Part 246.7(d)(2)(vi).
  - (d) “Approved foods” means types, brands, or varieties of foods meeting the Program requirements established under the federal regulations found in 7 CFR Part 246.10. Foods selected by the Department for the Program in Tennessee can be further limited due to cost, availability, packaging, or other reasons as defined in the current Tennessee Food Package Policy and as provided by Central Office to food manufacturers and other interested parties needing this information.
  - (e) “Breastfeeding woman” means a participant who is breastfeeding her baby up to twelve months after delivery.
  - (f) “Central Office” means the office site operated by the Department which is responsible for the overall operation of the Program.
  - (g) “Child” means a person five (5) years of age or younger.
  - (h) “Civil money penalty” means a monetary penalty assessed in lieu of disqualification.
  - (i) “Claim” means a request for reimbursement of Program funds realized by the Department resulting from the detection of any questionable voucher redeemed by a vendor, suspected vendor overcharges, or other errors by the vendor, either intentional or unintentional, or an intentional participant violation that affects the receipt of Program benefits by the participant.

(Rule 1200-15-2-.01, continued)

- (j) “Commissioner” means the Commissioner of the Tennessee Department of Health or the Commissioner’s designee.
- (k) “Competitive prices” means shelf prices for approved foods that are competitive with the WIC vendors in the same peer group and region within the state.
- (l) “Department” means the Tennessee Department of Health.
- (m) “Disqualification” means the withdrawal of authorization as a WIC vendor as a result of fraud, abuse, violation of federal regulations, or continued failure to meet Program requirements prior to the expiration of a WIC Vendor Agreement.
- (n) “Dual participation” means simultaneous participation in either the Program in more than one clinic and/or region, or participation in the Program and in the Commodity Supplemental Food Program, or in another WIC Program in another state.
- (o) “Food instrument” means a negotiable check with a limited period of validity used by a Program participant to purchase approved foods at an authorized WIC vendor.
- (p) “Food package” means the types and amounts of approved foods based on the nutritional needs of the participant.
- (q) “Grocery store” means a retail store, open to the general public, that derives the majority (i.e., greater than 50%) of its annual total gross sales from staple foods. Its purpose is to provide Program participants with a selection of Program approved foods that meets the Program’s minimum stock requirement. It must also offer a full market basket of foods to provide the opportunity for price comparison shopping and for nutrition information comparison. At least one other form of payment (i.e., bank debit or credit card, personal check, or cash) must be accepted in addition to Food Stamp Program transactions and Tennessee WIC vouchers.
- (r) “Income” means gross income before taxes. Source of income is further defined in the WIC Manual.
- (s) “Infant” means a baby up to twelve (12) months of age.
- (t) “Lock-in status” means vouchers must be presented to a vendor specified by the Program, on a specific day, mutually agreed upon between the Program and the participant.
- (u) “Minimum stock requirement” means the types, varieties, brands, and quantities of approved foods a grocery store is required to keep available as established by the Department for the Program.
- (v) “Nutritional risk” as defined by federal regulation means:
  - 1. detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; or
  - 2. other documented nutritionally related medical conditions, such as
    - (i) dietary deficiencies that impair or endanger health; or
    - (ii) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

(Rule 1200-15-2-.01, continued)

- (w) “Overcharge” means an act committed by a vendor of seeking and/or accepting more Program funds for approved foods than is permitted under the WIC Vendor Agreement. Such an act may result in a sanction whether it is intentional or unintentional.
- (x) “Parent/caretaker” means a parent of an infant or child participant or a person other than a parent, who is responsible for the care of the infant or child and who enrolls them in the Program.
- (y) “Participant” means a pregnant woman, breastfeeding woman, postpartum woman, infant, or child who is receiving supplemental foods or food instruments under the Program.
- (z) “Participation” means a monthly count of persons who have received supplemental foods or food instruments.
- (aa) “Pattern” means an act that occurs two (2) or more times.
- (bb) “Peer group” means a group of WIC vendors who have common characteristics, including, but not limited to, type of business, type of ownership, total sales volume, and pricing of approved foods and are located in the same geographic region.
- (cc) “Pharmacy” means a retail establishment licensed by the State of Tennessee to operate as a pharmacy. Its purpose for authorization in the Program is to provide Special Formulas defined in the WIC Manual. These formulas are issued to a participant when prescribed by written order from a physician or nurse clinician under physician supervision.
- (dd) “Postpartum woman” means a participant who is not breastfeeding her baby, but may remain on the Program for up to six months after delivery.
- (ee) “Program” means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, as amended.
- (ff) “Proxy” means a person designated, in writing, by the participant or parent/caretaker to receive the vouchers when issued and shop for the supplemental foods issued on the voucher. Parents or caretakers applying on behalf of child and infant participants are not proxies.
- (gg) “Redemption” means the procedure during which the vendor receives payment for vouchers previously submitted following the requirements of the WIC Vendor Agreement.
- (hh) “Regional Office” means an administrative site operated by or under contract with the Department to provide Program services for its designated geographic area.
- (ii) “Sanction” means a disciplinary action taken by the Department as described in sections 1200-15-2-.06 Participant Program Violations and 1200-15-2-.08 Vendor Program Violations.
- (jj) “Staple Foods” means the variety of foods carried by an authorized WIC grocery store consisting of, but not limited to, infant formula and other baby food products, eggs, dairy products, bread and bakery products, pastas, fresh produce and vegetables, frozen and canned fruits and vegetables, frozen and canned juices, seafood, meat and poultry. Staple foods do not include any prepared foods or accessory foods such as candy, condiments, spices, tea, coffee, cocoa, or carbonated and uncarbonated drinks.
- (kk) “Transaction” or “transacted” means the procedure during which the participant, parent/caretaker or proxy presents a voucher to an authorized WIC vendor in exchange for the approved foods listed on the voucher.

(Rule 1200-15-2-.01, continued)

- (ll) “USDA” means the United States Department of Agriculture.
- (mm) “Vendor” means a retail grocery store or pharmacy that agrees to abide by applicable policies and procedures as delineated in 7 CFR Part 246.12, Department rules, the WIC Vendor Agreement, and the WIC Vendor Handbook. A vendor is authorized by the Department to accept vouchers and provide the supplemental foods issued on the voucher. A vendor encompasses both a business entity and the physical location of a business.
- (nn) “Vendor Application for Authorization to Participate in the Tennessee WIC Program” means the standard application form and attachments required by the Department for a potential vendor to participate in the Program. The application must be signed by the Department’s authorized designee, as well as an owner or an owner’s authorized designee.
- (oo) “Vendor Representative” means the regional office staff person who is responsible for contracting the WIC vendor and assuring compliance with the WIC Vendor Agreement.
- (pp) “Violation” means each act of non-compliance that occurs or a series of acts that together equate to a violation.
- (qq) “Voucher stamp” means a device provided by the Department which imprints the WIC vendor’s name and assigned number on redeemed vouchers.
- (rr) “Voucher” - see “Food instrument”
- (ss) “WIC food”-see “Approved foods”
- (tt) “WIC Food List” means the current list of approved foods as provided by the Department to participants and contracted grocery stores.
- (uu) “WIC Grocer Price Report Card” means the form submitted by contracted grocery stores at time of application and then on a periodic basis as required by the Department to report prices of specific approved foods.
- (vv) “WIC Manual” means the current publication produced by the Department that contains Program information, policies, procedures, sample reports, and forms for use by Program staff in the regional offices and local health department clinics.
- (ww) “WIC Vendor Agreement” means the standard written departmental agreement that specifies the terms and conditions for a WIC vendor to participate in the Program. (The agreement must be signed by an owner or an owner’s authorized designee and the Department’s authorized designee. See Vendor Application.)
- (xx) “WIC Vendor Handbook” means the current publication produced by the Department that contains Program information, policies, and procedures to be followed by WIC vendors.
- (yy) “WIC Vendor Management Manual” means the current publication produced by the Department that contains Program information, policies, procedures, sample reports and forms for use by Program staff in the Central Office and the Regional Offices.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repealed and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002. Amendment filed July 1, 2004; effective September 14, 2004.

**1200-15-2-.02 PURPOSE.**

- (1) WIC is the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) administered by the Tennessee Department of Health. The purpose of the Program is to provide supplemental foods, nutrition education, and breastfeeding promotion to eligible persons. The Program serves as an adjunct to good health care during critical times of human growth and development.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002.

**1200-15-2-.03 ELIGIBILITY.**

- (1) In order to participate in the Program, an applicant must:
  - (a) be a resident of the state of Tennessee, and
  - (b) have income per family size not exceeding 185% of the USDA poverty income guidelines most recently published in the Federal Register or have adjunctive eligibility, and
  - (c) be found to be at nutritional risk.
  - (d) When resources are limited, participants will be served within priority groups as defined in 7 CFR Part 246 and published in the WIC Manual.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Amendment filed January 3, 1986; effective February 2, 1986. Amendment filed September 30, 1987; effective October 14, 1987. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002.

**1200-15-2-.04 ISSUANCE OF VOUCHERS.**

- (1) Vouchers shall only be issued to a participant, a parent/caretaker, or an authorized proxy designated by the participant or parent/caretaker in writing in accordance with policy as described in the WIC Manual.
- (2) Vouchers shall be issued for specific food packages based on the nutritional needs of participants in accordance with policies as described in the WIC Manual.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002.

**1200-15-2-.05 VOUCHER TRANSACTIONS AND REDEMPTION.**

- (1) Vouchers must be transacted only for approved foods as described in the WIC Manual. Cash and/or credit, including rainchecks, may not be provided in exchange for vouchers.
- (2) Vouchers must be transacted only up to the amount of food specified.
- (3) Prices charged for approved foods must be the same or lower than the current prices charged to other customers, excluding sales tax which may not be charged.
- (4) No exchanges of approved foods are allowed following completion of a transaction, except for an exact exchange for food items that are defective, spoiled, or exceed their "sell/use by" date.

(Rule 1200-15-2-.05, continued)

- (5) The participant, parent/caretaker, or proxy must transact vouchers within the month for which they are valid. Vouchers must be submitted for redemption within the time period specified in 7 CFR Part 246 and the WIC Vendor Agreement, as may be amended from time to time.
- (6) The purchase price and redeemed date must be entered on the voucher before it is signed in the presence of vendor staff.
- (7) The vendor shall not collect payment from participants for vouchers that are returned from the bank unpaid.
- (8) The cost of a food package redeemed by a WIC vendor is controlled by the prices submitted periodically by the WIC vendor, as described in WIC Vendor Agreement.
- (9) Vouchers can be redeemed only up to the amount of the prices submitted by the WIC vendor to the Program.
- (10) The Department may submit a claim to the vendor for Program violations resulting in unjustified overcharges. These claims will be for redeeming a voucher over the vendor's reported prices or over the "Do Not Exceed" amount of the voucher, charging WIC participants more for WIC foods than non-WIC customers, charging for items not received by the participant, charging for items not authorized, or charging more than the current shelf price. When questioned by the Department, the vendor shall be given the opportunity to justify or correct the overcharge. The claim for reimbursement is not subject to a hearing or administrative review as stated in 7 CFR Part 246.18(a)(1)(iii) and the WIC Vendor Agreement.
- (11) The Department may make price adjustments to vouchers containing errors in the purchase price once the voucher has been presented to the Department for validation. The price adjustment must comply with the price limitations as stated in the WIC Vendor Agreement. The price adjustment is not subject to a hearing or administrative review as stated in 7 CFR Part 246.18(a)(1)(iii) and the WIC Vendor Agreement, although the vendor shall be given an opportunity to explain or justify the error in question.
- (12) The vendor may not appeal to the Department any voucher payment disputes.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002. Amendment filed July 1, 2004; effective September 14, 2004.

#### **1200-15-2-.06 PARTICIPANT PROGRAM VIOLATIONS.**

- (1) The Department shall submit to the participant or parent/caretaker a claim requiring repayment of the value of any Program benefits obtained or disposed of improperly. This includes dishonesty in the use of vouchers; providing false information for certification including dual participation; sale of supplemental food or food instruments to, or exchange with, other individuals or entities; receipt from WIC vendors of cash or credit toward purchase of unauthorized food or other items; or physical abuse or threat of physical abuse of health department or vendor staff. The participant or parent/caretaker accepts responsibility for understanding the preceding situations upon signing the Department's "Informed Consent/Signature Sheet" during the procedures for determining eligibility in the Program.
- (2) A participant may be disqualified up to twelve months for proven claims of less than \$100, except for dual participation or a second or subsequent claim for which the disqualified period must be one-year. When the participant is an infant or child, and the parent/caretaker is guilty of the violations set forth in item (1) of this section, further participation by the infant or child shall be as a lock-in status.

(Rule 1200-15-2-.06, continued)

- (3) A participant must be disqualified for one-year for proven claims of \$100 or more. However, the disqualification may be waived by the Department if full repayment is made or a payment schedule agreed upon within thirty (30) days of receipt of the letter demanding repayment. If a participant is an infant, child, or a woman under age eighteen (18), the disqualification may be waived without full repayment or a payment schedule agreed upon if the Department approves a designated proxy. Repeated violations of this nature may result in disqualification.
- (4) A participant may be given an opportunity to reapply for the Program before the end of a mandatory one-year disqualification if full payment is made or a payment schedule is agreed upon within thirty (30) days of receipt of the letter demanding repayment. If a participant is an infant, child, or a woman under age eighteen (18), an opportunity to reapply for the Program before the end of a mandatory one-year disqualification may be offered without full repayment or a payment schedule being agreed upon if the Department approves a designated proxy.
- (5) The Department may provide warnings to the participant, parent or caretaker of an infant or child participant, or proxy before issuing a sanction.
- (6) A participant will be given an opportunity for a hearing following the Fair Hearing Procedure (WIC/CSFP Programs) of the Tennessee Department of Health, posted in each clinic, prior to any adverse action. The participant must request a hearing within ninety (90) days of the notice of the adverse action. All hearings will be conducted in accordance with the Uniform Administrative Procedures Act, T.C.A. §4-5-101, et seq.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002.

#### **1200-15-2-.07 VENDOR AGREEMENTS.**

- (1) The Department utilizes a retail purchase food delivery system in which participants obtain approved foods by transacting vouchers at local WIC vendors. The WIC vendor must comply with federal regulations and the policies and procedures found in the WIC Vendor Handbook. The Department is not obligated to pay for any voucher accepted by a vendor who was not authorized at the time of the voucher was accepted.
- (2) A potential WIC vendor must be a grocery store or pharmacy as defined in 1200-15-2-.01, Definitions, which operates at a permanent fixed location. Each such location requires a separate vendor agreement. Apart from initial authorization, a grocery store must also be actively participating in, and currently conducting, Food Stamp Program transactions in accordance with the regulations in 7 CFR Part 278 before authorization by the Department as a WIC vendor. Any authorized WIC vendor, participating in the WIC Program as of January 1, 2004, who does not meet these requirements shall have up to six (6) months to comply. Failure to comply shall result in termination of the WIC Vendor Agreement. The Program requires a WIC vendor, at both initial and subsequent authorizations, not be under a disqualification or civil money penalty issued by the Food Stamp Program, another State WIC Agency, or the Tennessee WIC Program, unless denying such authorization would create an undue hardship for participants attempting to transact vouchers. Such decision related to hardship shall rest solely with the Department per 7 CFR Part 246.18(a)(1)(iii)(B) which prohibits the WIC vendor's right to appeal. The Department does not require pharmacies to participate in the Food Stamp Program. If, however, a pharmacy was previously disqualified from the Food Stamp Program or is currently authorized and it has been issued a civil money penalty, it must inform the Department when applying for authorization as a WIC vendor.

(Rule 1200-15-2-.07, continued)

- (3) A potential vendor may apply by submitting a completed and signed Vendor Application for Authorization to Participate in the Tennessee WIC Program to the designated Program staff person in the appropriate region. Pharmacies receive written notification of waived requirements. Initial applications may be submitted at anytime.
- (4) An incomplete or inaccurate application shall be returned within fifteen (15) calendar days of its receipt, unless the only item missing is the Food Stamp Authorization, which has been applied for but not received. The application shall be processed, but the vendor shall not be authorized until a copy of the Food Stamp Authorization has been provided. If the potential vendor does not resubmit a corrected application within fifteen (15) calendar days from receipt of the return letter, the application shall be considered denied. Receipt of the return letter shall be presumed to occur within three (3) business days of the date of mailing unless undeniable proof of later receipt is presented. If a resubmitted application is returned two (2) additional times for being incomplete or inaccurate, it shall be considered denied. In each instance, when an application has been denied, a new application shall not be accepted for six (6) months from the date of the denial.
- (5) A potential vendor must demonstrate good business integrity, based on facts known by the Department and representations made on the application. Unless denying authorization as a vendor would create a hardship for participants' vouchers to be redeemed, if any owner, officer, or manager has been convicted of or had a civil judgment entered against them within the previous six (6) years for any activity indicating a lack of business integrity, the application shall be denied.
- (6) The Department has established appropriate criteria, including those described in paragraph (7) below, to use in the decision to determine authorization of a vendor. The potential vendor may not ask the Department for a hearing or administrative review regarding the appropriateness of these criteria, which include, but are not limited to: competitive price and price limitations, minimum variety and quantity of approved foods, business integrity, status of Food Stamp Program authorization, the majority of annual total gross sales being in staple food, and a history of Food Stamp Program transactions (except for initial authorization). However, the vendor may appeal a decision to deny authorization as a vendor as described in section 1200-15-2-.10, Appeals and Administrative Reviews. Pharmacies are exempt from the staple food requirement.
- (7) The application is subject to verification of the minimum stock requirement, competitive prices with other vendors of similar size in a peer group, and a positive compliance history with sanitation authorities. If the minimum stock is not available and/or competitive prices can not be verified during the Vendor Representative's first visit to the store's location, there will be a second unannounced visit within fifteen (15) calendar days. If the minimum stock requirement and/or verification of competitive prices are still not met, the application will be considered denied and a new application will not be accepted again for six (6) months from the date of the denial. Pharmacies are exempt from minimum stock and competitive pricing requirements.
- (8) The Department may not authorize a potential vendor if it determines that the previous ownership has sold the store in order to circumvent a WIC sanction. This includes selling to a relative by blood or marriage or to any individual or organization for less than the fair market value. The subsequent buyer cannot be authorized as a vendor, unless such sale was conducted as an arms length transaction.
- (9) The final decision to approve or deny the application will be made within sixty (60) days from the date of receipt of the completed application.
- (10) Once approved, the store must execute a WIC Vendor Agreement with the Department. The vendor will be authorized to accept vouchers fifteen (15) days following the completion of WIC training provided by the Department. The training must be attended by an owner or an owner's authorized designee.



(Rule 1200-15-2-.07, continued)

- (11) At least one person representing the vendor must participate in annual training.
- (12) The WIC Vendor Agreement will be terminated if the Department determines the vendor provided false information in connection with its application.
- (13) The Department may reassess any authorized vendor at any time during the current WIC Vendor Agreement period using the vendor selection criteria in effect at the time of the reassessment. The agreement for a vendor that does not meet the selection criteria must be terminated as stated in 7 CFR Part 246.12(h)(3)(xxiv) and the WIC Vendor Agreement.
- (14) The WIC Vendor Agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization.
- (15) The WIC Vendor Agreement shall be terminated if the vendor is disqualified from the Program.
- (16) The Department must provide the vendor with as much advance notice as possible regarding changes to federal and State Program statutes, rules, and regulations, before implementing such changes.
- (17) The Department will provide not less than fifteen (15) calendar days advance written notice of expiration prior to the expiration date of the WIC Vendor Agreement. The vendor must apply for reauthorization prior to this expiration date. However, neither the Department nor the WIC vendor has an obligation to enter into a new agreement. The Department shall consider the vendor's satisfactory compliance with the previous agreement before making its' decision.
- (18) The vendor may not ask the Department for an administrative review regarding either the expiration of the WIC Vendor Agreement or the appropriateness of the current criteria used by the Department at the time of reauthorization as stated in 7 CFR Part 246.18(a)(1)(iii) and the WIC Vendor Agreement.
- (19) During the term of the WIC Vendor Agreement, either the Department or the WIC vendor may terminate for cause, after providing not less than fifteen (15) calendar days advance written notice.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002. Amendment filed July 1, 2004; effective September 14, 2004.

#### **1200-15-2-.08 VENDOR PROGRAM VIOLATIONS.**

- (1) The Department may take actions such as disqualification, civil money penalties (CMP) in lieu of disqualification and claims, for Program violations and non-compliance with the WIC Vendor Agreement as described in this section. The vendor shall be given the opportunity to appeal any adverse action following procedures in 1200-15-2-.10.
- (2) The vendor is responsible for its owners, officers, managers, agents, and employees who commit vendor violations.
- (3) The vendor shall make inventory and other required records and all vouchers on hand available upon request of the Department.
- (4) The WIC Vendor Agreement will be terminated, if the Department identifies a conflict of interest between the vendor and Program staff who administer the Program on behalf of USDA and the Department.

(Rule 1200-15-2-.08, continued)

- (5) Compliance with the WIC Vendor Agreement will be verified by activities conducted by Program staff. This includes on-site routine monitoring visits, the auditing of the vendor's invoices to confirm sufficient stock was on hand to transact vouchers, and computer monitoring of food prices and voucher redemption activity. In addition, investigators from Department staff, or under contract with the Department, may pose as participants to conduct compliance purchases.
- (6) Non-compliance is cause for sanctions against the WIC vendor, as described in the WIC Vendor Handbook. These sanctions include disqualification, a civil money penalty (CMP) in lieu of disqualification, in addition to other remedies available by law. Prior warning is not required before sanctions are issued. The Program may use installment plans for the collection of CMP's. However, if the WIC vendor does not honor an installment plan for a CMP, the WIC vendor shall be disqualified for the same corresponding length of time as the original disqualification. Specific sanctions and periods of enforcement are found in the WIC Vendor Handbook. The following is a description of these sanctions. Subparts (a)-(d) are federally mandated; (e)-(f) are State established.
  - (a) Permanent disqualification for:
    1. conviction by a court of competent jurisdiction of trafficking in WIC vouchers, or
    2. conviction by a court of competent jurisdiction 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 WIC vouchers.
  - (b) Six-year disqualification for:
    1. one or more incidences of investigative finding of trafficking in WIC vouchers; or
    2. one or more incidences of investigative finding of selling firearms, ammunition, explosives, or controlled substances.
  - (c) Three-year disqualification for:
    1. one or more incidence of investigative finding of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for WIC vouchers;
    2. a pattern of claiming reimbursement for more of a WIC food item than the vendor's documented inventory shows was on hand for a specific time period;
    3. a pattern of overcharging;
    4. a pattern of receiving, transacting, and/or redeeming WIC vouchers outside of authorized channels including a vendor's location not contracted to accept WIC vouchers and/or from someone other than the person who signed the WIC voucher at the WIC Clinic;
    5. a pattern of charging for WIC foods not provided to the participant at the time of the transaction; or
    6. a pattern of providing credit or non-food items (e.g., paper towels, tissues) in exchange for WIC vouchers, (other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, which only require one (1) incidence).
  - (d) One-year disqualification for:

(Rule 1200-15-2-.08, continued)

1. a pattern of providing non-WIC foods and/or a quantity of WIC food greater than allowed on the WIC vouchers.
- (e) One-year disqualification for first violation for:
1. providing false information on the “Vendor Application for Authorization to Participate in the Tennessee WIC Program”;
  2. providing false information on the WIC Grocer Price Report Card;
  3. failing to allow any authorized WIC representative the right to inspect vouchers on hand;
  4. failing to withhold deposit of WIC vouchers for up to seven (7) days upon request of an authorized WIC representative; or
  5. failing to produce bills of lading or invoices upon request of an authorized WIC representative.
- (f) Six-month disqualification for first violation and one-year disqualification for second violation for:
1. failing to reimburse the WIC Program for a claim of reimbursement regarding one or more WIC vouchers;
  2. failing to lower prices on approved WIC foods upon request of an authorized WIC representative;
  3. failing to allow employee training on WIC procedures including having in place an effective policy and program to prevent trafficking;
  4. failing of ownership/management to be knowledgeable of WIC procedures and be accountable for employee actions;
  5. collecting reimbursement from a WIC participant(s) for a voucher(s) returned unpaid from the WIC Program’s bank contractor;
  6. failing to treat all WIC participants the same regardless of race, color, national origin, age, gender, disability, religious or political belief;
  7. failing to meet minimum stock requirements for approved WIC foods including having stock within eligible product dates;
  8. failing to provide suitable hours and an environment for participant access including, but not limited to, not restricting the hours to redeem WIC vouchers, not keeping WIC participants from using a check-out available to all other customers, and not acting in a way that abuses or embarrasses a WIC participant;
  9. failing to offer WIC participants any courtesies offered other customers including, but not limited to, bonus cards, multiplying of coupon values, and additional products for free;
  10. requiring WIC participants to sign WIC vouchers without first entering the redeemed date and/or redeemed amount;
  11. failing to obtain a signature on WIC vouchers at the time of the transaction;

(Rule 1200-15-2-.08, continued)

12. redeeming WIC vouchers not valid for the month in which they are redeemed; or
  13. failing to conduct WIC transactions only on the vendor's premises.
- (7) WIC vendors who are disqualified by the Food Stamp Program or another State WIC Agency may also be disqualified by the Program for the same length of time, unless doing so would place a hardship on participants, and is not subject to administrative or judicial review under the WIC Program.
  - (8) A civil money penalty may be imposed when disqualification would place a hardship upon participants who normally redeemed their vouchers at that particular location. This includes a decision for disqualification made by the Program, the Food Stamp Program or another State WIC Agency. The participant access determination must be made in writing by the Department and is not subject to challenge by the vendor. This determination is to be based on the availability of at least one other vendor within a reasonable distance of the vendor to be disqualified. The other vendor(s) must be reachable by participants using available transportation such as automobile, public transit, and/or walking without geographic barriers. Such barriers might include, but are not limited to, interstate highways, rivers, bridges not open to foot traffic, and steep terrain. A civil money penalty issued in lieu of permanent disqualification shall be \$10,000. For any other period of disqualification, the CMP shall be based on ten (10) percent of the vendor's average WIC redeemed dollar amount for the previous six-month period multiplied by the number of months the vendor would have been disqualified but shall not exceed \$10,000 for each violation or \$40,000 for multiple violations.
  - (9) When a vendor previously assessed a federally mandated sanction for any of the one, three, or six-year periods is to be sanctioned again for any of these violations, the disqualification period shall be doubled. If a CMP is to be issued, the amount of the CMP shall be doubled up to the \$40,000 maximum stated in (8) above. When a vendor previously assessed a federally mandated sanction twice for any of these violations commits any one of them for the third time or greater, the disqualification period shall be doubled. A CMP shall not be issued in these situations.
  - (10) When a vendor previously assessed a State established sanction for any of the six-month or one-year periods is to be sanctioned again for any of these violations and a CMP is to be issued, the CMP shall be doubled up to the limits stated in (8) above. A CMP shall not be issued in lieu of disqualification for the third time or greater.
  - (11) A WIC vendor committing fraud or abuse of the Program is subject to prosecution under applicable federal, State, or local laws.
  - (12) Except for vendor name, address, and authorization status, the Department must restrict the use or disclosure of confidential vendor information to those entities listed in 7 CFR Part 246.26(e).

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002. Amendment filed July 1, 2004; effective September 14, 2004.

#### **1200-15-2-.09 NON-DISCRIMINATION.**

- (1) The Program is governed by the following USDA non-discrimination statement for participation in the Program as either a participant or WIC vendor:
- (2) "The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information

(Rule 1200-15-2-.09, continued)

(e.g., Braille, large print, audiotape) should contact USDA'S TARGET Center at (202) 720-2600 (voice and TDD).

- (3) To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed June 20, 1985; effective July 20, 1985. Repeal and new rule filed August 24, 2000; effective November 7, 2000. Repeal and new rule filed February 8, 2002; effective April 24, 2002.

#### **1200-15-2-.10 APPEALS AND ADMINISTRATIVE REVIEWS.**

- (1) Vendors may appeal any adverse actions taken by the Department, except as provided in paragraph (4)(a) of this section.
  - (a) The Department shall provide the vendor with written notice of the adverse action fifteen (15) calendar days prior to the effective date of the action. The written notice shall contain:
    1. the adverse action being taken;
    2. the cause(s) for the action;
    3. effective date of the action;
    4. procedures to file for a hearing or administrative review;
    5. time period allowed to request a hearing or administrative review; and
    6. any other pertinent information.
  - (b) The vendor's request for a review (either a hearing or an administrative review) in order to appeal the actions of the WIC Program must be received within fifteen (15) calendar days from the date of receipt of the notice.
- (2) Adverse actions subject to hearings shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §4-5-101, et seq.
  - (a) The vendor will be provided an opportunity to request a hearing for the following reason(s):
    1. denial of authorization: based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods or for requiring the majority of annual total gross sales to be derived from staple foods or on a determination that the vendor is attempting to circumvent a sanction;
    2. termination of an agreement for cause;
    3. disqualification; or
    4. imposition of a civil money penalty in lieu of disqualification.
  - (b) The Department shall make arrangements for a hearing before an administrative judge from the Administrative Procedures Division of the Office of the Secretary of State. The vendor shall also be given the following:

(Rule 1200-15-2-.10, continued)

1. written notification of the adverse action, the procedures to follow to obtain a full administrative review, and the cause(s) for and the effective date of the action (When a vendor is disqualified due in whole or in part to violations in 1200-15-2-.08(6) Subparts (a)-(d), such notification must include the following statement: “This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification is not subject to administrative or judicial review under the Food Stamp Program.”);
  2. the opportunity to appeal the adverse action within fifteen (15) calendar days of receipt of the notification of adverse action;
  3. adequate advance notice of the time and place of the hearing to provide sufficient time to prepare for the hearing;
  4. the opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request;
  5. the opportunity to cross-examine adverse witnesses (When necessary to protect the identity of WIC Program investigators, such examination may be conducted behind a protective screen or other device.);
  6. the opportunity to be represented by counsel;
  7. the opportunity to examine prior to the review the evidence upon which the Program’s action is based;
  8. an impartial decision-maker (administrative judge), whose determination is based solely on whether the Program has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the evidence presented at the hearing; and
  9. written notification of the review decision, including the basis for the decision, within ninety (90) days from the date of receipt of a vendor’s request for a hearing. (These timeframes are only administrative requirements and do not provide a basis for overturning the Program’s adverse action, if a decision is not made within the specified timeframe.)
- (3) Adverse actions subject to administrative review in accordance with 7 CFR 246.18(a)(1)(ii) are as follows.
- (a) The vendor will be provided an opportunity to request an administrative review for the following reason(s):
    1. denial of authorization: based on the vendor selection criteria for business integrity or for a current Food Stamp Program disqualification or civil money penalty for hardship;
    2. denial of authorization: based on a Program-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification;
    3. termination of an agreement because of a change in ownership or location or cessation of operations;

(Rule 1200-15-2-.10, continued)

4. disqualification based on a trafficking conviction;
  5. disqualification based on the imposition of a Food Stamp Program civil money penalty for hardship; or
  6. disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State Program.
- (b) The Department shall conduct all administrative reviews pursuant to 7 CFR 246.18(c). The vendor shall also be given the following:
1. written notification of the adverse action, the procedures to follow to obtain an administrative review, the cause(s) for and the effective date of the action, and an opportunity to provide a written response;
  2. a decision-maker, appointed by the Commissioner, who is someone other than the person who rendered the initial decision on the action and whose determination is based solely on whether the Program has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the information provided to the vendor concerning the cause(s) for the adverse action and the vendor's response; and
  3. written notification of the review decision, including the basis for the decision, within ninety (90) days of the date of receipt of the request for an administrative review. (These timeframes are only administrative requirements and do not provide a basis for overturning the Program's adverse action if a decision is not made within the specified timeframe.)
- (4) Adverse actions not subject to administrative reviews.
- (a) The Department will not provide administrative reviews to vendors that appeal the following adverse actions:
1. the validity or appropriateness of the Program's vendor limiting or selection criteria;
  2. the validity or appropriateness of the Program's participant access criteria and the Program's participant access determinations;
  3. the Program's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
  4. the expiration of the vendor's agreement;
  5. disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error); or
  6. disqualification of a vendor as a result of disqualification from the Food Stamp Program.
- (5) Effective date of adverse actions against vendors.
- (a) The Department will make denials of authorization and permanent disqualification imposed for violations contained in 1200-15-2-.08(6)(a) of this Chapter effective on the date of receipt of the notice of adverse action.

(Rule 1200-15-2-.10, continued)

- (b) The Department will make all other adverse actions effective after fifteen (15) calendar days after the date of the notice of adverse action is received by the vendor, unless a request for a hearing or administrative review is received from the vendor within fifteen (15) calendar days.
  - (c) The Department will make the adverse action effective the date the vendor receives the final determination on actions which were subject to a hearing or administrative review.
- (6) Continuing responsibilities. Appealing an adverse action does not relieve a vendor that is permitted to continue program operations while its' appeal is in process from the responsibility of continued compliance with the terms of the written agreement with the Program.
- (7) The Department shall accept the decisions rendered under the hearing and administrative review as the final Program action. If the adverse action under review has not already taken effect, the Program will make the action effective on the date of receipt of the review decision by the vendor.
- (8) Judicial review. If the review decision upholds the adverse action against the vendor, the Department will inform the vendor that it may be able to pursue judicial review of the decision in the Chancery Court for Davidson County, Tennessee.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 68-1-106. **Administrative History:** Original rule filed February 8, 2002; effective April 24, 2002. Amendment filed July 1, 2004; effective September 14, 2004.