

## Section III: State Agency Procedure Manual

### I. State Vendor and Farmer Management

#### H. Federal Violations and Sanctions

##### **Purpose**

Standardized Federal violations and sanctions ensure program integrity.

##### **Policy**

The Montana WIC Program shall determine the type and level of Federal sanction to be applied against retailers based upon the severity, nature, and pattern of the violation.

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##### **1. Notification of Violation**

- If a retailer has committed a violation that requires a pattern of occurrences to impose a sanction, the Montana WIC Program will notify the retailer of the initial violation in writing prior to documentation of another violation.
- Notification is not required:
  - For WIC retailer disqualifications or Civil Money Penalties based on Supplemental Nutrition Assistance Program (SNAP) sanctions.
  - For violations that only require one incident before a sanction is imposed, or,
  - If such notice could compromise covert investigations being conducted by the Supplemental Nutrition Assistance Program (SNAP), the USDA Office of the Inspector General, the State Police, or an ongoing WIC investigation or other authorities.
    - Reason for not informing will be documented in the retailer's chart.

##### **2. Establishing a Pattern of Violations**

- Montana WIC Program sanctions require documentation of a pattern of the same type of violation. A pattern of violations can be based on at least two (2) independent documented violations during any compliance investigation, at least three (3) documented independent violations obtained through objective data or other non-compliance purchase investigations or one (1) inventory audit where discrepancies were found.
  - When multiple violations are detected during a single investigation, the disqualification period will be based on the most serious violation.
  - The Montana WIC Program may not accept voluntary withdrawal of a retailer from the WIC Program as an alternative to disqualification.
  - Any retailer who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State, or local laws. 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 (5) 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 (1) year or both. (7 CFR §246.12 (h) (3) (xxi))

##### **3. Retailer Noncompliance**

- Montana WIC may initiate administrative action to disqualify or assess a fine against a retailer for non-compliance based on one incident of a violation or a pattern of violations. An incident is defined as one isolated event at a single point in time or any single occurrence of a violation. A pattern is defined as two or more incidences of a violation.
- Mandatory sanctions are federal penalties and shall constitute grounds for disqualification from

the WIC Program for a minimum of one (1) year and up to permanent disqualification.

#### **4. Mandatory Violations and Sanctions**

- Class A and B violations are subject to mandatory federal sanctions and shall constitute grounds for disqualification from the WIC Program for a minimum of one (1) year and up to permanent disqualification.

- **Class A Violations:**

These violations require one incident and are subject to mandatory federal sanctions as defined in 7 CFR 246.12 and shall constitute grounds for disqualification from the WIC Program for a minimum of three (3) years and up to permanent disqualification. Class A violations include:

- A conviction for trafficking (buying or selling WIC food benefits), conviction of selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food benefits – Length of disqualification – Permanent.
  - The WIC Program reserves the right to impose a Civil Money Penalty (CMP) in lieu of permanent disqualification, particularly in cases of a participant access determination.
- One incident of trafficking (buying or selling WIC food benefits), selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food benefits – Length of disqualification – Six (6) years.
- One occurrence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for WIC benefits – Length of disqualification – Three (3) years.

- **Class B Violations**

These violations require a pattern to be documented before a sanction can be imposed. Unless otherwise noted, “pattern” is defined as two or more of the same Class B violations which occur during the retailer’s contract period. For a single Class B violation, the retailer may be given written notice of the violation. When written notice is given the retailer must establish a corrective action plan that includes the retailer’s attendance at a mandatory training to be completed within sixty (60) days of the notice.

At the end of the disqualification period a new application for authorization may be submitted. In all cases the retailer’s new application will be subject to the Montana WIC Program’s retailer selection criteria in effect at that time. Class B violations include:

- Claiming reimbursement for the sale of any WIC item that exceeds the store’s documented inventory of that food item for a specific period – Length of disqualification – 3 years.
- Charging WIC participants more for WIC approved foods than non-WIC customers or charging more than the posted shelf price (overcharges) – Length of Disqualification – 3 years.
- Receiving, transacting, and/or redeeming WIC food benefits outside of authorized channels, including the use of an unauthorized retailer and/or an unauthorized person – Length of disqualification – 3 years.
- Charging the WIC Program for WIC foods not received by the WIC participant – Length of disqualification – 3 years.
- Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, in exchange for WIC food benefits – Length of disqualification – 3 years.
- Providing unauthorized food items in exchange for WIC food benefits, including charging

for supplemental food provided more than items available on the benefit – Length of disqualification – 1 year.

## **5. Other Disqualifications**

- The Montana WIC Program shall disqualify a retailer that has been disqualified from SNAP. The WIC disqualification will be for the same length of time as the SNAP disqualification, and the WIC disqualification may begin later than the SNAP disqualification. This disqualification is not subject to administrative or judicial review on the WIC Program.
- The Montana WIC Program shall disqualify a retailer who has been assessed a Civil Money Penalty (CMP) for hardship in SNAP under 7 CFR 278.6. The length of disqualification will correspond to the period for which the retailer would otherwise have been disqualified in SNAP.
  - The WIC Program will include notification that it will take such disqualification action in its sanction schedule, and;
  - Conduct a participant access determination. If the WIC Program determines that inadequate participant access would result from the disqualification, then neither a disqualification nor a civil money penalty in lieu of disqualification may be imposed.

## **6. Prosecution and Fines**

A retailer committing fraud or abuse of the WIC Program is liable to prosecution under applicable federal, state, or local laws.

- Appeals & Notice
  - A retailer may appeal a denial of authorization. The retailer may also appeal action taken during a contract where the retailer is disqualified, or any other adverse action is taken. The exception is that the retailer cannot appeal the expiration of the contract and the Montana WIC Program's participant access determination for a mandatory or Montana WIC Program violation.
- Civil Money Penalty (CMP) In Lieu of Disqualification
  - The Montana WIC Program shall consider Civil Money Penalties (CMP) in lieu of disqualification for mandatory sanctions if the retailer was authorized under a participant access determination.
  - If a vendor is assessed a second mandatory sanction, the WIC Program must double the second sanction. CMP may only be doubled up to the limits allowed under 7 CFR 246.12(l)(1)(x)(C).
  - If a vendor is assessed a third mandatory sanction, the WIC Program must double the third sanction. No CMP may be issued in lieu of disqualification.
- Calculation of a Civil Money Penalty
  - The CMP shall not exceed the maximum amount specified in 7 CFR 3.91(b)(3). Further information on calculating CMPs and using these maximums can be found in federal WIC regulations at 7 CFR 246.12(l)(1)(x).
- Failure to pay Fine/Civil Money Penalty
  - If a retailer does not pay or partially pays a fine and/or CMP within the specified time frames, the Montana WIC Program will disqualify the retailer for the length of the disqualification corresponding to the original violation.