

4617.0084 VENDOR SANCTIONS.

Subpart 1. **Notice of violation.** If a violation described in subpart 7, 8, 9, 12, 13, 13a, or 19 does not result in disqualification or a civil money penalty, the commissioner shall mail or deliver to the vendor a notice of violation.

Subp. 2. **Permanent disqualification.** The commissioner shall permanently disqualify a vendor if any controlling person of the vendor is criminally convicted of either:

A. buying or selling one or more vouchers or cash-value vouchers for cash; or

B. selling any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more vouchers or cash-value vouchers.

Subp. 3. **Six-year disqualification.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for six years if the vendor:

A. buys or sells one or more vouchers or cash-value vouchers for cash; or

B. sells any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more vouchers or cash-value vouchers.

Subp. 4. **Providing alcohol or tobacco.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if the vendor provides any alcohol, alcoholic beverage, or tobacco product in exchange for one or more vouchers or cash-value vouchers.

Subp. 5. **Redeeming vouchers or cash-value vouchers in excess of inventory.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if, on two occasions within any two-year period, the vendor claims reimbursement for the sale of an amount of a specific supplemental food item during a specified period of time and the amount claimed exceeds the store's documented inventory of that supplemental food item by at least 15 units for that period of time. The two occasions may be established during a single review of inventory records and may involve two different food items during the same period of time, two different food items during two different periods of time, or one food item during two different periods of time.

Subp. 6. **Laundering vouchers or cash-value vouchers.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if, on two occasions within any two-year period, the vendor launders one or more vouchers or cash-value vouchers.

Subp. 7. Providing credit or nonfood item.

A. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if, twice within any two-year period, the vendor provides credit, other than a rain check, or provides a nonfood item, other than any alcohol, alcoholic beverage, tobacco product, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, in exchange for a voucher or cash-value voucher.

B. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if, four times within any two-year period, the vendor provides a rain check in exchange for a voucher or cash-value voucher.

Subp. 8. Overcharging and charging for food not received.

A. This subpart applies to violations under subitems (1) and (2). The violation described in subitem (1) is distinct from the violation described in subitem (2) and is accumulated separately to determine the number of violations:

- (1) a vendor overcharge; and
- (2) charging the WIC program for WIC-allowed food not received by a WIC customer.

B. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if the vendor commits a violation under item A twice within any two-year period and if:

- (1) for each violation, the price the WIC program paid the vendor for the voucher or cash-value voucher was \$2 or more greater than the correct price for the voucher or cash-value voucher; and

- (2) each violation involved any of the following circumstances:

- (a) no price was entered on the voucher or cash-value voucher at the time it was accepted by the vendor;

- (b) the price on the voucher or cash-value voucher was at any time altered to reflect a price higher than the price originally entered on the voucher or cash-value voucher;

- (c) the price the WIC program paid the vendor for the voucher or cash-value voucher was more than 20 percent greater than the correct price for the voucher or cash-value voucher;

- (d) no receipt was provided at the time the voucher or cash-value voucher was accepted by the vendor;

(e) the price for any of the WIC-approved food items obtained with the voucher or cash-value voucher was not displayed for easy viewing or marked on the food; or

(f) the cashier or other store representative asked the WIC customer for any identification other than the WIC ID folder.

C. Except as provided in item B and subparts 15, 16, and 19, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A three times within any two-year period and if, for each violation, the price the WIC program paid the vendor for the voucher or cash-value voucher was \$2 or more greater than the correct price for the voucher or cash-value voucher.

D. Except as provided in items B and C and subparts 15, 16, and 19, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A four times within any two-year period.

Subp. 9. Providing unauthorized food.

A. A vendor shall not provide unauthorized food.

B. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for one year if the vendor violates item A twice within any two-year period and each violation involved providing unauthorized food in exchange for any of the infant formula listed on the voucher, other than substituting another infant formula with the same level of iron fortification.

C. Except as provided in item B and subparts 15, 16, and 19, the commissioner shall disqualify a vendor for one year if the vendor violates item A four times within any two-year period.

Subp. 10. SNAP or food support sanctions.

A. If a vendor is disqualified from the SNAP or food support program, the commissioner shall disqualify the vendor from the WIC program for an equal amount of time, except as provided in subpart 15.

B. If the SNAP or food support program assesses a vendor a civil money penalty for hardship instead of disqualifying the vendor from the SNAP or food support program, the commissioner shall disqualify the vendor from the WIC program for the amount of time the vendor would have been disqualified from the SNAP or food support program absent the hardship determination, except as provided in subpart 15.

Subp. 11. One-year disqualification for one violation.

A. The commissioner shall disqualify a vendor for one year if, during any 12-month period within the last three years, the dollar amount of the vendor's WIC sales was greater than 50 percent of the vendor's total food sales.

B. Except as provided in subpart 15, the commissioner shall disqualify a vendor for one year if:

(1) the vendor provides false or misleading material information on any document submitted to the commissioner;

(2) a controlling person of the vendor commits a business-related violation, unless the business-related violation results in permanent disqualification under subpart 2;

(3) the vendor fails to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4 or 5;

(4) the real estate where the vendor's business is located is not owned or leased by one or more controlling persons of the vendor;

(5) during an on-site inspection, the vendor fails to allow the commissioner access to any voucher or cash-value voucher located on the vendor's premises or to any cash register or other area of the vendor's premises where vouchers or cash-value vouchers may be located; or

(6) the vendor violates part 4617.0068, subpart 14.

Subp. 12. One-year disqualification for two violations.

A. This subpart applies to the violations described in subitems (1) to (5). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) duplicating a vendor stamp or using a counterfeit vendor stamp;

(2) violating the nondiscrimination clause of the vendor agreement, as specified in Code of Federal Regulations, title 7, section 246.12, paragraph (f)(2)(xv), as amended, or failing to offer a WIC customer the same courtesies offered to other customers;

(3) altering the first-day-to-use date, last-day-to-use date, or food prescription on a voucher or cash-value voucher or signing a voucher or cash-value voucher that the vendor has accepted without a signature;

(4) offering an incentive for a WIC customer to redeem a voucher or cash-value voucher at the vendor's business site or advertising that the vendor would provide such an incentive; and

(5) allowing a WIC customer to return or exchange any infant formula bought with a voucher, unless the customer is exchanging infant formula that is expired or damaged food for the identical size, type, brand, and level of iron fortification.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for one year if the vendor commits a violation under item A twice within any two-year period.

Subp. 13. Six-month disqualification for two violations.

A. This subpart applies to the violations described in subitems (1) to (5). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) requiring a WIC customer to provide information or identification other than the WIC ID folder;

(2) requesting any reimbursement or payment from a WIC customer for a WIC voucher or cash-value voucher returned by the bank;

(3) failing to enter a dollar amount on a voucher or cash-value voucher at the time the vendor accepts the voucher or cash-value voucher from a WIC customer;

(4) except as provided in subpart 12, item A, subitem (5), allowing a customer to return or exchange any food bought with a voucher or cash-value voucher, unless the customer is exchanging expired or damaged food for the identical size and type of food; and

(5) accepting a voucher or cash-value voucher on which the last-day-to-use date, first-day-to-use date, or food prescription has been altered.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for six months if the vendor commits a violation under item A twice within any two-year period.

Subp. 13a. Three-month disqualification for three violations.

A. This subpart applies to the violations described in subitems (1) to (4). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) failing to verify that the signature of the individual who signs the voucher or cash-value voucher matches an authorized signature on the WIC ID folder;

(2) failing to accept a manufacturer's coupon for any food obtained by a WIC customer in exchange for a WIC voucher or cash-value voucher or failing to discount the price inserted on the voucher or cash-value voucher by the amount of the coupon;

(3) failing to provide to a WIC customer a cash register receipt that includes the date, total price, and price of each item purchased by the WIC customer; and

(4) failing to provide the commissioner with accurate and complete shelf price survey information within one month of a request by the commissioner.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for three months if the vendor commits a violation under item A three times within any two-year period.

Subp. 14. [Repealed, 29 SR 1202]

Subp. 14a. **Written warnings; termination.**

A. The commissioner shall terminate a vendor agreement if:

- (1) the commissioner disqualifies the vendor; or
- (2) termination of the vendor agreement is required under part 4617.0066, subpart 2.

B. If a vendor commits a violation under subitems (1) to (11), the commissioner shall issue a written warning to the vendor. The vendor must correct the violation within 15 days after the vendor receives the warning. If the vendor fails to correct the violation or commits the same violation at any time more than 15 days but less than six months after receiving the written warning, the commissioner shall terminate the vendor agreement. The commissioner shall issue a written warning if the vendor:

- (1) violates part 4617.0067, subpart 4, item A, B, C, D, or E, or 5; or 4617.0068, subpart 4a;
- (2) is a retail food vendor and does not meet any license or authorization requirement under part 4617.0067, subpart 2;
- (3) is a pharmacy vendor and the vendor's Minnesota Board of Pharmacy registration is suspended or revoked or is not renewed;
- (4) is a retail food vendor that fails to maintain the required minimum stock under part 4617.0067, subpart 3;
- (5) on two occasions, fails to ensure that a prescribed infant formula is in stock and available for purchase within one week of a WIC customer's request under part 4617.0067, subpart 3, item E;
- (6) fails to ensure that a representative of the vendor receives required WIC-approved training;
- (7) fails to make full payment to the commissioner within 120 days of a request by the commissioner under part 4617.0090, subpart 4;

(8) has in stock and available for purchase any expired infant formula of the brand and level of iron fortification approved by the commissioner under part 4617.0171;

(9) is a pharmacy vendor, is not also a retail food vendor, and accepts a WIC voucher or cash-value voucher for any foods other than special infant formula;

(10) fails to be open for business during the business hours that the vendor has reported to the WIC program; or

(11) fails to provide to the commissioner by the applicable deadline the corrective action plan required under subpart 15, item G.

Subp. 15. Inadequate participant access; corrective action plan.

A. Before disqualifying a vendor under any subpart except subpart 2 or 11, item A, the commissioner shall determine whether disqualification of the vendor would result in inadequate participant access, unless under subpart 16, item C, the vendor is not eligible for a civil money penalty instead of disqualification.

B. Disqualification of a vendor located in a Tier 1 county would result in inadequate participant access if the vendor is the only vendor in a clinic town or if:

(1) during the most recent 12 months for which voucher and cash-value voucher redemption information is available for the commissioner's review, the vendor redeemed WIC vouchers and cash-value vouchers in an average monthly amount of at least \$150; and

(2) as of the date of the notice of disqualification or civil money penalty:

(a) the next closest retail food vendor is more than one mile by public road from the vendor, not including roads on which pedestrians are prohibited; and

(b) there is no bus stop or other public transportation within one-half mile by public road from the vendor, not including roads on which pedestrians are prohibited.

C. Disqualification of a vendor located in a Tier 2 county would result in inadequate participant access if the vendor is the only vendor in a clinic town or if:

(1) during the most recent 12 months for which voucher and cash-value voucher redemption information is available for the commissioner's review, the vendor redeemed WIC vouchers and cash-value vouchers in an average monthly amount of at least \$100; and

(2) as of the date of the notice of disqualification or civil money penalty, the next closest retail food vendor is more than five miles by public road from the vendor, including roads on which pedestrians are prohibited.

D. If the commissioner determines under this part that disqualification of the vendor would result in inadequate participant access, then instead of disqualifying the vendor, the commissioner shall, except as provided in item F and in subpart 16, item C, impose on the vendor one or more civil money penalties.

(1) If during the course of a single investigation the commissioner determines that the vendor committed multiple violations, the commissioner shall impose a civil money penalty for each violation that would constitute grounds for disqualification in the absence of inadequate participant access.

(2) For each violation described in subparts 3 to 9 and subpart 10, item A, the civil money penalty is calculated as follows:

(a) determine the vendor's average monthly WIC redemptions for the six months immediately before the month that the notice of civil money penalty is dated;

(b) multiply the monthly average from unit (a) by ten percent; and

(c) multiply the product from unit (b) by the number of months the store would have been disqualified for the violation. The product is the civil money penalty for the violation except as provided in subpart 16 and except that, if this product exceeds \$10,000, the civil money penalty for the violation shall be reduced to \$10,000.

(3) For each violation described in subparts 11, item B, and 12 to 14a, the civil money penalty is \$700 or the average monthly amount of the vendor's WIC redemptions during the most recent 12 months for which voucher and cash-value voucher redemption information is available for the commissioner's review, whichever is less.

(4) The total amount of all civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

E. A civil money penalty assessed under this part must be paid in full no later than 30 days after the date of the notice of assessment. If the vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed under this part, the commissioner shall disqualify the vendor for the length of time that the vendor would have been disqualified if there had been no determination of inadequate participant access.

F. If disqualification of a vendor under subpart 10, item B, would result in inadequate participant access, then the commissioner shall not disqualify the vendor under subpart 10, item B, or impose a civil money penalty in lieu of disqualification under subpart 10, item B.

G. If the commissioner imposes a civil money penalty on a vendor, the commissioner shall also require the vendor to create and implement a corrective action plan to prevent future violations. The corrective action plan must be in writing. The

vendor must provide the corrective action plan to the commissioner no later than 30 days after the date of the notice of assessment.

Subp. 16. Second and subsequent sanctions.

A. For the purpose of this subpart, "federally mandated sanction" means any disqualification or civil money penalty assessed based on this subpart or the violations described in subparts 3 to 9 and 19.

B. If a vendor that has on one occasion received a federally mandated sanction subsequently engages in conduct warranting a second federally mandated sanction, the second federally mandated sanction shall be doubled, except that:

- (1) a civil money penalty for one violation shall not exceed \$10,000; and
- (2) the total of all civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

C. If a vendor that has on two or more occasions received a federally mandated sanction subsequently engages in conduct warranting a third or subsequent federally mandated sanction:

- (1) the vendor shall be disqualified and shall not be eligible for a civil money penalty instead of disqualification; and
- (2) the third and each subsequent sanction shall be doubled.

Subp. 17. Multiple violations.

A. If, during a single investigation, a vendor commits multiple violations that warrant disqualification, then:

- (1) the commissioner shall include all of the violations in the notice of disqualification;
- (2) the commissioner shall disqualify the vendor for the period corresponding to the most serious violation, except as provided in subpart 15; and
- (3) if disqualification under subparts 2 to 9; 10, item A; or 19 is not upheld on appeal and the vendor has also committed one or more violations warranting disqualification under subpart 10, item B, or subparts 11 to 14a, the commissioner shall disqualify the vendor for the period corresponding to the most serious violation described in subpart 10, item B, or subparts 11 to 14a, except as provided in subpart 15.

B. For the purpose of this subpart, a violation warranting disqualification that is described in subparts 2 to 9; 10, item A; or 19 shall be considered more serious than any violation warranting disqualification that is described in subpart 10, item B, or in subparts 11 to 14a.

Subp. 18. General provisions.

A. Except for a violation of subpart 2, a vendor commits a violation of this part if any controlling person, employee, or agent of the vendor committed the described conduct.

B. The commissioner shall notify a vendor in writing of the vendor's disqualification and of the vendor's termination. The written notice shall include all information required by federal regulations. If a disqualification is based on subpart 2, the disqualification shall be effective on the date the vendor receives the written notice of disqualification. If a disqualification is based on any subpart other than subpart 2, the disqualification shall be effective 30 days after the date the written notice of disqualification is mailed. If a termination is based on subpart 14a, item A, subitem (1), the termination shall be effective on the same date that the disqualification is effective. If a termination is based on subpart 14a, item B, the termination shall be effective 30 days after the date the written notice of termination is mailed.

C. A retail food store or pharmacy that has been disqualified or terminated must deposit each voucher and cash-value voucher in the store's or pharmacy's bank account by the earlier of:

- (1) 60 days after the first-day-to-use date on the voucher or cash-value voucher; or
- (2) five days after the effective date of the disqualification or termination.

D. After expiration of the disqualification period, a disqualified vendor may apply for WIC vendor authorization. A retail food store or pharmacy that has been terminated but not disqualified as a WIC vendor may apply for WIC vendor authorization no sooner than two months after the effective date of the termination, except that a retail food vendor terminated under part 4617.0066, subpart 2, may apply for an immediate vendor agreement under part 4617.0066, subpart 3.

E. A vendor may not terminate the vendor's WIC vendor agreement or otherwise withdraw from the WIC program instead of disqualification. The expiration or termination of the vendor agreement shall not affect the commissioner's duty to disqualify the vendor and shall not affect the vendor's right to appeal the disqualification under part 4617.0100.

F. If a violation involves a vendor's acceptance of a voucher or cash-value voucher, the violation occurs on the date the vendor accepts the voucher or cash-value voucher.

G. If a vendor provides food in exchange for a voucher or cash-value voucher under circumstances where the vendor informs the WIC customer that the customer may return the food for cash or a nonfood item and if the WIC customer subsequently does return the food for cash or a nonfood item, the vendor shall be sanctioned in the same way as if the

vendor had provided the cash or nonfood item directly to the WIC customer in exchange for the voucher or cash-value voucher.

Subp. 19. **Previous history of disqualification.** Notwithstanding subparts 7 to 9, if a vendor was previously disqualified under this subpart or subparts 3 to 10, and if any controlling person of the vendor was a controlling person at the time of the previous disqualification, except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for:

A. three years if, twice within any two-year period, the vendor, in exchange for a WIC voucher or cash-value voucher, provides credit other than a rain check or provides a nonfood item other than any alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended;

B. three years if the vendor commits a vendor overcharge twice within any two-year period;

C. three years if, twice within any two-year period, the vendor charges the WIC program for WIC-allowed food not received by a WIC customer; and

D. one year if the vendor provides unauthorized food twice within any two-year period.

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