

902 KAR 18:061. Vendor violations and sanctions.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Vendor Violations and Sanctions. (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for designated violations committed by a vendor, his employee, or agent:

(a) Failure of a vendor to meet the authorization criteria in 902 KAR 18:050:

1. First occurrence: a sixty (60) day disqualification or non-renewal;
2. Second occurrence: a ninety (90) day disqualification or non-renewal; or
3. Third and subsequent occurrences: a 120 day disqualification or non-renewal;

(b) Failure of a vendor to pay a claim. The state WIC agency shall request payment as follows:

1. Mail a letter to the vendor requesting payment by a specified date;
2. If payment is not received, the state WIC agency shall contact the vendor by either email or telephone, reminding vendor of payment due;
3. If payment is not received, the state WIC agency shall send a second letter by certified mail, return receipt requested, of past due claim; and
4. If payment is not received by the deadline specified in the second letter, then the following disqualification shall be issued:

a. First occurrence: a six (6) month disqualification; or

b. Second occurrence and subsequent occurrences: a one (1) year disqualification from the WIC program;

(c) Failure of a vendor to return the WIC vendor authorization stamp and XAC device (if applicable). The state WIC agency shall request receipt of stamp and XAC device (if applicable) as follows:

1. Mail a certified letter to the vendor requesting return of the vendor stamp and XAC device (if applicable) within seven (7) days of disqualification or termination;
2. If the vendor stamp and XAC device (if applicable) are not received, the state WIC agency shall contact the vendor by either email or telephone, reminding the vendor of the vendor stamp and XAC device (if applicable) being due; and
3. If the stamp and XAC device (if applicable) are not returned within seven (7) days of the effective date of termination or disqualification, then an additional six (6) month disqualification shall be issued;

(d) Store personnel requesting the PIN: two (2) positive buys out of three (3) shall result in a one (1) year disqualification;

(e) Using the integrated or WIC XAC device Cash Value Benefits (CVB) functionality to provide non-produce food item(s): two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC program;

(f) Providing free merchandise exclusively to WIC participants as an incentive to redeem WIC benefits: one (1) positive buy out of three (3) shall result in a six (6) month disqualification;

(g) Public notice by a WIC vendor of providing free merchandise exclusively to participants

as an incentive to redeem WIC benefits: one (1) occurrence shall result in a six (6) month disqualification;

(h) Conviction of trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a permanent disqualification;

(i) Trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a six (6) year disqualification;

(j) Sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument: one (1) positive buy shall result in a three (3) year disqualification;

(k) Claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental food item for a specific period of time:

1. An inventory audit for a thirty (30) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or

2. An inventory audit for a ninety (90) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification;

(l) Charging a participant more for supplemental food than a non-WIC customer is charged or the current shelf price:

1. Two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification if:

a. The vendor has exhibited a prior pattern of overcharging based upon routine monitoring visits which have resulted in two (2) letters for price discrepancies; or

b. The vendor has exhibited a pattern of two (2) out of four (4) quarters of low variance in the prior federal fiscal year;

2. The state WIC agency shall:

a. Require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state WIC agency; and

b. Notify a vendor who exhibits a pattern of low variance for two (2) or more quarters during the federal fiscal year; and

3. Three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in subparagraph 1. of this paragraph;

(m) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or unauthorized person: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(n) Charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the WIC benefits but not purchased by the WIC participant: three (3) positive buys out of three (3) shall result in a three (3) year disqualification;

(o) Providing credit, an IOU, a rain check, a due bill, or a store credit, or

providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, in exchange for food benefits shall result in the following disqualification: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(p) Providing an unauthorized food item or items in exchange for a food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(q) Charging for supplemental food provided in excess of those listed on the food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(r) A vendor who has been disqualified from the SNAP shall be disqualified from the WIC program for the same length of time as the SNAP disqualification; or

(s) A vendor who has been assessed a civil money penalty by SNAP, as provided under 7 C.F.R. 278.6, shall be disqualified from the WIC program for the same length of time for which the vendor would have been disqualified from SNAP unless the WIC program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.

(2) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

(3) A vendor who has previously received two (2) or more of the mandatory sanctions designated in subsection (1)(h) through (q) of this section, and who receives another sanction for a violation designated in subsection (1)(h) through (q) of this section, shall have the third and all subsequent sanctions be doubled. A civil monetary penalty shall not be assessed for a third or subsequent sanction.

(4) Disqualified vendors, even if the decision is later overturned, shall not be entitled to receive compensation for revenues lost as a result of a disqualification.

Section 2. Vendor Notification (1) Except for violations identified in Section 1(1)(a) through (c), (f) through (j), (r), and (s) of this administrative regulation, the state WIC agency shall notify a vendor in writing if an investigation reveals a potential initial violation.

(2) The vendor shall be notified before another violation is documented unless the state WIC agency determines that notifying the vendor would compromise the investigation.

(a) The notification determination shall be made on a case by case basis.

(b) A notification of a potential initial violation shall not be issued if:

1. The vendor is identified as a high-risk vendor in accordance with 902 KAR 18:090;
2. One (1) or more of the same type of violation occurred within the same federal fiscal year or prior federal fiscal year and the vendor has received prior notification; and
3. Sending a notification letter would divulge the identity of the investigator. (40 Ky.R. 503; 832; eff. 10-16-2013.)