

Chapter HSS 149

**SELECTION AND MONITORING OF VENDORS FOR THE
SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN,
INFANTS AND CHILDREN (WIC)**

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Note: Chapter HSS 149 was created as an emergency rule effective June 7, 1986.

HSS 149.01 Authority, purpose and applicability. (1) This chapter is adopted pursuant to ss. 46.016 and 227.11 (2) (a), Stats., for the purpose of establishing conditions under which the state WIC office will authorize grocery stores and pharmacies to be vendors for the special supplemental food program for women, infants and children established under s. 17 of the Child Nutrition Act of 1966, as amended, 42 USC 1786, and under regulations set forth in 7 CFR 246.

(2) This chapter applies to the vendor contract period beginning January 1, 1987 and to the application process for that contract period, and to subsequent contract periods.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.

HSS 149.02 Definitions. In this chapter:

(1) "Applicant" means a grocery store or pharmacy which applies to the state WIC office to be an authorized vendor.

(2) "Authorized food list" means the list of authorized foods approved by the state WIC office.

Note: The authorized food list is available from the State WIC Office, Division of Health, P.O. Box 309, Madison, WI 53701.

(3) "Authorized foods" means types, brands or varieties of foods which meet requirements specified under 7 CFR 246.10 and the WIC operations manual, are approved by the state WIC office, and are listed on the authorized food list and the vendor application form.

(4) "Change of ownership" means any transfer of the right to control the assets or management of a vendor, or any majority changes in ownership of a sole proprietorship, of a partnership or of the stock of a corporation which owns a vendor.

(5) "Contract" means a completed application form that has been approved and signed by the state WIC office, the vendor guidebook, the authorized food list, and periodic newsletters and other formal instructions issued by the state WIC office to vendors.

(6) "Contract period" means a period of 2 calendar years beginning January 1 of the odd-numbered year.

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(7) "Customer area" means the portion of a grocery store or pharmacy which is normally frequented by customers, and does not include storage or other areas that are normally not frequented by customers.

(8) "Department" means the department of health and social services.

(9) "Draft" means the negotiable instrument used by participants in the WIC program to purchase authorized foods.

(10) "Food stamps" means an assistance program under the Food Stamp Act of 1977, as amended.

(11) "Grocery store" means a retail store whose primary business is the sale of food.

(12) "Local project" means one of the following agencies that has a contract with the state WIC office to provide services to participants in a project service area:

(a) A public health or human service agency or a private, nonprofit health or human service agency which provides health services either directly or through contract;

(b) An Indian health service unit;

(c) An Indian tribe, band or group recognized by the U.S. department of the interior which operates a health clinic or is provided health services by an Indian health service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the U.S. department of the interior, which operates a health clinic or is provided health services by an Indian health service unit.

(13) "Minimum stock requirement" means the types, varieties, brands and quantities of foods a grocery store or pharmacy is required to keep in the customer area as specified on the vendor application form and on the authorized food list.

(14) "Participant" means any of the following persons receiving supplemental food, nutrition education and counseling services under the WIC program:

(a) A pregnant woman;

(b) A woman up to 12 months after giving birth who is breastfeeding her infant;

(c) A woman up to 6 months after a pregnancy has ended who is not breastfeeding her infant;

(d) An infant from birth to one year of age; or

(e) A child from one to 5 years of age.

(15) "Pharmacy" means an establishment issued a license to operate as a pharmacy under s. 450.06, Stats.

(16) "Project service area" means the geographic area or population group served by a local project.

(17) "Standardized combination of foods" means a group of specific types of authorized foods identified on commonly-used drafts selected by the state WIC office for the purpose of calculating average prices charged by vendor applicants.

(18) "State WIC office" means the unit of the department assigned to administer the WIC program.

(19) "USDA" means the United States department of agriculture.

(20) "Vendor" means a grocery store or pharmacy authorized by the state WIC office to sell authorized foods to participants.

(21) "Vendor guidebook" means a publication developed by the state WIC office for the use of vendors which describes the WIC program, reproduces program policies, including those setting forth vendor obligations, and contains detailed procedures for operation of the program.

Note: Copies of the vendor guidebook may be obtained from the State WIC Office, Division of Health, P.O. Box 309, Madison, WI 53701.

(22) "Vendor stamp" means the rubber stamp provided to vendors by the state WIC office for validating drafts.

(23) "WIC" means the special supplemental food program for women, infants and children authorized by s. 17 of the Child Nutrition Act of 1966, as amended, 42 USC 1786.

(24) "WIC operations manual" means a publication developed by the state WIC office for the use of local projects and approved by USDA, which details the policies and procedures necessary to operate a local WIC program.

Note: The WIC operations manual is on file at the State WIC Office and at each local project office. A copy may be obtained from the State WIC Office, Division of Health, P.O. Box 309, Madison, WI 53701.

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HSS 149.03 Vendor authorization. (1) AUTHORIZATION REQUIRED. Only grocery stores and pharmacies that are authorized as vendors by the state WIC office may accept WIC drafts and be reimbursed by the state WIC office for foods provided to participants.

(2) CONDITIONS OF ELIGIBILITY. In order to be authorized as a vendor under this chapter, a grocery store or pharmacy shall:

(a) If it has had prior involvement with WIC or other food and nutrition service programs of the USDA, have an acceptable history with those programs. In determining whether that history is acceptable, the state WIC office shall take into account the history of the grocery store's or pharmacy's owners and managers with regard to WIC and other food and nutrition service programs of the USDA. A history of suspension, termination or noncompliance with regard to these programs, or a history of doing business with these programs without authorization, may result in denial of the application. For a period of up to 3 years from the date of the denial, the state WIC office may not process an application submitted by a grocery store or pharmacy denied authorization due to unauthorized participation in WIC or other food and nutrition service programs of USDA. In the history review, the grocery store or pharmacy shall be held responsible for the acts of its employees;

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(b) Meet the minimum stock requirement;

(c) Charge a price for a standardized combination of foods which is comparable to the average price charged for those foods by other vendor applicants in the project service area in which the grocery store or pharmacy is located, as determined by the state WIC office. In this paragraph, "comparable" means no more than 115% of the average price in the project service area in which the grocery store or pharmacy is located. Beginning March 1, 1987 and every 6 months thereafter, the state WIC office shall adjust the average price for each project service area based on statewide prices shown in redeemed drafts for the standardized combination of foods during the previous 6 month period;

(d) Be found satisfactory following a site visit, if one is conducted under sub. (4);

(e) Complete training required under sub. (6); and

(f) Be located within this state.

(3) APPLICATION. (a) Any owner of a grocery store or pharmacy in this state may apply for authorization as a vendor by submitting an application to the state WIC office on forms provided by that office.

(b) The application shall include:

1. Name and address of the grocery store or pharmacy;

2. The name of the owner of a grocery store or pharmacy which is a sole proprietorship, the names of all partners in a grocery store or pharmacy owned by a partnership or, if the grocery store or pharmacy is owned by a corporation, the name of the corporation and of its president;

3. Square footage of the grocery store or pharmacy;

4. Annual gross receipts or sales of the grocery store or pharmacy;

5. A description of the grocery store's or pharmacy's participation in food and nutrition service programs of the USDA;

6. Instances in which the grocery store or pharmacy or its owners or managers have been suspended or disqualified from WIC, food stamps, or any other programs operated by the food and nutrition service of the USDA;

7. Identification of all authorized foods on the shelf or in the cooler in the customer area of the store on the day the application is completed;

8. Non-sale prices of authorized foods on the day the application is completed; and

9. Other information as requested on the application form.

(c) Information provided in the application shall be accurate and complete. The applicant shall provide additional information relating to the conditions of eligibility under sub. (2) if requested to do so by the state WIC office.

(d) The state WIC office shall deny the application if false information is submitted and shall return incomplete applications unprocessed. An application returned due to incompleteness may, following completion, Register, December, 1986, No. 372

be resubmitted within 15 days to the state WIC office, or a new application may be submitted at any time.

Note: Application forms are available from the State WIC Office, Division of Health, P.O. Box 309, Madison, WI 53701.

(4) **SITE VISITS.** (a) If the state WIC office determines that a grocery store or pharmacy meets the history, stock, and price requirements specified in sub. (2) (a) to (c), a site visit may be made by staff of the local project in the project service area in which the grocery store or pharmacy is located. A site visit shall be required for all grocery stores and pharmacies which have not previously been authorized as WIC vendors and may be required for previously-authorized applicants if the state WIC office or local project determines that a site visit is necessary for reasons which may include, but are not limited to, suspension or termination of the store's authorization during the most recent contract period, possible program offenses on the part of the applicant, or some reason to suspect that information on the application may be false.

(b) In conducting a site visit, local project staff shall verify information included on the application and shall evaluate the cleanliness of the grocery store or pharmacy and the freshness of authorized foods.

(c) Authorization shall be denied if, at the time of the site visit:

1. The grocery store or pharmacy does not have foods meeting the minimum stock requirement on shelves or in coolers in the customer area;

2. Prices are neither marked on food containers nor otherwise posted in the immediate area where the foods are kept in the customer area of the store;

3. Prices are substantially different from those listed on the application;

4. The store is in violation of applicable federal, state and local health protection laws and ordinances;

5. Authorized foods are older than the expiration date indicated on the package or are otherwise not fresh; or

6. It is determined that the grocery store or pharmacy provided false information on the application.

(d) If an application for authorization is denied under par. (c), a grocery store or pharmacy may submit a new application following correction of the situation which resulted in the denial. Only one additional site visit shall be made in a 6-month period under these circumstances.

(5) **APPROVAL OF APPLICATION.** Within 60 days after receipt by the state WIC office of a complete application for initial authorization as a vendor, the state WIC office shall either approve or deny the application. Within 120 days after receipt by the state WIC office of a complete application for continued authorization as a vendor for a new contract period, the state WIC office shall either approve or deny the application. If the application is denied, the department shall give the applicant reasons, in writing, for the denial.

(6) **TRAINING.** If the application and site visit are acceptable, the owner of the grocery store or pharmacy or the owner's designee from each location for which authorization is requested shall participate in a train-

ing session at a location designated by local project staff. A signed contract, vendor stamp, and educational materials shall be distributed to the persons attending the training session.

(7) **DURATION OF AUTHORIZATION.** (a) All authorizations shall expire on December 31 of even-numbered years regardless of when initial authorization was granted. A new application shall be submitted for each 2-year contract period.

(b) The state WIC office may suspend or terminate a vendor's authorization pursuant to s. HSS 149.06 at any time during a contract period or may deny renewal of authorization for failure to comply with program requirements.

(c) Authorization of a vendor shall terminate automatically upon a change of ownership.

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HSS 149.04. Vendor rights and responsibilities. (1) **NONDISCRIMINATION.** The state WIC office may not discriminate against an applicant or vendor on the basis of age, race, handicap, sex, creed, national origin, ancestry, sexual orientation, arrest or conviction record, or marital status.

Note: Applicants and vendors who believe they have been discriminated against should write to the Affirmative Action/Civil Rights Compliance Office, Department of Health and Social Services, P.O. Box 7850, Madison, WI 53767.

(2) **COMPLIANCE WITH FEDERAL, STATE AND LOCAL REQUIREMENTS.** Vendors shall comply with:

(a) WIC program requirements specified in this chapter and 7 CFR 246; and

(b) Applicable federal, state, and local health protection laws and ordinances.

(3) **DRAFT REDEMPTION.** Vendors shall:

(a) Provide to participants, in exchange for drafts, only the foods and no more than the quantities specified on drafts and on the authorized food list;

(b) Accept drafts only for foods included in the contract; and

(c) Comply with draft processing and redemption procedures described in the vendor guidebook and periodic newsletters and other formal instructions issued by the state WIC office to vendors.

(4) **STOCK.** Vendors shall, at all times, maintain foods meeting the minimum stock requirement on the shelves or in the cooler in the customer area of the store.

(5) **PRICES.** Vendors shall:

(a) Charge participants prices that are equal to or lower than prices charged to other customers;

(b) Provide price lists to the state WIC office or the local project in the project service area in which the vendor is located upon request of the state WIC office or the local project;

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(c) Maintain reasonable prices consistent with prices indicated on the application and charged by other vendors in the project service area in which the vendor is located; and

(d) Display the prices of authorized foods on the foods, on the shelves in proximity to the foods, or in the immediate area where the foods are kept in the customer area of the store.

(6) **REQUIRED INFORMATION.** Vendors shall:

(a) Keep on file a copy of the vendor guidebook, the approved application form and newsletters and other updated instructions from the state WIC office and the local project;

(b) Display a sign, sticker or other evidence of authorization as a WIC vendor in an area visible to participants; and

(c) Ensure that the current authorized food list is readily accessible to cashiers.

(7) **USE OF VENDOR STAMP.** (a) A vendor stamp may be used only for transactions completed by the vendor for which it was issued. A vendor shall keep the vendor stamp in a safe place and shall immediately report loss of the stamp to the state WIC office. A vendor stamp may not be duplicated.

(b) A vendor shall return the vendor stamp to the local project or to the state WIC office immediately following a change in ownership, upon closing the store or upon suspension or termination of authorization under s. HSS 149.06.

(8) **CHANGE OF OWNERSHIP.** A vendor shall immediately report a change of ownership or of location to the local project in the project service area in which the vendor is located or to the state WIC office. In the case of a change in ownership, all drafts accepted prior to the change shall be deposited in the vendor's bank immediately and WIC business shall cease until an application has been submitted by the new owner and approved by the state WIC office.

(9) **SERVICES TO PARTICIPANTS.** Vendors shall offer to participants the same courtesies offered to other customers, in accordance with equal opportunity guidelines under 7 CFR 15.

(10) **TRAINING.** The owner of a grocery store or pharmacy authorized as a WIC vendor, the owner's designee, or if the owner owns more than one grocery store or pharmacy, the owner's designee from each authorized location shall attend any training sessions required by the state WIC office or the local project in the project service area in which the vendor is located and shall ensure that all employees who process drafts are trained in draft redemption procedures.

(11) **ACTS OF EMPLOYEES.** A vendor is responsible for the acts of its employees related to the WIC program.

(12) **REPORTING.** A vendor shall notify the local project in the project service area in which the vendor is located of instances in which a participant has failed to comply with WIC program requirements.

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HSS 149.05 Site visits to vendors. (1) Staff of the state WIC office or of the local project in the project service area in which a vendor is located may make a site visit to a vendor under sub. (2) at any time during a contract period. The reasons for conducting a site visit under sub. (2) may include, but are not limited to:

- (a) High prices;
- (b) High volume of WIC sales;
- (c) High number of rejected drafts;
- (d) Review of draft redemption records;
- (e) Suspected failure to comply with program requirements;
- (f) Complaints received by the local project or state WIC office; or
- (g) Random selection.

(2) A site visit shall be of one of the following types:

(a) A compliance visit, in which a WIC representative posing as a participant presents food or non-food items and WIC drafts at the checkout counter, and may either inform the cashier or manager of the visit or leave the store and allow the drafts to continue through the banking system;

(b) A monitoring visit, in which a WIC program representative visits a vendor to verify stock levels, prices and compliance with WIC procedures; or

(c) A training session, in which program procedures are clarified.

(3) A WIC representative may review drafts available in the grocery store or pharmacy at the time of a site visit.

(4) If noncompliance is found by a WIC representative during a compliance visit under sub. (2) (a) or a monitoring visit under sub. (2) (b), penalties under s. HSS 149.06 shall apply.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.

HSS 149.06 Failure to comply with program requirements. (1) **CLASS A OFFENSES.** (a) The state WIC office shall terminate the authorization of a vendor after giving the vendor reasonable notice and opportunity for a hearing, if the state WIC office finds that the vendor has committed a class A offense as follows:

1. Redeemed drafts for any store not authorized as a WIC vendor;
2. Redeemed drafts for food purchased at an address other than the address that appears on the application;
3. Provided cash or other consideration for drafts;
4. Charged for foods not received by a participant;
5. Charged participants higher prices than prices charged to other customers;
6. Been disqualified or suspended from participation in food stamps or other food and nutrition service programs operated by USDA;

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7. Provided false information on the application, including but not limited to:

a. Failure to disclose that the vendor has been suspended or terminated by WIC, food stamps, or another food and nutrition service program operated by USDA;

b. Incorrect information regarding the vendor's annual receipts, stock or prices; or

c. Incorrect information regarding the vendor's ownership or management;

8. Intentionally entered on a draft a dollar amount other than the actual retail price of the items purchased, as substantiated by a site visit;

9. Duplicated a vendor stamp for a fraudulent purpose or used a counterfeit vendor stamp;

10. Accepted drafts prior to receiving authorization from the state WIC office; or

11. Substituted or allowed the purchase of non-food items or alcoholic beverages.

(b) A vendor whose authorization is terminated under par. (a) shall be disqualified from WIC for a period of up to 3 years as determined by the state WIC office.

(2) CLASS B OFFENSES. (a) A vendor has committed a class B offense if the state WIC office finds that the vendor has:

1. Failed to maintain the minimum stock requirement;

2. Substituted or allowed the purchase of unauthorized foods or food not specified on the draft;

3. Provided an assurance that a participant could make purchases on 2 or more occasions with a single draft;

4. Provided amounts of food in excess of amounts specified on the draft;

5. Required participants to countersign the draft prior to indicating dollar amount;

6. Provided cash for returned WIC foods;

7. Contacted participants for restitution of returned WIC drafts;

8. Accepted drafts that are countersigned before being presented to the cashier for redemption;

9. Failed to allow the purchase of the full amount of food specified on the draft;

10. Accepted or redeemed altered drafts;

11. Stocked or sold authorized foods that were not fresh;

12. Failed to deposit redeemed drafts directly into the vendor's own bank account, sold drafts or used drafts to repay debts to other parties;

13. Failed to provide updated price lists when requested by the state WIC office or local project in the project service area in which the vendor is located;

14. Following authorization, made price increases which are inconsistent with price increases by other authorized vendors in the project service area in which the vendor is located; or

15. Failed to comply with applicable health protection laws and ordinances.

(b) If it finds that a vendor has committed an offense under par. (a), the state WIC office shall, after giving the vendor reasonable notice and opportunity for a hearing:

1. Send the vendor a warning letter and require training for the first offense committed during a contract period;

2. Suspend the vendor's authorization for up to 6 months as determined by the state WIC office for the second offense committed during a contract period; or

3. Terminate the vendor's authorization for up to 3 years as determined by the state WIC office for the third offense committed during a contract period.

(3) CLASS C OFFENSES. (a) A vendor has committed a class C offense if the state WIC office finds that the vendor has:

1. Failed to adequately train cashiers and other store personnel in draft redemption procedures;

2. Failed to verify the participant's or proxy's signature on a draft;

3. Required participants to use a separate checkout lane or engaged in any other form of discrimination against participants;

4. Accepted drafts prior to the issue date;

5. Accepted drafts more than one calendar month after the issue date;

6. Failed to attend training sessions required by the state WIC office or a local project;

7. Failed to record the price on drafts with permanent ink;

8. Failed to display prices for authorized foods on the foods, on the shelves in proximity to the foods or in the immediate area where the foods are kept in the customer area of the store; or

9. Duplicated a vendor stamp for a nonfraudulent purpose, which may include, but not be limited to replacing a worn or damaged stamp or making multiple copies of the stamp for the vendor's convenience.

(b) If it finds that a vendor has committed an offense under par. (a), the state WIC office shall, after giving the vendor reasonable notice and opportunity for a hearing:

1. Require the vendor to attend training for the first offense committed during a contract period;

2. Issue a warning letter for the second offense committed during a contract period;

3. Suspend the vendor's authorization for a period of up to 6 months as determined by the state WIC office for the third offense committed during a contract period; or

4. Terminate authorization of the vendor for up to 3 years as determined by the state WIC office for a fourth offense committed during a contract period.

(4) COMBINATION OF OFFENSES. (a) If the state WIC office determines that a vendor simultaneously committed an offense under both sub. (2) (a) and sub. (3) (a), the state WIC office shall impose one of the penalties under sub. (2) (b).

(b) If during the course of a single site visit a WIC representative finds evidence of more than one offense of the same class, those offenses of the same class shall be counted as one offense for purposes of determining the applicable penalty under this section.

(c) If the state WIC office determines that a vendor committed a first offense under sub. (3) (a) subsequent to committing an offense under sub. (2) (a), the state WIC office shall suspend the authorization of the vendor for a period of up to 6 months as determined by the state WIC office.

(d) If the state WIC office determines that a vendor committed a first offense under sub. (2) (a) subsequent to committing an offense under sub. (3) (a), the state WIC office shall send the vendor a warning letter and require training.

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HSS 149.07 Waivers. The state WIC office may waive any condition of eligibility specified in s. HSS 149.03 (2) or the suspension or termination of a vendor's authorization under s. HSS 149.06 if the office determines, after consultation with the local project in the project service area in which the vendor is located, that requiring an applicant to meet the conditions of eligibility or suspending or terminating the vendor's authorization would create undue hardship for participants.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.

HSS 149.08 Appeal procedures. (1) SCOPE. (a) A grocery store or pharmacy may appeal the following administrative actions by the state WIC office:

1. Denial of an application;
2. Suspension of authorization under s. HSS 149.06; and
3. Termination of authorization under s. HSS 149.06.

(b) Expiration of a vendor's authorization at the end of a contract period is not subject to appeal.

(2) WRITTEN NOTICE. The state WIC office shall begin actions described under sub. (1) (a) by serving upon the vendor written notice of the action by certified mail or by personal delivery.

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(3) REQUEST FOR HEARING. (a) A vendor desiring to contest a state WIC office action under sub. (1) (a) may request a hearing. The request shall be in writing and shall:

1. Be submitted to the department's office of administrative hearings; and

2. Be received by the office of administrative hearings within 15 days after the vendor's receipt of state WIC office notification of the penalty.

Note: The mailing address of the Office of Administrative Hearings is P.O. Box 7875, Madison, WI 53707.

(b) If the hearing request is submitted in accordance with par. (a), the department shall hold a hearing and issue a final decision within 60 days after the date on which the request for a hearing is received. If the action being appealed under sub. (1) (a) concerns a grocery store or pharmacy which is an authorized vendor at the time of the appeal, the grocery store or pharmacy may continue to participate in the WIC program until a final administrative hearing decision is issued by the department.

(c) A vendor may reschedule the hearing date no more than twice under the following conditions:

1. A first request to reschedule a hearing may be granted by the office of administrative hearings upon specific request to that office; and

2. A request to reschedule the hearing a second time shall be granted by the office of administrative hearings only for good cause. Good cause occurs when the vendor's representative cannot attend the scheduled hearing due to circumstances beyond his or her control, including but not limited to serious illness, unavailability of transportation to the hearing site due to mechanical problems, or severe weather conditions.

(d) The state WIC office may reschedule the hearing date under circumstances comparable to those stated under par. (c).

(e) Hearings shall be conducted in accordance with ss. 227.44 to 227.50, Stats.

(f) The final hearing decision is subject to judicial review under s. 227.52, Stats.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.