SECTION 8. WIC VENDOR VIOLATIONS AND SANCTIONS

FEDERALLY MANDATED SANCTIONS

Federal regulations at 7 CFR Part 246.12(l)(1) mandates that the violations included in the Mandatory Federal Sanctions chart in this section shall result in mandatory sanctions.

Incidents of a violation are accrued over a three (3) year period starting on the date of the first incident, regardless of the date that the Vendor was notified. Violations remain on the Vendor's record for thirty-six (36) months and will be used when determining how many incidents have occurred.

A Vendor who is assessed a second mandatory sanction for violations numbered 2 -10 in the Mandatory Federal Sanctions chart below shall be assessed double the second mandatory sanction. Civil Money Penalties (CMP) may be doubled up to the limits allowed.

A Vendor who has previously been assessed two (2) or more mandatory sanctions for violations 2-10 listed below and receives another mandatory sanction shall be assessed a mandatory sanction that is double the second sanction and all subsequent mandatory sanctions. Civil Money Penalties may not be assessed in lieu of disqualification for third or subsequent sanctions for violations listed above.

WIC shall disqualify a Vendor who has been disqualified from the Supplemental Nutrition Assistance Program (SNAP). The length of disqualification shall be for the same amount of time as the SNAP disqualification, but may start at a later date. Disqualification based on a SNAP disqualification shall not be subject to administrative or judicial review under WIC. WIC may disqualify a Vendor that has been assessed a Civil Money Penalty for hardship in SNAP. The length of such disqualification shall be for the same amount of time the Vendor would otherwise have been disqualified from SNAP.

A Vendor who commits fraud or abuse of the WIC Program is liable to prosecution under applicable Federal, State or local laws. Under 7 CFR Part 246.23, whoever embezzles, willfully misapplies, steals or obtains by fraud any program funds shall be fined not more than $25,000 or imprisoned for not more than five 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 year or both.

STATE VIOLATIONS AND SANCTIONS

Violations listed in the State Sanctions chart below include administrative, procedural, fraud, and abuse violations. The numbers of incidents are calculated in the one (1) year period from the date of the incident regardless of the date that the Vendor was notified. Violations remain on the Vendor's record for 12 months and will be used when determining how many incidents have occurred.

For both Federal and State violations, If WIC determines that disqualification of the Vendor would result in inadequate participant access, a Civil Money Penalty **may** be imposed in lieu of disqualification. This option will only be offered in cases where the WIC Program determines that disqualifying the Vendor would result in a hardship, not just an inconvenience, to participants. The Civil Money Penalty details and calculations are included at the end of this section.

MANDATORY FEDERAL SANCTIONS		
VIOLATION	**MAXIMUM NUMBER OF INCIDENTS**	**LENGTH OF DISQUALIFICATION**
1. Vendor convicted of trafficking WIC food instruments or cash-value vouchers or 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 food instruments or cash-value vouchers.	One (1)	Termination of MOA and permanent disqualification
2. Selling firearms, ammunition, explosives or controlled substances [as defined in 21 U.S.C. 802] in exchange for WIC food instruments or cash-value vouchers.	One (1)	Termination of MOA and six (6) year disqualification.
3. Buying or selling WIC food instruments or cash-value vouchers for cash (trafficking).	One (1)	Termination of MOA and six (6) year disqualification
4. Sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments or cash-value vouchers.	One (1)	Termination of MOA and three (3) year disqualification.
5. A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers.	Two (2)	Termination of MOA and three (3) year disqualification.
6. A pattern of charging for supplemental food not received by the WIC participant.	Two (2)	Termination of MOA and three (3) year disqualification.
7. A pattern of receiving, transacting, and/or redeeming WIC food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person.	Two (2)	Termination of MOA and three (3) year disqualification.

MANDATORY FEDERAL SANCTIONS		
VIOLATION	**MAXIMUM NUMBER OF INCIDENTS**	**LENGTH OF DISQUALIFICATION**
8. A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time.	One audit (1)	Termination of MOA and three (3) year disqualification.
9. A pattern of vendor overcharges.	Two (2)	Termination of MOA and three (3) year disqualification.
10. A pattern of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental foods provided in excess of those listed on the food instrument.	Three (3)	Termination of MOA and one (1) year disqualification.
11. Vendor who has been disqualified from SNAP.	One (1)	Termination of MOA and disqualification for the same length of time as the SNAP disqualification. No administrative review is allowed.

STATE SANCTIONS		
VIOLATION	**MAXIMUM NUMBER OF INCIDENTS**	**LENGTH OF DISQUALIFICATION**
1. A pattern of failure to remove or allow the purchase of WIC food items after the manufacturer's expiration date printed on the food container.	Three (3)	Termination of MOA and six (6) month disqualification.
2. A pattern of requiring the purchase of all items listed on the WIC check or preventing the purchase of all items listed on the WIC food instrument.	Three (3)	Termination of MOA and six (6) month disqualification.
3. A pattern of requiring the purchase of specific brands (although other WIC-authorized brands are available).	Three (3)	Termination of MOA and six (6) month disqualification.

STATE SANCTIONS		
VIOLATION	**MAXIMUM NUMBER OF INCIDENTS**	**LENGTH OF DISQUALIFICATION**
4. A pattern of failure to document on receipt the value of any discount coupon or other amount that was deducted from the total sales price of the WIC foods purchased with the WIC food instrument.	Three (3)	Termination of MOA and six (6) month disqualification.
5. A pattern of obtaining the WIC customer's signature before the dollar amount and date is filled in on the WIC food instrument.	Three (3)	Termination of MOA and six (6) month disqualification.
6. A pattern of failure to maintain the minimum variety and inventory of WIC foods including, but not limited to, the required quantities of Least Expensive Brand (LEB) items as declared.	Three (3)	Termination of MOA and six (6) month disqualification.
7. A pattern of requiring participants to make additional purchases in order to redeem WIC food instruments	Two (2)	Termination of MOA and one (1) year disqualification.
8. A pattern of failure to clearly display prices or clearly mark the prices for all WIC foods on the shelf, product, or nearby area.	Two (2)	Termination of MOA and one (1) year disqualification.
9. A pattern of failure to maintain or provide purchase records for infant formula and other WIC foods as well as other records, including inventory records, relating to the performance of the WIC Vendor Agreement that are required to be maintained for four (4) years after the expiration of the Agreement.	Two (2)	Termination of MOA and one (1) year disqualification.
10. A pattern of failure to remit payment for refunds requested by WIC.	Two (2)	Termination of MOA and one (1) year disqualification.
11. A pattern of obtaining infant formula from a source not included on the WIC Authorized Infant Formula Sources list.	Two (2)	Termination of MOA and one (1) year disqualification.

In the case of an outlet of a chain-store, only the violating outlet will be disqualified and removed from the list of outlets covered by the MOA.

WIC may assess multiple violations to the Vendor at the same time.

Disqualifications that extend past the end of an Agreement period shall continue in force into the new Agreement period until the end of the disqualification. Vendors may start the re-application, authorization and training process beginning ninety (90) days prior to the end of the disqualification, noting the disqualification on the application where indicated. Enrollment is open all year with the exception of July, August and September every third year when all authorizations expire. If the Vendor meets all application, training and contract requirements, the new WIC Agreement **may** become effective immediately after the end of the last month of disqualification.

SANCTION PROCESS

WIC shall disqualify a Vendor from participating in WIC for any of the violations listed above, including substantiated Vendor errors, abuse or fraud committed by the Vendor, its owners, officers, managers, employees, or agents. The imposition of disqualifications shall not be construed as excluding or replacing any other criminal or civil sanctions, penalties or remedies applicable under any Federal or State law.

Any method used by WIC to determine a violation is an investigation. An infraction of WIC regulations or other requirements is a violation. **An administrative action taken as a result of a violation is a sanction. All reference to days or years shall be calculated in calendar days or calendar years.** Vendors will be notified in writing of the initial violation, prior to documenting another incidence of the violation, as notification is required for violations that require a pattern before a sanction is imposed, unless the State agency determines that notification will compromise the integrity of its investigation. Disqualification of the Vendor from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP). The length of disqualification shall be for the same amount of time as the WIC disqualification, but may start at a later date. Such disqualification shall not be subject to administrative or judicial review under SNAP.

WIC shall disqualify a Vendor who has been disqualified from SNAP. The length of disqualification shall be for the same amount of time as the SNAP disqualification, but may start at a later date. Disqualification based on a SNAP disqualification shall not be subject to administrative or judicial review under WIC.

A pattern of incidences is usually needed to warrant a mandatory sanction. In cases of extreme program abuse, only one incident of violation may warrant a Vendor disqualification. For example, a Vendor shall be disqualified from WIC for one incidence of buying or selling WIC food instruments for cash (trafficking) or one incidence of selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food instruments. See the Federal and State Violations and Sanctions tables above for detailed information on number of incidences needed to impose sanctions.

Federal regulations establish the length of disqualification for mandatory sanctions appropriate to the severity of the violation. For mandatory Federal sanctions and for State sanctions, WIC must

impose either disqualification or a Civil Money Penalty in lieu of disqualification.

In situations where a Vendor is found guilty of multiple violations during the course of a single investigation, the mandatory sanction against the Vendor shall be determined by the most severe violation or the assessment of multiple Civil Money Penalties.

Prior to being disqualified, the Vendor shall be sent a written notice of the disqualification. This notice shall include reasons for the disqualification, the effective date of the action (some disqualifications may be effective upon date of receipt of this notice), the Vendor's right to appeal, and the procedures to be followed to file an appeal. Vendors may receive a copy of the administrative hearing procedures upon request.

For mandatory Federal and State sanctions, WIC may not accept the Vendor's voluntary withdrawal from the WIC Program or non-renewal of the vendor agreement as an alternative to disqualification or payment of Civil Money Penalties.

CIVIL MONEY PENALTIES

Using the formula outlined below, WIC shall make the calculation of the CMP amount.

If WIC imposes CMPs in lieu of disqualification, the Vendor shall submit a written corrective action plan that indicates the steps the Vendor shall take to assure that the violations shall not reoccur.

CMPs do not relieve the Vendor of the financial liability for previous compliance issues such as outstanding overcharge recoveries or payments due for the sale of unauthorized foods. Such outstanding liabilities must be paid in addition to the CMP.

WIC shall not accept voluntary withdrawal by the Vendor or non-renewal of the vendor agreement to avoid payment of CMPs. If CMPs are not paid as required, WIC shall impose the disqualification corresponding to the violation for which the CMPs were assessed.

Procedure for Assessing a Civil Money Penalty

The Vendor shall be sent a written notice of the CMPs in lieu of disqualification. This notice shall include reasons for the disqualification, notice that WIC has decided to offer CMPs in lieu of disqualification, the effective date of the action, the Vendor's right to appeal, the procedures to file an appeal, , and notice that the Vendor will be contacted to schedule a meeting with WIC to discuss the CMP offer.

The meeting shall cover the following:

1. The amount of the CMP (as determined by the following procedure for calculating CMPs);
2. The method(s) of payment of the CMP available to the Vendor; and
3. Discussion of all non-compliance issues, not just those that brought about the disqualification.

Also, at the meeting, the Vendor shall be advised of the following:

- Payment of the CMP does not relieve the Vendor of its obligation to complete a corrective action plan approved by WIC to resolve identified problems or protect the Vendor from future sanctions or disqualification for continued non-compliance;
- Payment of the CMP does not settle all civil liabilities;
- When determining disqualifications, mandatory sanctions settled by CMPs must be used to double a second or subsequent mandatory sanction, even if the type/nature of violations resulting in the previous mandatory sanction differs; and
- The CMP settlement does not prohibit further WIC investigations.

Procedure for Calculating Civil Money Penalties

For all mandatory Federal and State sanctions listed above, unless otherwise specified in 7 CFR 3.91(b)(3)(v), WIC will use the following formula to calculate a Civil Money Penalty imposed in lieu of disqualification:

Step 1: Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of adverse action is dated;

Step 2: Multiply the average monthly redemptions figure by 10 percent (.10); and

Step 3: Multiply the product of Step 2 by the number of months for which the vendor would have been disqualified to determine the amount of the Civil Money Penalty.

Note: The Civil Money Penalty shall not exceed the maximum amount specified in 7 CFR 3.91(b)(3)(v) for each violation. Instances of other violations that have not yet reached disqualification sanction shall not be used to calculate the CMPs.

For a subset of mandatory Federal violations, the following provisions will be used to calculate CMPs, in accordance with 7 CFR 3.91(b)(3)(v):

1. Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of $100,000 for each violation.
2. Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $32,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $59,000.
3. Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $32,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $59,000.
4. Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $49,000.
5. Civil penalty for a vendor convicted of selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B)

and 42 U.S.C. 1786(o)(4)(B), has a maximum of $11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $49,000.

Example of Calculating Civil Money Penalties

Vendor is notified of a one-year disqualification starting October of this year. CMPs in lieu of disqualification would be calculated as follows:

Monthly redemption for the most recent six (6) calendar months:

September	$6,500
August	6,015
July	6,125
June	6,180
May	6,190
April	6,250
Total	$37,260

Step I = $37,260 ÷ 6 6,210.00 x 10% $621.00

Step II = $621.00 x 12 months $7,452.00

Payment of Civil Money Penalties

The payment must be made by one of the following methods as determined by WIC.

1. A lump sum payment of the CMPs shall be received on or before the date the disqualification is to become effective; or
2. Installment payments of equal amounts, of which the total number of installments cannot exceed one-half the number of months of the disqualification, and shall be paid with interest.

WIC must receive the first installment on or before the date the disqualification is to become effective. The subsequent payments must be received on or before the first day of the month for all subsequent months until final payment is received. If a Vendor fails to make any scheduled installment payment by the due date, WIC shall notify the Vendor that the balance of the CMPs are due within 20 calendar days or the full disqualification sanction period shall be implemented.

All payments (either lump sum or installment) shall be made by **certified check or money order** payable to the **"Hawaii State Director of Finance"** and must include the Vendor's name and Vendor ID Number. **Payments must be sent by certified mail to:**

Hawaii WIC Services Branch
Vendor Management Unit
235 South Beretania Street, Suite 701
Honolulu, Hawaii 96813-2419

A Vendor that does not pay, partially pays, or fails to pay on a timely basis shall receive the disqualification corresponding to the violation for which the CMP was assessed.