

641—73.8(135) Food delivery. Food delivery refers to all aspects of the method by which WIC participants receive food benefits, i.e., printing, distribution, and processing of computerized personal food instruments redeemable through retail food markets and the statewide banking system. Food delivery shall be uniform throughout the state as provided for by these rules.

73.8(1) Responsibilities of WIC participants.

a. Prompt redemption of food instruments. A WIC participant must redeem WIC benefits within the validated date of use.

b. Claiming food instruments. Enrolled participants are required to appear in person to claim food instruments when they have appointments to certify or have nutrition education contacts. Missed attendance may entitle contract agencies to deny that month's benefit. If a written statement is provided to the contract agency, a proxy may pick up food instruments.

c. Adherence to standards for use of the food instrument. The WIC participant in using the WIC food instrument to obtain the specified foods shall:

- (1) Sign the WIC identification card at the time of receipt in the clinic.
- (2) Present the WIC identification card to the vendor at point of purchase.
- (3) Sign each food instrument in the appropriate box in the presence of the vendor.
- (4) Write in the total amount of the purchase in the designated space.
- (5) Not accept money in exchange for unused food instruments or portions of the food allotment.
- (6) Attempt to redeem food instruments only with a WIC-contracted vendor.

73.8(2) Responsibilities of contract agencies.

a. Loss or theft of food instruments. The contract agency is responsible for any financial loss due to theft or other loss of food instruments from clinics. Steps for minimizing the chances of theft or loss are followed in accord with the Iowa WIC Policy and Procedure Manual.

b. Mailing of WIC food instruments. Mailing of food instruments to participants is allowed when inclement weather prevents participants from coming to a distribution site. Any mailing of WIC food instruments on a clinicwide basis must have prior approval from the state.

c. Use of manual food instruments. Rescinded IAB 1/30/08, effective 3/5/08.

d. Training/monitoring of WIC vendors. The contract agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the department. Monitoring and training of vendors and securement of contracts shall be carried out in accordance with department directives outlined in the Iowa WIC Policy and Procedure Manual.

e. Food instrument distribution on nonclinic days. It is the policy of the Iowa WIC program to ensure maximum accessibility to program benefits by establishing alternate procedures for distributing WIC food instruments to participants on days other than regularly scheduled clinic days when the participant notified the contract agency on or before the clinic day of the participant's inability to appear at the clinic. Each contract agency shall establish written guidelines for assessing the adequacy of reasons presented for inability to appear and shall establish written procedures for alternative means of food instrument distribution when a participant timely presents adequate reasons for inability to appear on a regularly scheduled clinic day. These written guidelines and procedures shall be subject to review and approval by the department.

73.8(3) Responsibilities of department. Provision of foods through retail grocers and special purpose vendors is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of stores authorized to provide reasonable access for program participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that the number of vendors (retail grocers and special purpose vendors) may be limited and that all vendors must meet minimum criteria for approval. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be allowed. The department shall be responsible for the following:

a. Approving or denying vendor applications. The department shall determine if applications meet the mandatory specifications in 73.8(4) and meet the minimum review points in 73.8(4) for a subsequent agreement.

b. Compiling the statewide or local area composite data against which vendor applications are reviewed, determining if applications meet the selection criteria which require use of that data, providing training, and signing the initial authorization agreement if a vendor is determined to be eligible.

c. Developing procedures, forms, and standards for agencies to use in conducting on-site review of vendor applications, monitoring, compliance buys, educational buy monitoring, or compliance investigations as defined in 73.8(5).

d. Determining when compliance investigation activities are necessary to verify program violations, developing or approving standards and procedures to be used in conducting the activities, and arranging for an appropriate state or private agency to conduct the compliance buying investigation as required.

e. Providing written notice to vendors of program violations and sanctions.

73.8(4) Responsibilities of WIC vendors. A potential vendor shall make application to the Iowa department of public health WIC program and shall accept the obligations imposed by the signing of a WIC vendor agreement prior to acceptance of any WIC food instrument. The two categories for which any potential vendor may apply are grocery vendors and special purpose vendors. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be approved.

a. *Grocery vendor agreement.* To qualify for a grocery vendor agreement with the Iowa WIC program, a retail outlet shall meet all of the following criteria:

(1) The vendor must stock all of the following categories of items to be defined as a grocery vendor: a minimum of 5 linear feet of raw fruits and vegetables; a minimum of 12 linear feet of unbreaded fresh or frozen meats and poultry (prepackaged luncheon meats do not qualify); canned and frozen vegetables; dairy products; and cereals.

(2) No more than 20 percent of the vendor's gross retail sales may be from the sale of gasoline or other automotive supplies.

(3) No more than 20 percent of the vendor's gross retail sales may be from the sale of alcoholic beverages and tobacco products.

(4) The vendor must maintain regular business hours. This shall include a minimum of two 4-hour blocks of time on each of five days per week. Daily operating hours shall be consistent from week to week, and shall be posted.

(5) The vendor must stock the minimum variety and quantity of WIC-approved foods as defined in the latest revised version of the Iowa WIC vendor application.

The specific brands of products that are included on the WIC-approved food list shall be made available to the vendor at the time of application and prior to renewal of each agreement.

The variety and quantity in stock are defined as including both inventory on display and in on-premises storage, but not inventory on order from suppliers.

(6) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. The prices charged to WIC participants for the average of all WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 105 percent of the average prices of all other WIC vendors in the same peer group. The vendor's average price for any category of WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 115 percent of the average price charged for the same category by all other WIC vendors in the same peer group. Categories refer to the broad groupings of items rather than specific brands. For purposes of making the price comparisons, the average price for all other WIC vendors in the peer group shall be computed from the most recent Price Assessment Reports on file from those vendors. If a vendor intends to comply with this provision by charging WIC participants a lower price than the price charged to other customers, the WIC price for each approved item must be identified on the package or shelf front.

(7) There must be a minimum of five current WIC participants residing in the same ZIP code area as the vendor.

(8) The vendor must not have had a food stamp program disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application or reauthorization.

(9) The vendor must not have had a WIC program suspension imposed or a WIC application denied within the six-month period preceding the date of the application.

(10) The vendor must not have had a conviction or civil judgment for any activity that indicates a lack of business integrity against any of the officers or owners during the previous six years.

(11) The vendor must accept training on WIC program regulations prior to signing an agreement and must agree to provide training to all employees who will handle WIC food instruments prior to accepting any food instruments.

(12) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement Booklet.

b. Special purpose vendor. To qualify as a special purpose vendor, a retail outlet shall meet all of the following criteria:

(1) The vendor may be primarily a retailer of any type of merchandise but shall be authorized to provide only specified infant formula in exchange for WIC food instruments.

(2) The vendor must be able to provide the specified formula within 48 hours; 72 hours if a weekend or holiday is involved.

(3) The prices charged WIC participants must be equal to or less than the prices charged all other customers. The average price of each brand of infant formula sold to WIC participants as reported must not exceed the average price of the same brands of infant formula charged by all authorized WIC grocery vendors in the same peer group.

(4) The vendor shall meet the criteria in paragraph “a,” subparagraphs (2) to (4) and (6) to (12), for grocery vendors.

(5) The vendor must agree to adhere to applicable provisions of the WIC Vendor Instructions and Agreement Booklet.

(6) Vendors that derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments are not allowed.

The department shall review each vendor application within five working days of receipt and determine if the information provided indicates that the retail outlet meets the selection criteria. If the application shows that the vendor does not meet one or more of the criteria, the department shall deny the application. If the vendor’s application indicates that the vendor would qualify, the department or contract agency shall make an on-site visit to verify that the information provided in the application is correct, to provide training, and sign the agreement. If the department or contract agency finds that the vendor has two or more types of out-of-date, stale, or moldy WIC foods in stock during the on-site visit, the vendor’s application may be denied. If the contract agency or department determines during the on-site visit that the vendor does not qualify, the contract agency or department shall not sign the agreement. Within five working days of disapproving an application or agreement, the department will advise the vendor in writing of the reasons for denial of the application and the procedure for appeal. During the on-site visit, the contract agency representative is acting as an agent of the department and has the authority to approve or deny an application.

A vendor that is denied an agreement, either at the application review level or at the on-site review, is required to wait six months prior to submitting a new application. The department may, at its discretion, request a vendor to resubmit an application prior to completing its review if the application has not been completed to the extent that a determination of eligibility can be made.

c. Reauthorization. If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC food instruments. Vendor agreements are valid only for the period of time specified, and a vendor may not continue accepting food instruments past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has been assessed less than 60 violation points under paragraph 73.19(2) “b” within the previous 24 months.

Vendors must complete a new application and sign a new WIC vendor agreement at least every three years to continue accepting WIC food instruments.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the vendor has been assessed 60 or more violation points under paragraph 73.19(2) “b” within the last 24 months, or if any of the following conditions are in effect:

(1) The vendor has failed to submit any of the preceding year’s Price Assessment Reports by the specified dates.

(2) The vendor has not cashed any WIC food instruments for at least two consecutive months at any time during the contract period, or has not cashed five or more WIC food instruments for any 120-day period during the contract period. A vendor will not be excluded under this provision if it is the only grocery or special purpose vendor in that ZIP code area.

(3) Any of the selection criteria listed in 73.8(4) “a” and “b” above are no longer met.

Expiration of a WIC agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

d. Training. Vendors shall accept training in program policies and procedures at the on-site review prior to becoming an authorized vendor and shall be responsible for training all employees who will be handling WIC food instruments. The manager and person responsible for staff training must allow time at this visit for training; the agreement will not be signed until training is completed. Vendors shall be responsible for all actions of their employees in conducting WIC transactions.

If violations of program policies and procedures are documented, either through on-site monitoring or other indirect means, the vendor shall implement a corrective action training plan developed jointly by the vendor and the department or contract agency.

e. Validity of food instruments. The WIC vendor shall be responsible for ensuring that:

(1) The participant signature required on the food instrument is completed in the vendor’s presence;

(2) The participant presents a WIC identification card prior to redeeming food instruments. A signature on the WIC identification card must match the food instrument signature;

(3) The type and quantity of food to be purchased is as indicated on the food instrument;

(4) The amount of money written onto the food instrument for repayment does not exceed the maximum amount as designated by the department and printed on the food instrument;

(5) The expiration date is present on the food instrument and is equal to or no later than the date of usage;

(6) WIC food instruments are never exchanged for cash or credit;

(7) Substitutions of foods different from those listed on the food instrument in type or amount are not made;

(8) Food instruments are presented to the state’s agent (bank) for payment within 15 days of the date of receipt;

(9) The costs of foods purchased by WIC participants do not exceed charges to other customers for the same foods;

(10) The vendor’s authorizing number is stamped with the state-issued vendor stamp on the face of the food instrument prior to its being presented for payment.

f. Cooperation during monitorings. Contracted WIC vendors shall cooperate with department and contract agency staff who are present on site to monitor the store’s WIC activities.

g. Reimbursement to the program. Vendors determined by the department to have collected more moneys than the true value of food items received shall make reimbursement to the department.

73.8(5) Vendor monitoring. To maintain program integrity and accountability for federal or state program funds, the department and contract agencies shall conduct ongoing monitoring of authorized vendors, both through on-site visits and through indirect means. A sample of 10 percent of currently authorized vendors receives on-site monitoring every year. Vendors that change ownership during the year, or apply during the contract period, receive an on-site visit prior to signing an agreement. The types of on-site monitoring are defined as follows:

a. Routine or representative monitoring is used for vendors for which there is no record of violations or complaints or other indication of problems. It may include any or all of the following:

use of a food instrument or observation of a participant, educational buys, review of inventory levels, examination of redeemed WIC food instruments on hand, review of store policies on return items, and review of employee training procedures. The results of the monitoring are reviewed with the owner or manager on duty, and a follow-up letter confirming the findings is sent from the department. Routine monitoring may be performed by the department or by contract agency staff under the direction of the department. Depending on the nature and severity of violations noted, the department may schedule additional visits, initiate a compliance investigation, or apply sanctions.

Educational buy monitoring is a specialized type of routine monitoring. Department or contract agency staff attempt to use a WIC food instrument to purchase unauthorized types or brands of foods to test the level of training of store employees. At the conclusion of the transaction, the results of the buy are discussed with the store owner or manager on duty. The transaction is then voided, and the merchandise returned to the shelves. Educational buys are used on authorized vendors selected by the department. If unauthorized items are allowed to be purchased, the vendor shall agree to a corrective action training plan. A follow-up educational buy is scheduled within 30 to 90 days. A letter is sent from the department documenting the violation. By signing a WIC agreement, a vendor gives consent for educational buys by the department or contract agency. Vendors are not notified in advance that an educational buy is scheduled. The protocol for educational buys, including procedures, appropriate items to purchase, and forms to be used, is specified in the Iowa WIC Policy and Procedure Manual.

b. Electronic monitoring is examination of indicators tracked in the vendor computer database. It allows the analysis of data collected via computer from the contract agencies and the state's bank, from which patterns indicating compliance with or deviation from established patterns for Iowa WIC vendors emerge. Data is collected daily and reviewed on an ongoing basis. Trends identified can necessitate another type of monitoring, depending on the nature of each exception.

c. Compliance investigations may be used for any vendors. Compliance investigations will be conducted annually in a minimum percentage of vendors as mandated in federal regulations. A compliance investigation includes a sufficient number of compliance buys to provide evidence of program noncompliance, two compliance buys in which no program violations are found, or when an inventory audit has been completed. A compliance buy means a covert, on-site investigation in which a representative of the program poses as a participant, parent or caretaker, or proxy, transacts one or more food instruments and does not reveal during the visit that he or she is a WIC representative. Compliance buys may be performed by the department or another state agency or private company under contract with the department. The department is responsible for identifying the vendors to be investigated and for approving the protocol to be used during the investigation. Upon completion of a compliance buy documenting program violations, the department shall issue the vendor a notice of violation points assessed unless such notification would hinder an investigation.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.