

641—73.19 (135) Program violation. Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the program or its regulations.

73.19(1) Participant violation. Violations may be detected by contract agency staff, by vendors, or by department staff. Information obtained by the department is forwarded to the contract agency for appropriate action.

a. Whenever possible, the participant is counseled in person concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual.

b. Participants who violate program regulations are subject to sanction in accordance with the schedule below:

Violation	Points Per Event
1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.).	3
2. Attempting to cash food instrument for more than the possible value of the foods listed.	3
3. Not signing the food instrument at the time of purchase.	3
4. Attempting to cash food instruments after the last valid date.	4
5. Redeeming WIC food instruments at an unauthorized vendor.	4
6. Redeeming food instruments before the allowable date.	4
7. Attempting to cash food instruments that were signed prior to redemption at the vendor.	5
8. Redeeming WIC food instruments that were reported as lost or stolen.	5
9. Attempting to purchase more than the quantity of foods specified on the food instrument.	5
10. Verbal abuse or harassment of WIC or vendor employees.	5
11. Threat of physical abuse of WIC or vendor employees.	10
12. Attempting to sell, return, or exchange foods for cash or credit.	10
13. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
14. Attempting to purchase items that are not food.	10
15. Sale or exchange of WIC food instruments for cash or credit.	10
16. Altering a food instrument (e.g., changing last valid date, food item or quantity).	10
17. Attempting to redeem food instrument issued to another participant.	10
18. Receiving more than one set of benefits for the same time period.	10
19. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
20. Attempting to steal WIC food instruments from a contract agency or participant.	10
21. Physical abuse of WIC contract agency or vendor employees.	10
22. Attempting to pick up food instruments for a child that is not currently in their care.	10

c. The accumulation of 10 violation points within a 12-month period will result in a 2-month disqualification.

The accumulation of 10 additional violation points within a 12-month period following the disqualification will result in a 3-month disqualification. The participant must then reapply for the program and be scheduled for a certification.

d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification and of the right to appeal the decision through the fair hearing process.

e. A disqualification generally applies to all members of a family who are on the program. The competent professional authority may waive the disqualification for one or more members of the family if it is determined that a serious health risk may result from program disqualification. The reason for this waiver must be documented in the participant's file.

f. The cashing of one or more food instruments at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or fewer points for subsequent food instruments cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be disqualified. Violations are cumulative.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement, or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments. Collection of overpayment is not required when the department determines it is not cost-effective to do so.

The contract agency shall issue a Statement of Restitution along with the disqualification notice. The statement lists the serial numbers and dollar value of the food instruments for which payment is required.

The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments that have been cashed.

h. Each contract agency shall maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

73.19(2) Vendor violations. There are five types of sanctions that are applied to vendors for violations of program regulations: nonpayment of food instruments, issuance of violation points, temporary disqualification, permanent disqualification, and civil money penalties.

a. Nonpayment of food instruments.

(1) As a result of prepayment reviews conducted by the state's bank, improperly completed food items are refused payment and returned to the vendor. Items screened during prepayment are authorized vendor stamp not present or legible in the "Pay to the Order of:" box on face of food instrument, missing signature, price exceeds maximum printed on face of food instrument.

(2) If the violation can be corrected by applying the authorized stamp, obtaining the proper signature, or reducing the price, the item may be resubmitted for payment. Federal banking regulations prohibit a financial instrument from being sent through the federal reserve system more than twice. If an improperly completed WIC food instrument is received by the state's bank a second time, it is voided and may not be redeposited.

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that do not rise to the level of fraud against the program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of a WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Accepting food instrument(s) outside the valid dates of use.	5
2. Depositing food instrument(s) more than 15 days after purchase date.	5
3. Accepting food instrument(s) with no date stamp.	5
4. Refusal to accept valid WIC food instruments from participants.	10
5. Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification.	10
6. Providing to WIC participants incentive items not prior authorized by the department.	10
7. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
8. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	5
9. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
10. Failure to use the WIC vendor stamp issued by the Iowa WIC program.	5
11. Issuing "rain checks" or credit in exchange for WIC food instruments.	10
12. Stocking out-of-date, stale, or moldy WIC foods.	10
13. Failure to submit vendor price assessment reports as requested.	10
14. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
15. Cashing food instrument(s) without amount, date of purchase, or participant signature.	15
16. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
17. Providing false information on the price assessment report.	15
18. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.	10
19. Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.	10
20. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
21. Requiring other cash purchases to redeem WIC food instruments.	15
22. Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20

c. One-year disqualification. With an administrative finding of the following violations, the vendor will be disqualified for one year.

(1) Accumulation of 45 or more violation points within a single federal fiscal year of the agreement period.

(2) Allowing purchase of nonapproved and nonsimilar food items in exchange for WIC food instruments.

- (3) Failure to provide access to store premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit.
- (4) Loss of Iowa department of inspections and appeals license.
- (5) Submitting for payment a WIC food instrument redeemed by another authorized vendor.
- (6) Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions.

d. With an administrative finding of the following violations, the vendor will be disqualified from being a WIC vendor for three years.

- (1) A pattern of charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.
- (2) A pattern of charging for items not received by the WIC participant or for foods provided in excess of those listed on the WIC food instrument.
- (3) A pattern of providing credit or nonfood items, except for alcohol, alcoholic beverages, or tobacco products, in exchange for WIC food instruments.
- (4) One incidence of allowing the purchase of alcohol, alcoholic beverages, or tobacco products with a WIC food instrument.
- (5) A pattern of receiving, transacting, or redeeming WIC food instruments outside authorized channels, including through unauthorized vendors or persons.
- (6) A pattern of claiming reimbursement for the sale of a quantity of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time.
- (7) Submission for payment of WIC food instruments known by the vendor to have been lost or stolen.

e. With an administrative finding of the following violations, the vendor will be disqualified for six years.

- (1) One incidence of buying or selling food instruments for cash (trafficking).
- (2) Participating with other individuals including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instruments.
- (3) One incidence of 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.

f. With a conviction in a criminal court of law for trafficking in WIC food instruments 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, the vendor will be permanently disqualified from the Iowa WIC program. The department may impose a civil money penalty (CMP) in lieu of a disqualification when it determines, in its sole discretion, that:

- (1) Disqualification of the vendor would result in inadequate participant access; or
- (2) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

g. The following items do not have a point value, but shall result in or extend a disqualification period:

- (1) Failure to return WIC vendor stamp(s) to the WIC program within 10 days of effective date of disqualification, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a disqualification period.
- (2) For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification period shall be extended by 30 days.

h. The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost food instruments, trading cash and other inappropriate commodities for food instruments, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR 246 or the Iowa Code.

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any temporary or permanent disqualification.

j. A minimum of 15 days' notice is provided prior to all disqualifications, except for permanent disqualifications assessed under paragraph 73.19(2) "*f*," which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a disqualification letter with supporting documentation is prepared for the WIC director's signature. The disqualification letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal.

k. The department is responsible for issuing all warning and disqualification letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

l. Federal food stamp regulations require automatic disqualification from the food stamp program for vendors disqualified by the WIC program for certain types of violations. When a vendor is disqualified from the WIC program, the disqualification letter to the vendor will include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the food stamp program. Such disqualification may not be subject to administrative or judicial review under the food stamp program." For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

m. The department shall disqualify a vendor who has been disqualified from the food stamp program. The disqualification shall be for the same length of time as the food stamp program disqualification, may begin at a later date than the food stamp program disqualification, and shall not be subject to administrative or judicial review under the WIC program. If the department determines that disqualification of a vendor would result in inadequate participant access, it will impose a civil money penalty (CMP) in lieu of disqualification.

n. Civil money penalties.

(1) When the department determines that a civil money penalty (CMP) shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2) "*f*" or 73.19(2) "*m*," it shall use the civil money penalty formula in accordance with Title 7 CFR Subpart 246.12(k)(1)(x) to determine the CMP.

(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. "Failure to timely pay a CMP" includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as program income.