



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III  
Governor

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Secretary

**WV WIC PROGRAM**

**Attachment Three**

**Renewal of Vendor Cost Containment Certification:**

Vendor Cost Containment Certification is required of state WIC programs that admit vendors to the program or continue to authorize vendors who generate 50 percent or more of their gross annual grocery sales from WIC food. The West Virginia WIC Program does not authorize vendors of this type, nor are any vendors authorized who derive 50 percent or more of their gross sales from WIC foods. This is reinforced in WIC Policy 8.05 (B) (2) and 8.05 (B) (20). In addition, the vendor agreement that a vendor signs at the beginning of their authorization period has a provision (57) that reinforces policy 8.05.

Because of these policies of the WV WIC Program concerning above 50 percent vendors, we will not be designing a Cost Containment Plan for FY 2009

**Vendor Provisions in the Nondiscretionary WIC Certification and General Administrative Provisions Interim Final Rule that Must Be Addressed in the FY 2009 State Plan:**

**Participants Must Be Allowed to Use Food Instruments with Any Authorized Vendor:**

Participants are provided lists of vendors either by county, region or state. Participants may shop at any WIC vendor who is recognized by the WV WIC Program. (Policy 3.05 (F) (3) – Food Instrument Issuance).

**Requirement for Processing Vendor Applications Outside of Established Timeframes:**

The West Virginia WIC Program currently has no restrictions or vendor limiting policy that would prohibit a proposed vendor from applying to the program. Should a vendor cease business operations in an area identified as "Participant Hardship", the State Office would solicit other vendors in the area to come onto the program.

**This was already required by §246.12(g)(7) of the WIC regulations (since redesignated as §246.12(g)(8)); the only new requirement was that this requirement must be reflected in the State Plan. Many State agencies may have previously revised their State Plans because of the former §246.12(g)(7); these State agencies do not need to make any further revisions.**

**Manufacturer Cost Containment Provisions in the Miscellaneous Vendor-Related Provisions Final Rule that Must Be Addressed in the FY 2009 State Plan:**

Per the new §246.16a(j)(4), cost containment contracts must not require infant formula manufacturers to provide gratis infant formula or other items.

West Virginia is a member of the WSCA consortium which bids the infant formula contract. This language was included in the contract.

**Vendor Provisions in the Miscellaneous Vendor-Related Provisions Final Rule that Must Be Addressed in the FY 2009 State Plan:**

Abbreviated administrative review procedures may now be used for two additional issues per the new §246.18(a)(1)(ii)(I) and (J):

- A civil money penalty imposed in lieu of disqualification based on a Food Stamp Program disqualification under § 246.12(l)(1)(vii), and
- Denial of an application based on a determination of whether an applicant vendor is currently authorized by the Food Stamp Program.

Since use of abbreviated administrative review procedures is optional, the State agency is required to address this in its vendor agreement (or in an attachment or referenced authority), which is part of the State Plan, if the State agency chooses to use abbreviated administrative review procedures and chooses to add these subjects to such procedures.

The current vendor agreement contains language that provides for a civil money penalty to be imposed in lieu of disqualification. The WV WIC program currently authorizes vendors who do not participate in the USDA Food Stamp Program.

Attachment 3

Confidential vendor information does not include the vendor's telephone number, Web site/e-mail address, and store type:

Previously, under §246.26(e), confidential vendor information did not include the vendor's name, address, and authorization status. The final rule has added the vendor's telephone number, Web site/e-mail address, and store type as information which is also not confidential vendor information.

The West Virginia WIC Program will update written policy to reflect the above revision of the Federal Register §246.26(e).

Under the new §246.26(e)(4), State agencies may identify sanctioned vendors to other vendors, including some of the related details:

At the discretion of the State agency, the State agency may inform all authorized vendors and vendor applicants regarding vendor sanctions which have been imposed, identifying only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Such information may be disclosed only following the exhaustion of all administrative and judicial review, in which the State agency has prevailed, regarding the sanction imposed on the subject vendor, or the time period for requesting such review has expired. Since this provision is optional, the State agency is required to address this in its State Plan only if the State agency chooses to use this option.

The West Virginia WIC Program currently does not reveal the identity of sanctioned vendors. We will continue to employ this policy at our discretion.