

## **Section 13**

### **APPENDIX 3 – SELECTION & AUTHORIZATION**

## Selection and Authorization

The Department is responsible for authorization of each food Vendor Applicant before the Applicant may participate in the Arizona WIC Program. The authorization process begins when a retail food store, pharmacy or military commissary files a complete application, including all required attachments, with the Department. Authorization occurs when the Department enters into a written, fully executed Contract with the Applicant. The Department shall provide the authorized Vendor with a copy of the executed Contract by certified mail.

An Applicant must have a fully executed written Contract with the Department before it may participate in the Arizona WIC Program as an authorized Arizona WIC Program Vendor. Only the Director of the Department or his/her designee may enter into a written Contract authorizing an Applicant to become an Arizona WIC Program approved Vendor.

The Department shall contract with a sufficient number of Vendors to serve all Arizona WIC participants. The Department may limit the number of Vendors to enable the Department to effectively manage the program.

Pharmacies may be contracted to provide “infant formula only”. In this situation, any reference to “WIC foods” shall mean WIC approved infant formula. Except for food stamp authorization, all other provisions shall remain the same.

If any provision of the Contract conflicts with the requirements of the Federal WIC Program Regulations, the provisions in the Federal Regulations shall prevail. If any provision of the Contract conflicts with the requirements of the Vendor Manual, the Vendor Manual shall prevail. If any provision of the Arizona WIC Program Policy and Procedure Manual conflicts with Federal Regulations, the Federal Regulations shall prevail. If any provision of the Vendor Manual conflicts with the Arizona WIC Program Policy and Procedure Manual, the Arizona WIC Program Policy and Procedure Manual shall prevail. If any provision of the Vendor Manual conflicts with Federal Regulation, the Federal Regulation shall prevail.

The United States Department of Agriculture (USDA) has registered and trademarked the WIC acronym and logo and provided State agencies the discretion to authorize their use. Any use of the acronym “WIC” or the WIC logo must be prior approved in writing by the Department and the USDA.

### **FFY 2009 Vendor Contract Enrollment Period**

Retail grocers, pharmacies or military commissaries with a fixed location may apply to become Arizona WIC Program Vendors for FFY 2009. The Department shall mail an enrollment application packet to each currently authorized Vendor (in April 2008) and to any interested retail grocer, pharmacy or military commissary, who requests an application by March 31, 2008, for the FFY 2009 open enrollment period. The open enrollment period deadline will be identified in the enrollment application packet. An applicant must be open, viable and ready to do business **upon submission** of the enrollment application.

The Department uses a one (1) Federal fiscal year Contract. The Contract term is from October 1, 2008 through September 30, 2009. The Department must receive a complete original application, including all required attachments, not later than 5:00 p.m. if hand delivered, or postmarked on the closing date established in the enrollment application packet. **The Department shall not accept facsimile copies in lieu of the original documents.**

Required attachments include: a verified, complete Enrollment WIC Applicant Price/Stock Report; an original signed Contract; a copy of the Applicant’s current sanitation operating or health permit for each location identified in the application, and a verified, completed application form and any additional attachments as applicable.

The Applicant must file a complete list of all outlets which are to be considered, to include, but not limited to, the name of each outlet, outlet numbers (if applicable), the address and telephone number, a contact person responsible for the operation of the WIC food instrument redemption program and the food stamp identification number of each outlet. The Part II – Outlet Information form shall be used and a copy can be found in Appendix 2 of this Manual.

Applications received after 5:00 p.m., if hand delivered, or postmarked after the closing date shall be deemed untimely. The Department shall inform the Applicant that its application was untimely and shall not be considered during the open enrollment period. However, an untimely application will be processed after October 1, under the Arizona WIC Program’s continuous enrollment criteria.

## Evaluation Process

New Vendor Applicants: The evaluation process for Applicants who have not participated in the Arizona WIC Program within the last five (5) Federal fiscal years is as follows:

1. The Department shall verify that the Applicant is an authorized Food Stamp Program retailer operating in good standing.
2. The Department or its designee shall conduct an on-site visit to verify the information contained in the application, Contract and Enrollment WIC Applicant Price/Stock Report. An appointment shall be made for training purposes. Upon conclusion of the site visit, the Department or its designee shall notify the Applicant of the results of the verification visit by providing the Applicant with a copy of the Vendor Site Review form. The Department or its designee shall make one unannounced follow-up visit if deficiencies are noted. Currently, Vendors who have had a satisfactory Vendor Site Review during the current fiscal year may be exempt from this criteria (open enrollment only).
3. The Department shall deny an application if the Department or its designee is unable to verify the information in the application or supporting documentation or if the Applicant has less than the required amounts or kinds of WIC approved foods at the follow-up visit.
4. The Department shall not authorize a new for-profit applicant (not currently participating in the Arizona WIC Program) that is expected to derive more than 50-percent of its annual food sales revenue from WIC food instruments, unless that applicant is necessary to ensure participant access to program benefits. The Department completes a six-month assessment of all new Vendors to assure that the status initially assigned is appropriate. Upon completion of the assessment, if the Vendor's food sales from WIC food instruments exceed 50-percent of their total food sales, the Vendor Contract will be terminated unless the outlet is necessary to ensure participant access.
5. The Department will not review a re-application following a denial based upon the aforementioned reasons for 180 calendar days from the date in the denial letter. If an Applicant appeals the denial of the application, the Department will not review a re-application for 180 calendar days from the date that the final administrative decision is rendered.

Current and previous Vendors: The evaluation process for all current Vendors or Applicants who were previous Vendors who have participated in the Arizona WIC Program at any business location during the previous five (5) Federal fiscal years is as follows:

1. The Department shall follow the Vendor Evaluation Criteria established for new Vendors.
2. The Department shall evaluate the Vendor's file in the following areas:
  - a. Compliance with the Vendor Contract, Federal Regulations and this Section at all business locations;
  - b. Responsiveness to Vendor Site Review corrective action recommendations and participant/authorized representative complaints;
  - c. Past performance in the previous five (5) Federal fiscal years, including points accrued and sanctions assessed;
  - d. In the case of stores owned by corporations, past performance at other locations operated by the same corporation;
  - e. Compliance with the Food Stamp Program requirements;
  - f. Timely and complete submission of Vendor WIC Price/Stock reports;
  - g. Is the Vendor an Above-50-Percent Vendor or a Regular Vendor.

Failure to meet **all** of the Vendor Evaluation Criteria, or if the Vendor's history file evaluation is unacceptable, provides cause to deny an application or to terminate a current Vendor's Contract.

All new Vendor Applicants, current and previous Vendors must attend the Department's mandatory training session scheduled by the Department for each open enrollment period. Each store shall send a management representative or their designee who shall be responsible for Arizona WIC Program compliance at that location. In addition to the management representative or their designee, other representatives may be designated to attend the mandatory training and function as training liaisons for that location's site. The additional store (outlet) representatives who function as training liaisons shall not be a substitute for the management representative or the designee.

Attendance at in-store training or at a mandatory or voluntary training session in a previous and/or a current contract cycle does not satisfy the requirement for attendance at the mandatory training session for the current open enrollment period.

Before an Applicant is denied due to lack of training only, and there is a documented need for the Applicant, the Applicant's original application and related attachments shall be re-evaluated under the Participant Access criteria stated in this Manual. The Applicant will then be given only one (1) opportunity to attend the Department mandatory training session scheduled.

Individual outlets (stores) may be added to a Vendor Contract without affecting the status of the other outlet(s). The Part II – Outlet Information form shall serve as Written Notice and shall be received by the Department not less than thirty (30) calendar days before the outlet opening date (A copy of the Part II – Outlet Information form is located in Appendix 2 of this Manual), along with the Enrollment Price/Stock Report form. The Department shall evaluate the individual outlet based on the evaluation criteria described in this Manual.

### **Continuous Enrollment**

The Department will accept and process applications at any time during the year with the exception of the enrollment period for the FFY 2009 Contract where submission deadlines apply. There are no deadline restrictions attached to applications submitted and processed under continuous enrollment.

### **Change of Ownership**

When a change of ownership occurs including, bankruptcy of a currently approved Arizona WIC Program Vendor, the new owner shall complete an application to become an Arizona WIC Program Vendor, including all attachments. This should occur not less than (30) calendar days prior to the transfer of ownership to ensure that services to Arizona WIC Program participants are not interrupted. The Department shall evaluate the application based on the criteria described in this Manual. When the Department is notified of the change of ownership in writing by the Vendor, the Department shall initiate the follow-up actions necessary to reduce or eliminate any disruption of service to Arizona WIC Program participants. If a Vendor ceases operation by closing a location, any subsequent reopening shall be processed through the full application process, not under the change of ownership clause.

The Department shall evaluate all of the applications for all of the above-mentioned based on the evaluation criteria described in this Manual.

### **Vendor Evaluation Criteria**

In addition to filing a complete and timely application, which includes the attachments, an Applicant must meet **all** of the evaluation criteria. Failure to meet any of the criteria provides cause to deny the application. All Applicants shall be evaluated in accordance with the following criteria:

#### Stock Requirements

Maintain the minimum stock and variety of all WIC foods from the time an application for enrollment is completed and if approved, throughout the contract period as described in Section 2 of the Vendor Manual;

1. Grocers/Commissaries  
Grocer/Commissary Applicants shall have the required WIC approved foods in the amounts and variety required on its shelves or stored at its location address (not available to order) **from the date an application** is submitted. WIC approved brands are listed in Section 2 of this Manual.
2. Pharmacies  
Pharmacy Applicants shall agree to order WIC eligible infant formula in the amounts and brands specified on the food instrument redeemed by the WIC participant/authorized representative, or ordered by the local agency or Department.

The Arizona WIC Program will maintain a list of infant formula wholesalers and distributors licensed in accordance with State law and federal regulations and infant formula manufacturers registered with the Food and Drug Administration. Authorized Vendors are required to only purchase infant formula from sources on the above-mentioned list. Failure to do so will result in the denial of the application or the Vendor being disqualified from participation in the WIC Program. This list will be updated and provided to all authorized Vendors annually and to each new applicant in the enrollment packet.

### Competitive Price Evaluation

The Department collects food prices and redemptions data to perform various analyses and ensure that all Vendors are and remain competitively priced throughout the Vendor Contract period.

### Accessibility to WIC participants

The Applicant's location(s) and hours of operation shall conform to the following requirements:

1. The Applicant shall be open for business a minimum of ten (10) hours a day, six (6) days a week.
2. The Applicant location shall be accessible to WIC participants because of its proximity to a WIC clinic or to the participants' residence.

### Type of Store

The Applicant shall be a retailer of groceries who has forty-five (45) percent or more of its gross sales from groceries and not from alcohol or tobacco products or lottery sales. A pharmacy, which provides only special order authorized infant formula, is exempt from this evaluation requirement. Stores that are classified as Super Centers **must** separate the retail grocery section from the general merchandise section.

### Above-50-Percent Vendor

The Department shall not authorize a new for-profit applicant (not currently participating in the Arizona WIC Program) that is expected to derive more than 50-percent of its annual food sales revenue from WIC food instruments, unless that applicant is necessary to ensure participant access to program benefits. The Department completes a six-month assessment of all new Vendors to assure that the status initially assigned is appropriate. Upon completion of the assessment, if the Vendor's food sales from WIC food instruments exceed 50-percent of their total food sales, the Vendor Contract will be terminated unless the outlet is necessary to ensure participant access.

### Sanitation

The Applicant shall be in compliance with all state, municipal and local sanitation standards and must have a current Permit to Operate posted in the store.

### History of Compliance

The Applicant shall not have been sanctioned or disqualified from participating in the Food Stamp Program or another Arizona WIC Program for a period of five (5) Federal fiscal years prior to application.

### Training

The Applicant shall accept mandatory training by the Department as a prerequisite to approval of the Vendor Contract. The Vendor shall also accept regional, state location and in-store training and shall implement corrective action(s) when a violation of state or Federal rules or policies and procedures occurs as outlined in the Manual (See Training).

### Conflict of Interest

The Vendor ensures that no conflict of interest shall exist with either the Department or local agencies. A conflict of interest relates to the standard of ethical conduct that no officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction, or professional activity or incur any obligation of any nature which is in conflict with the discharge of a person's duties.

The Department shall have the right to cancel this Contract as authorized by A.R.S. §38-511 immediately upon notification of the parties should such conflict of interest arise after the acceptance of this Contract by the parties. A.R.S. § 38-511 provides:

- a. Such cancellation shall occur without any further obligation;
- b. Conflict of interest shall include, but is not limited to, situations where any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to this Contract with respect to the subject matter of this Contract;
- c. Notification shall occur when written notice from the Governor or the chief executive officer or governing body of the political subdivision is received by any party to this Contract, unless the notice specified a later time.

#### Volume of WIC Business

The Applicant which participated as a WIC Vendor during the previous Contract period and had an average of ninety (90) or fewer food instruments redeemed for the quarter of February, March and April may be considered to have too low a volume, and may be evaluated as demonstrating a lack of demand for the Vendor Applicant in the area.

#### Food Stamp Status

The Applicant shall have authorization from and operate in compliance with the Food Stamp Program regulations, except for pharmacy contracts only for the sale of special formula. Applicants who are currently disqualified from the Food Stamp Program shall not be considered as WIC Vendors.

#### Business Integrity

The Applicant's owners, officers or managers shall maintain a standard of business honesty and maintain a reputation of good business practices. The applicant's owners, officers or managers shall not have a criminal conviction or a civil judgment against them in the last six years.

The Department shall have the right to deny authorization or participation in the WIC program based on consideration of information regarding the business integrity and reputation as follows:

1. Criminal conviction or civil judgment against the owners, officers or managers for:
  - a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
  - b) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice;
  - c) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses.
2. Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which an Applicant is removed from such program, or the Applicant is not removed from the program but the Department determines a pattern exists of three (3) or more instances evidencing a lack of business integrity on the part of the owners, officers and managers.
3. Evidence of an attempt by the Applicant to circumvent a period of disqualification, a Civil Money Penalty or fine imposed for violations of the Federal WIC regulations and Department WIC policies and procedures.
4. Previous WIC program violations administratively and/or judicially established as having been committed by owners, officers or managers for which a sanction had not been previously imposed and satisfied.
5. Evidence of prior WIC program violations personally committed by the owner(s), or the officer(s) of the Vendor at one (1) or more outlets of a multi-outlet Contract, or evidence of prior WIC program violations committed by management at other outlets of multi-outlet Contracts which would indicate a lack of business integrity on the part of ownership and for which sanctions have not been previously imposed or satisfied.

### Incentive Item Prohibition

For Vendor Applicants that receive or are likely to receive more than 50 percent of their annual food sales from the sale of supplemental foods obtained with WIC food instruments, incentive items\* shall not be provided to WIC program participants.

\*Incentive items or other free merchandise are defined as: Free or reduced price food or other items, cash, lottery tickets, buy one, get one free, buy one, get one at a reduced price, free amounts added to an item by a manufacturer, manufacturer coupons, store loyalty cards, sales and specials for supplemental food, free or reduced price services except for the minimal customary courtesies of the retail food trade, such as bagging supplemental food for the participant and assisting the participant with loading the supplemental food into his/her vehicle.

### **Timeframes for Action for Open Enrollment**

The Department will review all Vendor applications by July 25<sup>th</sup>.

By August 29<sup>th</sup>, the Department will send a certified notice to all new Vendor Applicants whose applications were denied. Appeal rights shall be outlined in the notice.

By September 1<sup>st</sup>, the Department will send a certified notice to current Vendors who did not file applications notifying them that their Contracts shall expire on September 30<sup>th</sup>.

By September 23<sup>rd</sup>, the Department will send the fully executed Vendor Contract and Vendor information packet to each Applicant who was authorized to become a WIC Vendor.

### **Contract Approval**

After evaluation of the Vendor application and upon a determination that the Applicant met all of the evaluation criteria, the Department will authorize the Vendor Applicant to become an approved Arizona WIC Program Vendor. Upon authorization, the Department will execute the Vendor Contract, assign the applicant a Vendor ID number and two (2) ID stamps so that it may begin to accept WIC food instruments at the beginning of the contract period. Prior to the execution of a Vendor Contract which covers more than one outlet, the Vendor shall file a list of outlets participating as WIC Vendors including the name of each outlet, outlet numbers (if applicable), its address and telephone number, a contact person at each location responsible for the operation of the WIC food instrument redemption program and the food stamp identification number of each outlet.

### **Termination of the Contract**

Either the Vendor or the Department may terminate the Contract according to the terms identified in the Contract. The Contract will be terminated immediately if the Vendor ceases operations, ownership changes (whole or controlling interest), or the Vendor files bankruptcy, which causes ownership or control to change.

The Vendor must inform the Department, in writing, not less than thirty (30) calendar days before the date of termination, change of location, ownership or control of the business or the date that the Vendor will cease business. The Department will send the Vendor a letter confirming the date of termination and the date by which food instruments must be deposited for payment.

When an outlet under one Contract ceases operations, the Vendor must complete in writing a Store Closure Notification form and submit it to the Department not less than thirty (30) calendar days prior to closure of the outlet.

All new WIC Vendors will have a Vendor Site Review after a minimum of thirty days on the program. Failure to meet the minimum stock requirements during this visit will result in termination of the Vendor Contract. The Vendor will not be eligible to re-apply for 180 calendar days from the date of the termination. If the Vendor appeals the termination, the Department will not review a re-application for 180 calendar days from the date that the final administrative decision is rendered.

The Vendor must return its Vendor ID stamps to the Department within ten (10) calendar days of termination of the Contract, a change of ownership or control of the business, or termination of the business.

**Note:** WIC Vendor authorization is not transferable and the Contract shall be terminated. Therefore, if there is a change of ownership, the new owner shall complete an application and meet all enrollment criteria.

### **Expiration of the Contract**

The Department will notify the Vendor at least fifteen (15) calendar days prior to the expiration of its Contract. Expiration of the Vendor's Contract is not subject to appeal.

### **Contract Termination and Disqualification**

The Department may terminate a Contract or disqualify a Vendor, which includes termination of the Contract, by providing the Vendor with thirty (30) calendar days advance written notice.

Any Vendor that is disqualified from another Food and Nutrition Service (FNS) Program may be disqualified from the Arizona WIC Program for the same length of time. During the disqualification, the Department will not consider the Vendor for authorization as an approved WIC Vendor.

### **Customer Relations**

During the term of this Contract the Vendor shall post in a conspicuous place the "We Accept Arizona WIC Food Instruments" decal provided by the Department.

The Vendor shall give WIC participants/authorized representative the same courtesies shown to all other customers.

The Vendor shall allow participants/authorized representatives access to all checkout lanes (**excludes** "Cash Only" and self serve lanes).

The Vendor shall ensure that all information pertaining to WIC participants/authorized representatives shall be confidential, except for Department and local agency monitoring, investigation or oversight.

The Vendor shall accept food instruments from WIC participants/authorized representatives without regard to their race, color, disability, age, national origin, or sex.

The Vendor shall comply with:

- a. The non-discrimination provisions of Federal law;
- b. Regulations in 7 CFR Parts 15, 15a, 15b;
- c. Applicable provisions of the Americans with Disabilities Act of 1990;
- d. All state, municipal and local sanitation standards.

### **Pricing**

The Vendor shall charge prices for WIC foods that are comparable to the prices charged by other similar type stores.

The Vendor may contract pricing for WIC approved foods.

The Vendor shall mark clearly the price of WIC approved foods either on the product container or the shelf.

## High-Risk Identification System

The Department has developed a system to assign Vendor peer groups for high-risk analysis.

The Department captures information from the Arizona WIC Program Vendor Application to determine peer group. Vendors are classified in the following peer groups:

1. Pharmacy (class 1)
2. National/Regional or Local Chain (class 2)
3. Super Centers (class 3)
4. Large Urban Independent – more than \$750,000 total gross annual sales (class 4)
5. Small Urban Independent – less than \$750,000 total gross annual sales (class 5)
6. Large Rural Independent – more than \$750,000 total gross annual sales (class 6)
7. Small Rural Independent – less than \$750,000 total gross annual sales (class 7)
8. Above-50-Percent – more than 50-percent annual food sales from WIC redemptions (class 8)
9. Military Commissary (class 9)

For peer group purposes, a chain is classified as a group of six (6) or more outlets listed under one (1) Contract.

Information relative to the number of cash registers, square footage, hours of operation, number of employees, warehousing and delivery schedules, etc. is collected and may be used for further comparison. For example, comparisons are made among volume of food instrument redemptions and sales and geographic area.

Data reports are produced which provide both peer group and redemption comparison data.