



# ARIZONA WIC ALERT



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## Federal Regulation and USDA Policy Changes Vendor Contract 2009 Changes

On January 6, 2009, the “Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108-265” became final. This rule amends regulations for the WIC Program by adding three requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004, concerning retail vendors authorized by WIC State Agencies to provide supplemental food to WIC participants in exchange for WIC food instruments. The intent of these provisions is to:

- Enhance due process for Vendors – requires the state agency to notify authorized WIC Vendors of an initial violation in writing for violations requiring a pattern of violative incidences in order to impose a sanction before documenting a subsequent violation unless notification would compromise an investigation.; **NEW**
- Prevent defective infant formula from being consumed by infant WIC participants – requires the state agency to 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. **NO CHANGE from existing Vendor Contract**
- Ensure that the WIC Program does not pay the cost of incentive items provided by above-50-percent Vendors in the form of high food prices- prohibits the state agency from authorizing or continue the authorization of an above-50-percent vendor, or make payments to an above-50-percent vendor, which provides or indicates an intention to provide prohibited incentive items to customers. **NO CHANGE from existing Vendor Contract**

This rule also adjusts the Vendor Civil Money Penalty (CMP) levels to reflect inflation – this provision requires the increase in the maximum penalty from \$10,000 per incident to \$11,000 per incident and the total maximum CMP for all violations committed during a single investigation be increased from \$40,000 to \$44,000. **NEW**

In addition to the Federal Regulations change, the United States Department of Agriculture (USDA) has revised its policies regarding the WIC Acronym and the WIC Logo. The WIC Acronym and the WIC Logo are registered service marks of the USDA for use by USDA’s WIC Program; all rights therein and goodwill pertaining thereto belongs exclusively to the USDA. This policy prohibits the use of the WIC Acronym or the WIC Logo, including close facsimiles thereof, in whole or in part, as part of a Vendor’s official or business name; in banners, advertising, signs, etc.; or on stickers or other attachments affixed to individual food items.

The Federal Regulations and USDA policy changes require an update to the current Arizona WIC Program Vendor Manual. **This WIC Alert will serve as official notice of the changes and become effective immediately.**



The Arizona WIC Program Vendor Contract, Vendor Responsibilities, Page 2 of 12 stipulates that:

‘The Vendor shall comply with:

- a. This Contract and the Arizona WIC Program Vendor Manual, and any subsequent amendments or additions thereto.
- b. Federal and state statutes (including 42 U.S.C. § 1786) and regulations (including United States Department of Agriculture (hereafter USDA) regulations 7 C.F.R. § 246.1 *et. seq.*) that govern the WIC program, including any changes made during the agreement period.
- c. The Arizona WIC Program Policy and Procedure Manual and any amendments or changes thereto.
- d. The Vendor selection criteria throughout the Contract period, including any changes to the criteria. Using the current Vendor selection criteria, the Department may reassess the Vendor at any time during the Contract period. The Department will terminate and/or disqualify the Vendor if the Vendor fails to meet the current selection criteria. The Vendor may also be subject to other sanctions, including administrative fines, termination, disqualification, and civil money penalties, or any combination of sanctions, according to the Violations and Sanctions section of the Vendor Manual.’

Enclosed, you will find the following replacement sections of the Arizona WIC Program Vendor Manual that have been revised to comply with the aforementioned referenced regulations and USDA policy:

- Section 1 – Introduction
- Section 9 – Violations and Sanctions
- Section 10 - Appeal Rights & Hearing Procedures
- Section 13 - Appendix 3 - Selection & Authorization

If you have any questions regarding this notice, please contact any member of the Arizona WIC Program, Vendor Management Team at 1-866-737-3935 or (602) 542-1886.

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