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Policy No. WV:01.1

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## **WIC Farmers' Market Agreement/Policy Violations**

### **Purpose**

To describe state agency (SA) procedures for monitoring compliance of farmers and farmers' market associations with the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Farmers' Market (FM) Agreement and policies, and to inform farmers and markets of sanctions that will be imposed by the SA for noncompliance.

### **Authority**

7 CFR Part 246 and WIC Farmers' Market Agreement

### **Policy**

Farmers and farmers' markets identified and documented as having failed to comply with the WIC Farmers' Market Agreement, policies, procedures and/or regulations of the WIC Program shall be sanctioned.

### **Procedures**

- I. The state agency (SA) and/or SA representative will monitor the operations of authorized farmers and farmers' markets (also known as FM Associations) transacting WIC Electronic Benefits Transfer (EBT) cash value benefits for fresh fruits and vegetables.
  - A. Monitoring techniques employed shall include but are not limited to:
    1. routine on-site reviews by representatives of the SA;
    2. covert compliance buys by representatives of the SA; or
    3. on-site inspections by a city, county, district or state health authority.
  - B. Criteria to be used by the SA and/or SA representative to initiate an on-site monitoring visit shall include but are not limited to:

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1. price differences identified or observations made as a result of a prior on-site review;
  2. complaints from a WIC agency, participants, or farmers;
  3. prior violations;
  4. high volume of WIC cash value redemptions;
  5. period of time elapsed since last review;
  6. the first year of WIC operation.
- II. A positive pass can occur as a result of an on-site evaluation and/or compliance buy. A positive pass is defined as a sanctionable activity(ies) and/or transaction(s) identified as a result of an on-site evaluation and/or compliance buy that violate the WIC Farmers' Market Agreement, Federal or State statutes, regulations, policies, and/or procedures governing the WIC Program. Sanctionable violations include, but are not limited to:
- A. One or more WIC transactions for unauthorized/ ineligible food items, non-food items, overcharges, and/or cash during a compliance buy visit; or
  - B. Submitting one or more WIC EBT transactions for payment through a different farmers' market location than where the WIC EBT transaction(s) was originally transacted during a compliance buy visit; or
  - C. Transacting one or more WIC transactions at an unauthorized location during a compliance buy visit; or
  - D. Transacting one or more WIC transactions outside the valid benefit period during a compliance buy visit; or
  - E. Entering the WIC EBT recipient's PIN and/or accepting the WIC EBT purchase transaction in lieu of the WIC EBT recipient.
- III. FM Associations will be notified in writing of the results of the on-site review and/or compliance buy and, if appropriate, sanctions. FM

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Associations are responsible for notifying individual farmers within their association of the results of the on-site review and/or compliance buy, any sanctions levied as a result of noted violations, and the effective dates of any sanction.

- IV. After a warning is issued to a farmer or FM Association relating to sanctionable violations noted during an on-site review and/or compliance buy, follow-up visits may occur during the same Agreement period or subsequent Agreement periods but will not occur sooner than 30 days after the FM Association receives written notification of the violation.
- V. All notifications of violation will be mailed via certified and regular mail service. The date of the certified mail receipt will confirm the FM Association's receipt of the notification. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then four days from the date of the letter will be considered the date of receipt. The FM Association is responsible for providing notification of violations, warnings, and/or sanctions to any of its member farmers who are identified in the State's notification.
- VI. An investigation must be completed within 24 months of the first positive pass. An investigation consists of any initial on-site review and/or compliance buy in which sanctionable violations were noted, and all follow-up on-site reviews and/or compliance buys conducted within 24 months of the first positive pass. Sanctions will be determined based on violations noted during all positive passes regardless of the compliance activity conducted, i.e. on-site review or compliance buy. An investigation may be closed any time during the 24 month period if two passes are conducted with no sanctionable violations being noted.
- VII. Monitoring by routine on-site reviews may be conducted by the SA or a SA representative. During the on-site review, the SA or SA

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representative shall identify him/herself to farmers and assess the farmers according to the following procedures of the on-site review:

- A. Check to see if the farmer identification poster is displayed and contains all required identifying information.
- B. Verify that prices are posted for eligible items;
- C. Review quality and quantity of produce.
- D. Question Farmers to determine their knowledge of WIC Policies and procedures and provide technical assistance if the farmers' responses indicate they do not understand the WIC policies and procedures.
- E. Other violations of policies and the Agreement may be tested by the SA representative.

VIII. Monitoring by Compliance Buys

- A. Definition of a FM compliance buy: A covert, on-site investigation in which a representative from the SA poses as a WIC recipient and transacts one or more WIC transactions to test for compliance with the WIC Farmers' Market Agreement, policies, and/or procedures. The compliance buy may occur on more than one day and consist of one or more transactions.
- B. A SA representative may attempt to transact WIC food benefits for eligible or ineligible food items, non-food items, credit (including rain checks which are not allowable), and/or cash back.
- C. WIC food benefits transacted improperly and/or for unauthorized/ineligible food items, non-food items, overcharges, or cash will not be paid.

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- D. If the Association representative enters the WIC EBT recipient's PIN and/or accepts the WIC EBT purchase transaction in lieu of the WIC EBT recipient, the transaction will not be paid.
  
- IX. Monitoring by On-Site Inspections by a Health Authority – The farmers' market may receive an on-site inspection by a public health authority for compliance with the Health and Safety Code. Violations may result in a disqualification from the WIC Program in addition to any other penalties as a result of non-compliance with the Health and Safety Code.
  
- X. Violations and sanctions. Definition of a violation: violation means any intentional or unintentional action of a farmer or the farmer's agent, or employees (with or without the knowledge of the farmer) that violates the WIC Farmers' Market Agreement, Federal or State statutes, regulations, policies, and/or procedures governing the Program. The following sanctions apply:
  - A. For selling unauthorized/ineligible food (i.e. honey, picante sauce, processed food items, etc.) in exchange for one or more WIC transactions, the SA or SA representative will:
    - 1. Issue a written warning to the farmer. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 2. For a second occurrence of selling unauthorized/ineligible food, the SA or SA representative will disqualify the farmer for one year and issue a written warning to the FM Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 3. An association receiving at least two written notifications within the same investigation where two or more farmers within the FM Association have been disqualified for selling unauthorized food will be disqualified by the SA for one year.

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- B. For accepting one or more WIC transactions for food purchased from outside the continental United States or from a retail grocer, wholesaler, and/or terminal, the SA or SA representative will:
    - 1. Issue a written warning to the farmer and the FM Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 2. For a second violation, the SA or SA representative will disqualify the farmer for one month and issue a second written warning to the FM Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 3. An association receiving three written warnings within the same investigation where one or more farmers within the FM Association sell food purchased outside the continental United States and/or from a retail grocer, wholesaler, and/or terminal, will result in the SA disqualifying the FM Association for one year.
  
  - C. For selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for one or more WIC transactions, the SA or SA representative will:
    - 1. Upon notification to the FM Association, immediately disqualify the farmer from participating in the WIC Program for six years and issue a written warning to the FM Association.
    - 2. An association receiving two written notifications within the same investigation where two or more farmers within the FM Association sell firearms, ammunition, explosives, or controlled substances, will result in the SA disqualifying the FM Association for six years.
  
  - D. For conducting one or more WIC transactions at an unauthorized location and submitting the transaction(s) for payment through an authorized location, the SA or SA representative will, upon notification to the FM Association, immediately disqualify the farmer from participating in the WIC Program for three years. The

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notification to the farmer will be provided through the FM Association of which the farmer is a member.

- E. For overcharging on one or more WIC transactions during a compliance buy, the SA or SA representative will:
  - 1. Issue a written warning to the farmer. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
  - 2. For a second violation, the SA or SA representative will disqualify the farmer from participating in the WIC Program for three years. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
  
- F. For providing cash in exchange for one or more WIC transactions, the SA or SA representative will:
  - 1. Upon notification to the FM Association, immediately disqualify the farmer from participating in the WIC Program for six years and issue a written warning to the FM Association.
  - 2. An association receiving two written notifications within the same investigation where two or more farmers within the FM Association provide cash for WIC transactions will result in the SA disqualifying the FM Association for six years.
  
- G. For selling non-food items in exchange for one or more WIC transactions, the SA or SA representative will:
  - 1. Upon notification to the FM Association, immediately disqualify the farmer from participating in the WIC Program for three years and issue a written warning to the FM Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
  - 2. An association receiving three written warnings within the same investigation where three or more farmers with the FM Association issue non-food items will result in the SA disqualifying the FM Association for three years.

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- H. For failing to display prices of eligible food items, the farmer will:
    - 1. Receive a written warning. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 2. If the same farmer fails to display prices a second time during the same investigation, the SA or SA representative will disqualify the farmer for one month and issue a written warning to the Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 3. An association receiving three written warnings where three or more farmers within the FM Association fail to display prices of eligible food items will result in the SA disqualifying the FM Association for one month.
  
  - I. For entering the WIC EBT recipient's PIN and/or accepting the WIC EBT purchase transaction in lieu of the WIC EBT recipient, the WIC EBT transaction will not be paid and the SA or SA representative will:
    - 1. Issue a written warning to the FM Association.
    - 2. An association receiving three written warnings within the same investigation where the FM Association representative(s) enters the WIC recipient's PIN and/or accept the WIC EBT purchase transaction in lieu of the WIC EBT recipient will result in the SA disqualifying the FM Association for one month.
  
  - J. For failing to display the WIC EBT ID Poster with all required identifying information, the farmer will:
    - 1. Receive a written warning. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
    - 2. For a second occurrence of a farmer's failure to display the WIC ID Poster with all required identifying information, the SA or SA representative will disqualify the farmer for one month



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and issue a written warning to the FM Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.

- XI. A farmer will be disqualified from accepting WIC transactions at all authorized market locations for a violation resulting in disqualification at any given market. At the discretion of the SA, one market location may be disqualified without affecting the participation of other authorized market locations within the Association.
  
- XII. Farmers' Markets/farmers are not permitted to use either the acronym "WIC" or the WIC logo, including close facsimiles thereof, in total or in part, either in the official name in which the Farmers Market/farmer is registered or in a different name under which it does business. Farmers' Markets/Farmer's use of the WIC Acronym and logo is authorized only on state-issued posters or signs. Farmers' Markets/farmers are not permitted to use the WIC acronym or the WIC logo on signs, pamphlets, posters or brochures. For violations pertaining to the use of the acronym "WIC" or the WIC logo, the SA or SA representative shall:
  - A. Issue a written warning to the farmer/FM Association as provided in Section III.
  - B. For a second occurrence of the same violation, the SA or SA representative will disqualify the farmer for one month and issue a warning to the FM Association. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
  - C. An association receiving three written warnings within the same investigation where three or more farmers with the FM Association and/or the association use the WIC acronym or logo, will result in the SA disqualifying the FM Association for one month.

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- XIII. Once noncompliance is identified, disqualification can be imposed at the State's discretion in any agreement period following notification to the farmer and/or market.
- XIV. Disqualification from the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamps Program) shall result in an automatic disqualification of the same duration from the WIC Program. However, the effective date of the disqualification from the WIC Program is at the discretion of the SA.
- XV. Disqualification from the WIC Program may result in disqualification as a retailer in SNAP. Such disqualification may not be subject to administrative or judicial review under SNAP.
- XVI. A farmer or FM Association being disqualified will be given at least twenty days prior notice before the disqualification becomes effective. The date of notice shall be the date determined using the methodology described in Section V. The notification to the farmer will be provided through the FM Association of which the farmer is a member.
- XVII. A FM Association that has been disqualified may reapply to participate in the program at the end of the disqualification period.
- XVIII. Any actions instituted against a farmer or FM Association as described in this policy will be considered before re-contracting with the FM Association and may be used as criteria in determining whether the farmer or FM Association is eligible to re-contract.
- XIX. The State, as well as officers, agents, and employees of the State, are not responsible for losses incurred by the farmer/market as a result of denial of application to participate, disqualification, and/or expiration of the WIC Farmers' Market Agreement.